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HARBORS DIVISION

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THIRD PREFERRED FLEET MORTGAGE

on the

U.S.-Flag Vessel

ALAKAI (Official No. 1182234)

HAWAII SUPERFERRY, INC.,  
as Shipowner

TO

STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION  
as Mortgagee

Dated as of May 30<sup>th</sup>, 2007

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NATIONAL VESSEL DOCUMENTATION CENTER  
U. S. COAST GUARD

I HEREBY CERTIFY THIS TO BE A TRUE COPY  
OF THE RECORDS OF THIS OFFICE.

*Andrew M. Duck*  
DOCUMENTATION OFFICER

*5/30/07*  
DATE

**SYNOPSIS OF MORTGAGE**

Name and Official Number of Vessel:	ALAKAI, Official Number 1182234
Type of Instrument:	Third Preferred Fleet Mortgage
Date of Instrument:	May <u>30<sup>th</sup></u> , 2007
Percentage of Vessel Mortgaged:	Whole of the Vessel (100%)
Name of Shipowner (Percentage of Vessel owned):	HAWAII SUPERFERRY, INC. (100%)
Address of Shipowner:	One Waterfront Plaza, Suite 300 500 Ala Moana Blvd. Honolulu, Hawaii 96813
Name of Mortgagee:	STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION
Address of Mortgagee:	869 Punchbowl Street Honolulu, Hawaii 96817
Total amount of Mortgage:	\$40,000,000 (exclusive of interest, expenses and fees)

### THIRD PREFERRED FLEET MORTGAGE

THIS THIRD PREFERRED FLEET MORTGAGE ("Mortgage") is made as of May 30<sup>th</sup>, 2007, by Hawaii Superferry, Inc., a Hawaii corporation having its principal place of business at One Waterfront Plaza, Suite 300, 500 Ala Moana Blvd., Honolulu, HI 96813 (together with its successors and assigns, the "Shipowner"), in favor of State of Hawaii, Department of Transportation, having its principal place of business at 869 Punchbowl Street, Honolulu, HI 96817 (the "Mortgagee").

#### RECITALS

A. The Shipowner is the sole Shipowner of the whole of the First Vessel (as such term is defined in the Granting Clause of this Mortgage), which is documented in the name of the Shipowner under the laws and flag of the United States of America at the National Vessel Documentation Center of the United States Coast Guard in Falling Waters, West Virginia (the "NVDC").

B. The Shipowner now has under construction at Austal USA, LLC in Mobile, Alabama, a second high-speed vehicle and passenger vessel, presently identified as Yard No. 616 (the "Second Vessel," and together with the First Vessel, the "Vessels" and each a "Vessel").

C. The Shipowner and the Mortgagee are parties to that certain Harbors Operating Agreement, dated September 7, 2005 (as such agreement may be amended, restated, supplemented, or otherwise modified from time to time, the "Harbors Operating Agreement"), pursuant to which the Mortgagee has provided port facilities to the Shipowner to operate the Vessels. A copy of the Harbors Operating Agreement, but no other exhibits or schedules thereto is attached hereto as Exhibit A and incorporated by reference herein. In order to induce the Mortgagee to enter into the Harbors Operating Agreement, the Shipowner has agreed to execute and deliver this Mortgage as security for the full and prompt payment, performance and observance by the Shipowner of its obligations under the Harbors Operating Agreement (the "Obligations"), and the Shipowner has agreed to execute and deliver this Mortgage in favor of the Mortgagee as security for the Obligations.

D. On the date hereof, the Shipowner executed and delivered a First Preferred Fleet Mortgage (as amended, modified or supplemented from time to time, the "First Preferred Fleet Mortgage") to The United States of America, represented by the Secretary of Transportation, acting by and through the Maritime Administrator (the "First Mortgagee"), pursuant to which the Shipowner mortgaged to the First Mortgagee the First Vessel, said First Preferred Fleet Mortgage having been filed and recorded prior to the filing and recording of this Mortgage.

E. On the date hereof, the Shipowner executed and delivered a Second Preferred Fleet Mortgage (as amended, modified or supplemented from time to time, the "Second Preferred Fleet Mortgage") to Austal USA, LLC (the "Second Mortgagee"), pursuant to which the Shipowner mortgaged to the Second Mortgagee the First Vessel, said Second

Preferred Fleet Mortgage having been filed and recorded prior to the filing and recording of this Mortgage.

F. The First Mortgagee and the Second Mortgagee have consented to the Shipowner granting this Mortgage on the First Vessel to the Mortgagee, provided this Mortgage is subordinated to the First Preferred Fleet Mortgage and the Second Preferred Fleet Mortgage upon the terms contained in Article V of this Mortgage.

G. The Shipowner agrees to execute and deliver, on the delivery date of the Second Vessel, a supplement to this Mortgage extending the lien of this Mortgage to the Second Vessel.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the due and prompt payment of the Obligations, and the performance and observance of and compliance with all agreements, covenants, terms and conditions contained in the Harbors Operating Agreement:

THE SHIPOWNER hereby grants, conveys, mortgages, transfers, assigns, pledges, hypothecates, sets over and confirms unto the Mortgagee, its successors and assigns, on a subordinated basis consistent with Article V of this Mortgage, the whole (100%) of the U.S.-flag high-speed vehicle and passenger vessel named ALAKAI, Official Number 1182234, which is documented under and pursuant to the laws of the United States of America, together with all of its engines, boilers, machinery, covers, masts, bowsprits, boats, spars, anchors, cables, chains, rigging, tackle, capstans, fittings, tools, pumps and pumping equipment, gear, apparel, furniture, equipment, spare parts, supplies, accessions and accessories and all other appurtenances thereunto appertaining and belonging, whether now owned or hereafter acquired, whether on board or not and also any and all additions, improvements and replacements hereafter made in, for or to such vessel, or any part thereof, or in or to its equipment and appurtenances aforesaid, and all proceeds of the foregoing (all of the foregoing referred to herein as the "First Vessel");

TO HAVE AND TO HOLD the First Vessel unto the Mortgagee, its successors and assigns, and to its, and its successors' and assigns' own use, benefit and behoof, forever, upon the terms set forth herein;

PROVIDED, HOWEVER, that if the Shipowner shall pay or cause to be paid in full to the Mortgagee all outstanding and unpaid Obligations, then upon payment by the Shipowner of any recording or other fees attendant to filing the satisfaction of this Mortgage in the NVDC and thenceforth this Mortgage and everything herein contained shall cease and be null and void; otherwise this Mortgage shall be and remain in full force and effect; and

FURTHER PROVIDED, HOWEVER, that the First Vessel is mortgaged to the Mortgagee subject to the following further representations, warranties, covenants, agreements, conditions and provisions of this Mortgage.

## ARTICLE I.

### REPRESENTATIONS AND WARRANTIES

The Shipowner hereby represents, warrants, covenants and agrees as follows:

Section 1: Corporate Existence. The Shipowner is a corporation duly organized, validly existing and in good standing under the laws of the State of Hawaii.

Section 2: Title to Vessels. The Shipowner is the sole, true and lawful Shipowner and is lawfully possessed of each Vessel, and the Shipowner owns all right, title and interest in and to each Vessel free and clear of all complaints in rem, libels, liens (maritime or otherwise), charges, claims, security interests, mortgages or other encumbrances of any kind or nature except for Permitted Liens (as defined below).

Section 3: Mortgage is Legal, Valid and Binding. The Shipowner has full power and authority to own, operate, charter and mortgage each Vessel; all action necessary and required by law for the execution and delivery of this Mortgage has been duly and effectively taken; and this Mortgage constitutes a legal, valid and binding obligation of the Shipowner and, upon the filing hereof (or, in the case of the Second Vessel, a supplement to this Mortgage) with the NVDC, will create a "preferred mortgage" under Chapter 313 of Title 46 of the United States Code (together with the regulations promulgated thereunder and set forth in 46 C.F.R. Part 67, as amended from time to time, "Chapter 313") covering each Vessel that is enforceable against the Shipowner in accordance with its terms.

Section 4: Citizen of United States. The Shipowner is a citizen of the United States within the meaning of Section 2 of the Shipping Act, 1916, as amended and recodified at 46 U.S.C. §§ 50501(a), (b) and (d) (any such person, a "United States Citizen"), for the purpose of operating the Vessels in the U.S. coastwise trade and is entitled to own and operate the Vessels in the U.S. coastwise trade under its Certificate of Documentation.

## ARTICLE II.

### COVENANTS

The Shipowner covenants and agrees as follows:

Section 1: Covenants in Harbors Operating Agreement. The Shipowner shall fully perform all covenants, agreements, obligations and conditions required of the Shipowner in the Harbors Operating Agreement.

Section 2: Maintain Citizenship and Documentation of Vessel. The Shipowner shall at all times maintain each Vessel, so long as it shall be subject to the lien hereof, as a vessel of the United States and shall maintain the documentation of such Vessel under the laws of the United States. The Shipowner shall continue to be (a) a corporation in good standing under the laws of the State of Hawaii, (b) a United States Citizen, for the purpose of operating each Vessel in the

U.S. coastwise trade, and (c) entitled to own and operate each Vessel in the U.S. coastwise trade under its Certificate of Documentation, which the Shipowner shall maintain in full force and effect.

**Section 3: Title to Vessel.** Except to the limited extent permitted under Section 11 of this Article II, the Shipowner shall continue to own and possess the whole of each Vessel free from all complaints in rem, libels, liens (maritime or otherwise), charges, claims, security interests, mortgages, pledges or other encumbrances of any kind or nature except for liens permitted by Section 9 of this Article II. The Shipowner hereby does and shall forever warrant and defend the title and possession of each Vessel, and each part thereof, for the benefit of the Mortgagee, against any and all claims and demands whatsoever.

**Section 4: Preservation of Mortgage Lien.** The Shipowner shall comply with and not permit each Vessel to be operated contrary to applicable law, including without limitation Chapter 313, and shall take any and all such other action as may be required from time to time in order to establish and maintain this Mortgage as a valid and perfected "preferred mortgage" under Chapter 313 on each Vessel in accordance with the terms hereof.

**Section 5: Transfer of Vessel.** The Shipowner shall not sell or transfer any Vessel, or place or permit any Vessel to be placed under any foreign registration or flag or change the hailing port of any Vessel, or do or suffer or permit anything to be done, including placing any Vessel under charter, which would or might adversely affect the registration or documentation of such Vessel under the laws or regulations of the United States, without the prior written consent of the Mortgagee.

**Section 6: Operation and Maintenance of Vessel.**

(a) The Shipowner shall operate or take all actions necessary to cause each Vessel to be operated in full compliance with each applicable law, treaty, convention, order, rule or regulation of the United States of America, any state thereof, or any other jurisdiction (foreign or otherwise) wherein operated or any department or agency thereof. The Shipowner shall not employ any Vessel or suffer her employment in any trade or business that is forbidden by the laws of the United States of America or is otherwise illicit or in carrying illicit or prohibited goods or in any manner whatsoever which may render her liable to condemnation in a court or to destruction, seizure or confiscation and in event of hostilities in any part of the world (whether war be declared or not), not to employ any Vessel or suffer her employment in carrying any contraband goods or to enter or trade to any zone which is declared a war zone by any government or by such Vessel's war risks insurers unless the required extra war risk insurance cover has been obtained for such Vessel.

(b) The Shipowner shall at all times and at its own cost and expense maintain and preserve each Vessel in good condition, working order and repair, ordinary wear and tear excepted, and shall cause each Vessel to be kept fully equipped and such equipment to be kept in good condition, working order and repair, ordinary wear and tear excepted as to enable her to maintain her present class with its classification society and so as to enable her to qualify to navigate the routes presently permitted under, and subject to the existing conditions as are set forth in, the current United States Coast Guard Certificate of Inspection covering each Vessel

and so as to comply with the provisions of such Certificate of Inspection, as well as all laws, regulations and other requirements (statutory or otherwise) from time to time applicable to a similar vessel of her age, type and trade registered under the flag of the United States of America, and to procure that all repairs to or replacements of any damaged, worn or lost parts or equipment be effected in such manner (both as regards workmanship and quality of materials) as not to diminish the value of such Vessel.

Section 7: Insurance.

(a) The Shipowner shall obtain and maintain such insurances and such protection and indemnity cover with respect to each Vessel as required under the terms of the First Preferred Fleet Mortgage, and such terms shall continue to apply hereunder notwithstanding the release or satisfaction of the First Preferred Fleet Mortgage before the release or satisfaction of this Mortgage.

(b) All insurances with respect to each Vessel shall name the Mortgagee as an additional assured, and all protection and indemnity cover with respect to each Vessel shall name the Mortgagee as an additional loss payee, subject to the subordination provisions of Article V and Article VI of this Mortgage, but without liability for premiums, calls or assessments. All amounts of whatsoever nature payable under any such insurances and protection and indemnity cover must be payable first to the First Mortgagee to the extent required under the First Preferred Fleet Mortgage, then to the Second Mortgagee to the extent required under the Second Preferred Fleet Mortgage, and otherwise to the Mortgagee for distribution to itself and thereafter to the Shipowner or others as their interests may appear. Nevertheless, until otherwise required by the Mortgagee by notice to the underwriters (with the prior written consent of the First Mortgagee and the Second Mortgagee), (i) amounts payable under any insurances and protection and indemnity cover on the Vessel may be paid directly to the Shipowner to reimburse it for any loss, damage or expense incurred by it and covered by such insurances or protection and indemnity cover, or to the person to whom any liability covered by such insurances or protection and indemnity cover has been incurred; *provided, however*, that if the Mortgagee shall give notice an Event of Default shall have occurred and be continuing or any which, with the giving of notice or the lapse of time, or both, would constitute an Event of Default shall have occurred and be continuing, all such payments shall be made to the Mortgagee, subject to the subordination provisions of Article V and Article VI of this Mortgage, until the Obligations have been fully discharged, and (ii) concerning amounts payable under any insurances or protection and indemnity cover with respect to each Vessel involving any damage to such Vessel not constituting a total loss, the underwriters may pay direct for the repair, salvage or other charges involved or, if the Shipowner shall have first fully repaired the damage or paid all of the salvage or other charges, may pay the Shipowner as reimbursement therefor. Subject to the subordination provisions of Article V and Article VI of this Mortgage, all payments under insurances or protection and indemnity cover shall be made to the Mortgagee if an Event of Default shall have occurred and be continuing or any event which with the giving of notice or the lapse of time, or both, would constitute an Event of Default shall have occurred and be continuing.

(c) Subject to the subordination provisions of Article V and Article VI of this Mortgage, all amounts paid to the Mortgagee in respect of any insurances and protection and indemnity cover on each Vessel shall be disposed of as follows:

(i) so long as no Event of Default shall have occurred and be continuing, any amount which might have been paid at the time, in accordance with the provisions of Section 7(a) above, directly to the Shipowner or others as their interest may appear shall be paid by the Mortgagee to, or as directed by, the Shipowner;

(ii) so long as no Event of Default shall have occurred and be continuing, all other amounts paid to the Mortgagee in respect of any insurances or protection and indemnity cover on such Vessel shall be applied to the making of needed repairs or other work on such Vessel, or to the payment of other claims incurred by the Shipowner relating to such Vessel, or may be paid to the Shipowner or whomsoever may be entitled thereto; and

(iii) if an Event of Default shall have occurred and be continuing, any amounts shall be applied in accordance with the terms of the Harbors Operating Agreement.

(d) In the event that any claim or lien is asserted against a Vessel for loss, damage or expense that is covered by insurances or protection and indemnity cover required hereunder and it is necessary for the Shipowner to obtain a bond or supply other security to prevent arrest of such Vessel or to release such Vessel from arrest on account of such claim or lien, the Mortgagee, on request of the Shipowner, may, in the sole discretion of the Mortgagee, assign to any person, firm or corporation executing a surety or guarantee bond or other Agreement to save or release such Vessel from such arrest, all right, title and interest of the Mortgagee in and to such insurance or protection and indemnity cover covering said loss, damage or expense, as collateral security to indemnify against liability under said bond or other agreement.

Section 8: Taxes. The Shipowner shall from time to time pay or discharge or cause to be paid or discharged, as they become due and payable, all taxes, assessments, and governmental charges levied or assessed or imposed upon each Vessel; *provided, however*, that the Shipowner shall have the right to contest the same in good faith.

Section 9: Creation of Liens. Neither the Shipowner nor any other Person (including without limitation any master or charterer of a Vessel) has or shall have any right, power or authority to create, incur or permit to be placed or imposed upon a Vessel, or any part thereof, or any of its freights, profits or hire, any lien whatsoever other than: (a) the lien of the First Preferred Fleet Mortgage, the lien of the Second Preferred Fleet Mortgage, this Mortgage or other liens in favor of the Mortgagee, or liens permitted under the Harbors Operating Agreement; (b) liens for damages arising out of maritime tort; (c) liens for wages of the crew of such Vessel; (d) liens for general average or salvage (including contract salvage); (e) liens for wages of stevedores when employed directly by a person listed in 46 U.S.C. § 31341; or (f) maritime and other liens for repair, services, and supplies to such Vessel arising in the ordinary course of



business (all liens described in clauses (a) through (f) hereof, "Permitted Liens"); *provided, however*, that any Permitted Lien for repairs, services or supplies under subsection (f) above shall be subject and subordinate to the lien of this Mortgage. The Shipowner shall, no later than 30 days after they become liens on such Vessel, pay, satisfy or discharge any and all liens of the types described in clauses (b), (c), (d) and (e) of this Section 9 unless such liens are covered by valid policies of insurance held by the Shipowner and meeting the requirements of Section 7 of this Article II; *provided, however*, that that the Shipowner shall have the rights to contest the same in good faith.

Section 10: Discharge of Liens, Encumbrances, Etc. Except for the lien of this Mortgage, Permitted Liens or liens for loss, damage or expense, which are fully covered by insurance or, in respect of which, a bond or other security has been posted by the Shipowner with the appropriate court or other tribunal to prevent the arrest or secure the release of a Vessel from arrest on account of such claim or lien, the Shipowner shall not suffer to be continued any lien, encumbrance or charge on any Vessel, and in due course and in any event, by the earlier of fifteen (15) days after the same becomes due and payable or seven (7) days after being requested to do so by the Mortgagee, shall pay or cause to be discharged or make adequate provision for the satisfaction or discharge of all claims or demands, or shall cause such Vessel to be released or discharged from any lien, encumbrance or charge therefor.

Section 11: Requisition of Title to Vessel. Subject to the provisions of Articles V and VI, in the event that title of the Shipowner to a Vessel shall be requisitioned, purchased or taken by any government of any country or any agent thereof, the lien of this Mortgage shall be deemed to attach to the claim for compensation and the compensation, purchase price, reimbursement or award shall be payable to the Mortgagee. The Shipowner shall promptly execute and deliver such documents, if any, and shall promptly do and perform such acts, if any, as in the opinion of the Mortgagee may be necessary or useful to facilitate or expedite the collection by the Mortgagee of such compensation, purchase price, reimbursement or award.

Section 12: Seizure of Vessel. Subject to the provisions of Articles V and VI, if a Vessel shall at any time, while subject to the lien hereof, be libeled, seized, detained, levied or attached under process or color of legal authority for any cause whatsoever, the Shipowner shall forthwith notify the Mortgagee in writing and, without expense to the Mortgagee, within fourteen (14) days from the time of such libel, seizure, detention, levy or attachment, either cause such Vessel to be released by filing an undertaking or stipulation or otherwise as may be lawfully permitted or furnish the Mortgagee additional security of a value acceptable to the Mortgagee. Subject to the provisions of Articles V and VI, if the Shipowner shall fail or neglect to furnish additional security to the Mortgagee or otherwise to release such Vessel from libel, seizure, detention, levy or attachment, the Mortgagee may (but need not) furnish security to release such Vessel, and if, as a result of such libel, seizure, detention, levy or attachment, such Vessel shall be sold at a marshal's sale or otherwise under legal process, any insurance money, excess proceeds and other sums recoverable with respect to such Vessel shall be paid to the Mortgagee and shall be applied against the Obligations.

Section 13: Notice of Loss or Adverse Claim. The Shipowner shall forthwith give notice by letter and telecopy to the Mortgagee in the event of (a) the actual, constructive or compromised or arranged total loss of such Vessel (b) any requisition of the use of or title to, or

seizure or forfeiture of, such Vessel by any governmental authority or any other party, or the attachment, levying upon, filing of an action in rem against, detention, sequestration or taking into custody of such Vessel in connection with any proceeding, (c) any marshal's or other sale of such Vessel, or (d) any casualty, accident or damage to such Vessel involving an amount in excess of \$2,000,000.

Section 14: Copies of Mortgage and Notice. The Shipowner shall carry, or cause to be carried, a certified copy of this Mortgage and of any amendments and supplements hereto, or assignments hereof, with each Vessel's documents and on board each Vessel with the ship's papers and shall exhibit the same or cause the same to be exhibited, on demand, to any Person having business with such Vessel and to any representative of the Mortgagee. Unless otherwise approved by the Mortgagee, a notice reading as follows, printed in plain type of such size that it shall cover a space not less than six inches wide by nine inches high, protected from exposure to the elements, shall be kept prominently displayed in the wheelhouse and in the Captain's cabin on each Vessel:

#### "NOTICE OF PREFERRED FLEET MORTGAGES

This vessel is owned by Hawaii Superferry, Inc., and is subject to a Third Preferred Fleet Mortgage in favor of the State of Hawaii, Department of Transportation, as Mortgagee, under authority of Chapter 313 of Title 46 of the United States Code. Under the terms of the Third Preferred Fleet Mortgage, neither the shipowner nor any other person (including without limitation any master or charterer of the vessel) has or shall have any right, power or authority to create, incur or permit to be placed or imposed upon the vessel, or any part thereof, or any of its freights, profits or hire, any lien whatsoever other than: (1) liens for wages of the crew of the vessel; (2) liens for general average or salvage (including contract salvage); (3) liens for wages of stevedores when employed directly by a person listed in 46 U.S.C. § 31341; or (4) maritime and other liens for repair, services, and supplies to the vessel arising in the ordinary course of business provided that such liens are subject and subordinate to the liens of the Third Preferred Fleet Mortgage."

Section 15: Further Action. From time to time the Shipowner shall, and the Mortgagee may on behalf of the Shipowner, execute and deliver such other and further instruments and assurances and take such other actions as in the opinion of the Mortgagee's counsel may reasonably be required to subject a Vessel more effectually to the lien hereof and to the payment of the Obligations and for the operation of such Vessel as herein provided, and, in case of an Event of Default, as defined below, to effectuate sales as provided in Article III of this Mortgage.

### ARTICLE III.

#### EVENTS OF DEFAULT AND REMEDIES

Section 1: Events of Default. The occurrence of any of the following events shall constitute an event of default (an "Event of Default"):

(a) An event of default shall occur and be continuing under the Harbors Operating Agreement; or

(b) The Shipowner shall fail to perform: (i) any covenant contained in Sections 2 through 10 of Article II of this Mortgage; or (ii) any covenant contained in other provision of this Mortgage and such failure shall continue for a period of thirty (30) days after the Shipowner obtains notice thereof.

Section 2: Remedies. Subject to the provisions of Articles V and VI, if an Event of Default shall have occurred and be continuing, then the Mortgagee may, in every case and concurrently or separately:

(a) Exercise any or all remedies available to the Mortgagee under the Harbors Operating Agreement;

(b) Exercise all the rights and remedies provided (i) under this Mortgage; and (ii) in foreclosure and otherwise given to mortgagees by the provisions of Chapter 313 and acts amendatory thereof and supplementary thereto;

(c) Exercise any other right or remedy provided by law or agreement, including without limitation the right to recover deficiency or other judgment for any amount due under the Harbors Operating Agreement or hereunder;

(d) Take and enter into possession of a Vessel or each Vessel, at any time, wherever the same may be, without legal process and without being responsible for loss or damage, and the Shipowner or other person in possession shall forthwith, upon demand of the Mortgagee, surrender to the Mortgagee possession of such Vessel or Vessels; and the Mortgagee may, subject to the Mortgagee's compliance with the requirements of 46 C.F.R. § 221.19, without being responsible for loss or damage except in case of the Mortgagee's own gross negligence, willful misconduct or bad faith, hold, lay up, lease, charter, operate or otherwise use such Vessel or Vessels for such time and upon such terms as it may deem to be for its best advantage, accounting only for the net profits, if any, arising from such use of such Vessel or Vessels and charging upon all receipts from the use of the Vessel or Vessels or from any sale thereof or from the exercise of any of the powers conferred by Section 2(e) of this Article III, all costs, expenses, charges, damages or losses by reason of such use and with the right to dock such Vessel or Vessels free of charge at the Shipowner's dock (or elsewhere at Shipowner's expense);

(e) Demand, collect, receive, compromise and sue for, so far as may be permitted by law, in the name of the Shipowner, all earnings, revenues, income and profits of a Vessel or each Vessel, all amounts due from insurers under any insurance thereon as payments of losses or as return premiums or otherwise, all salvage awards and recoveries, all recoveries in general average or otherwise, and all other sums due or to become due in respect of such Vessel or Vessels, or in respect of any insurance thereon, from any person whomsoever, and to make, give and execute in the name of the Shipowner acquittances, receipts, releases or other discharges for the same, and to endorse and accept in the name of the Shipowner all instruments in writing with respect to the foregoing, and the Shipowner does hereby irrevocably appoint the

Mortgagee the true and lawful attorney-in-fact of the Shipowner, upon the happening of an Event of Default, to do all said acts; and

(f) Take and enter into possession of a Vessel or each Vessel at any time, wherever the same may be, without legal process and, if it seems desirable to the Mortgagee and without being responsible for loss or damage except in case of the Mortgagee's own gross negligence, willful misconduct or bad faith, sell to sell such Vessel or Vessels at public auction, free from any claim of or by the Shipowner of any nature whatsoever by first giving notice of the time and place of sale with a general description of the property in the following manner: (i) by publishing such notice for ten (10) consecutive days in a daily newspaper of general circulation published in Honolulu and New York City; (ii) if the place of sale should not be Honolulu or New York City, then also by publication of a similar notice in a daily newspaper, if any, published at the place of sale; and (iii) by sending a similar notice by telecopy confirmed by registered mail to the Shipowner at its then current business address at least fourteen (14) days prior to the date of sale. Such sale of such Vessel or Vessels may be held at such place as the Mortgagee in such notices may have specified, or such sale may be adjourned by the Mortgagee from time to time by announcement at the time and place appointed for such sale or for such adjourned sale and without further notice or publication the Mortgagee may make such sale at the time and place to which the same shall be so adjourned; and such sale may be conducted without bringing such Vessel or Vessels to the place designated for such sale and in such commercially reasonable manner as the Mortgagee may deem advisable, and the Mortgagee may become the purchaser at such sale.

(g) In any suit to enforce its rights, powers or remedies, the Mortgagee shall be entitled as a matter of right (i) to the appointment of a receiver or receivers of a Vessel or Vessels and the earnings thereof with full rights and powers to use and operate such Vessel or Vessels, and (ii) to a decree ordering and directing the sale and disposition of such Vessel or Vessels. The Mortgagee may become the purchaser at the said sale, and the Mortgagee shall have the right to credit on the purchase price any and all sums of money due to the Mortgagee hereunder.

(h) Each and every right and remedy provided in this Section 2 shall be cumulative and in addition to every other remedy given hereunder or otherwise existing. The exercise of any right or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right or remedy. No waiver, delay or omission by the Mortgagee in the exercise of any right or remedy accruing upon any Event of Default shall impair the Mortgagee's right to exercise such right or remedy or be construed to be a waiver of any such Event of Default or to be any acquiescence therein. Nothing contained herein shall limit any rights or remedies available to the Mortgagee under the Harbors Operating Agreement, regardless of the existence of an Event of Default.

Section 3: Cure of Defaults. Subject to the terms of the Harbors Operating Agreement, if at any time after an Event of Default and prior to the actual sale of the Vessel by the Mortgagee or prior to any enforcement or foreclosure proceedings, the Shipowner offers completely to cure all Events of Default and to pay all expenses, advances and damages to the Mortgagee consequent on such Events of Default, with interest with respect to the Shipowner's obligations as provided herein or in the Harbors Operating Agreement as set forth therein, then

the Mortgagee may, but shall not be required to, accept such offer and payment and restore the Shipowner to its former position, but such action, if taken, shall not affect any subsequent Event of Default or impair any rights consequent thereon.

Section 4: Application of Proceeds. Subject to the provisions of Articles V and VI, the proceeds of any sale made either under the power of sale hereby granted to the Mortgagee or under a judgment or decree in any judicial proceedings for the foreclosure of this Mortgage or for the enforcement of any remedy granted to the Mortgagee hereunder, any net earnings arising from the management, charter or other use of a Vessel by the Mortgagee under any of the powers herein contained or by law provided, the proceeds of any and all insurances and any claims for damages on account of such Vessel or the Shipowner of any nature whatsoever, and any compensation for requisition, shall be applied as follows:

First: To the payment of all costs and expenses (together with interest thereon as provided in the Harbors Operating Agreement) incurred by the Mortgagee, including the reasonable compensation of its agents and reasonable attorneys' fees, determined by the equivalent hourly rate charged by members of the Hawaii State Bar Association with similar level of experience, by reason of any sale, retaking, management or operation of such Vessel and all other sums payable to the Mortgagee hereunder by reason of any expenses or liabilities incurred or advances made by it for the protection, maintenance and enforcement of the security or of any of its rights hereunder or in the pursuit of any remedy hereby conferred; and at the option of the Mortgagee to the payment of all taxes, assessments or liens claiming priority over the lien of this Mortgage;

Second: To the payment of the Obligations in the manner provided in the Harbors Operating Agreement; and

Third: Any surplus thereafter remaining, to the Shipowner or to the Shipowner's successors in interest or assigns, or to whomsoever may be lawfully entitled to receive the same.

In the event that the proceeds are insufficient to pay the amounts specified in paragraphs First and Second above, the Mortgagee shall be entitled to collect the balance from the Shipowner.

Section 5: Quiet Enjoyment. Until one or more of the Events of Default hereinabove described shall happen, the Shipowner (a) shall be suffered and permitted to retain actual possession and use of such Vessel and (b) shall have the right, from time to time, in its discretion, and without application to the Mortgagee subject to the terms of the Harbors Operating Agreement, and without obtaining a release thereof by the Mortgagee, to dispose of, free from the lien hereof, any boilers, engines, machinery, masts, spars, sails, rigging, boats, anchors, chains, tackle, apparel, drills, furniture, fittings or equipment or any other appurtenances of such Vessel that are no longer useful, necessary, profitable or advantageous in the operation of such Vessel, first or simultaneously replacing the same by new boilers, engines, machinery, masts, spars, sails, rigging, boats, anchors, chains, tackle, drills, apparel, furniture, fittings, equipment, or other appurtenances of substantially equal value to the Shipowner, which shall forthwith become subject to the lien of this Mortgage as a preferred mortgage thereon.

Section 6: No Waiver of Preferred Status. (a) If any provision of this Mortgage should be deemed invalid or shall be deemed to affect adversely the preferred status of this Mortgage under any applicable law, such provision shall cease to be a part of this Mortgage without affecting the remaining provisions, which shall remain in full force and effect.

(b) Anything herein to the contrary notwithstanding, it is intended that nothing herein shall waive the preferred status of this Mortgage and that, if any provision or portion thereof herein shall be construed to waive the preferred status of this Mortgage, then such provision to such extent shall be void and of no effect.

Section 7: Citizenship of the Mortgagee. Notwithstanding any other language in this Mortgage to the contrary, the Mortgagee shall not take any action in violation of Section 9 of the Shipping Act, 1916, as amended. To the extent any provision of this Mortgage contravenes Section 9 of the Shipping Act, 1916, as amended, such provision may be deemed void without affecting the validity and enforceability of the other provisions of this Mortgage.

#### ARTICLE IV.

#### SUNDRY PROVISIONS

Section 1: Recording Clause. For the purpose of recording this Mortgage as required by Chapter 313, the total amount of the direct or contingent obligations that are or may be secured by this Mortgage is FORTY MILLION U.S. DOLLARS (U.S.\$40,000,000), excluding interest, expenses and fees and any other amounts for which the Shipowner may become liable in connection with the performance of Mortgage covenants. The discharge amount is the same as the total amount, and there is no separate discharge amount for property other than the Vessels.

Section 2: Binding on Successors. All of the covenants, promises, stipulations and agreements of the Shipowner in this Mortgage shall bind the Shipowner and its successors and assigns and shall inure to the benefit of the Mortgagee and its respective successors and assigns. In the event of any assignment or transfer of this Mortgage to the extent permitted by the Harbors Operating Agreement, the term "Mortgagee", as used in this Mortgage, shall be deemed to mean any such assignee or transferee.

Section 3: Exercise by Agents. Wherever and whenever herein any right, power or authority is granted or given to the Mortgagee, such right, power or authority may be exercised in all cases by the Mortgagee or such agent or agents as it may appoint, and the act or acts of such agent or agents when taken shall constitute the act of the Mortgagee hereunder.

Section 4: Notices. Any notice or other communication to be given pursuant to this Mortgage shall be in the manner and addressed as provided in the Harbors Operating Agreement.

Section 5: Titles and Section Heading. The titles and section headings in this Mortgage are for convenience only and shall not affect the construction hereof.

Section 6: Governing Law. This Mortgage shall be governed by and construed in accordance with the general maritime laws of the United States of America to the extent applicable, and, to the extent that such laws are not applicable, the laws of the State of Hawaii as

applied to contracts made and performed within the State of Hawaii, without regard to principles of conflicts of law.

## ARTICLE V.

### SUBORDINATION TO THE FIRST PREFERRED FLEET MORTGAGE

Section 1: Subordination. So long as the First Preferred Fleet Mortgage is outstanding, this Mortgage is subject and subordinate thereto and all provisions of this Mortgage shall be construed according to the following:

(a) Anything herein to the contrary notwithstanding, this Mortgage is fully subject to and fully subordinate to the First Preferred Fleet Mortgage, and the rights, remedies, priorities and powers granted to the Mortgagee herein are fully subject to and are fully subordinate to the corresponding rights, remedies, priorities and powers granted to the First Mortgagee under the First Preferred Fleet Mortgage and may not be exercised in such a manner as to impair or prejudice such rights, remedies, priorities and powers under the First Preferred Fleet Mortgage, except as provided in this Article V.

(b) This Mortgage has the right of succession on payment or discharge of the First Preferred Fleet Mortgage.

(c) So long as the First Preferred Fleet Mortgage is outstanding, the Mortgagee may exercise the rights and remedies provided for herein only under the following circumstances:

- (i) with the prior written consent of the First Mortgagee; or
- (ii) the Shipowner or the Mortgagee shall have tendered to the First Mortgagee all amounts secured by the First Preferred Fleet Mortgage; or
- (iii) (x) a Vessel shall have been seized or arrested (and such seizure or arrest shall not have been released for a period exceeding fifteen days) by the First Mortgagee or shall have been seized or arrested by others; or (y) the Shipowner shall commence any case, proceeding or other action, or have any case, proceeding or other action commenced against it under any domestic or foreign law relating to bankruptcy, insolvency, reorganization or relief of debtors; and the Mortgagee shall have determined that the failure to assert its rights or remedies hereunder can reasonably be expected to jeopardize the validity or priority of this Mortgage.

(d) To the extent that the provisions of the First Preferred Fleet Mortgage require the Shipowner to do something prohibited hereby or to refrain from doing something required hereby, or require a distribution of funds other than as provided herein, no Event of default shall result from the Shipowner's compliance with such provisions. So long as any portion of the debt to the First Mortgagee is outstanding, the Mortgagee may not require the

Shipowner to comply with the provisions of this Mortgage to the extent that they require different or additional performance than that required by the First Preferred Fleet Mortgage unless the Mortgagee has obtained the prior written consent of the First Mortgagee.

(e) This Mortgage may not be amended without the prior written consent of the First Mortgagee. The First Mortgagee may from time to time amend the First Preferred Fleet Mortgage in any respect, including, without limitation, by increasing the discharge amount of the First Preferred Fleet Mortgage without the consent of the Mortgagee.

(f) The Mortgagee acknowledges that the First Mortgagee owes no duty to the Mortgagee in respect of this Mortgage, except that, in connection with the sale of a Vessel by the First Mortgagee, the First Mortgagee shall provide the Mortgagee with the same notice of sale that it provides any buyer.

(g) Notwithstanding any other provisions of this Mortgage, the Mortgagee agrees with the Shipowner, for the benefit of the First Mortgagee that the Mortgagee shall not take any action or present any position in connection with this Mortgage inconsistent with, or in opposition to, the validity, enforceability or priority of the First Preferred Fleet Mortgage, nor shall the Mortgagee take any action or present any position in connection with this Mortgage that has the effect of hindering, delaying, impeding, interfering with, or opposing the First Mortgagee's enforcement of its rights under the First Preferred Fleet Mortgage, even if the First Mortgagee's efforts to obtain the value of its collateral would not yield any proceeds to the Mortgagee hereunder.

## ARTICLE VI.

### SUBORDINATION TO THE SECOND PREFERRED FLEET MORTGAGE

Section 1: Subordination. So long as the Second Preferred Fleet Mortgage is outstanding, this Mortgage is subject and subordinate thereto and all provisions of this Mortgage shall be construed according to the following:

(a) Anything herein to the contrary notwithstanding, this Mortgage is fully subject to and fully subordinate to the Second Preferred Fleet Mortgage, and the rights, remedies, priorities and powers granted to the Mortgagee herein are fully subject to and are fully subordinate to the corresponding rights, remedies, priorities and powers granted to the Second Mortgagee under the Second Preferred Fleet Mortgage and may not be exercised in such a manner as to impair or prejudice such rights, remedies, priorities and powers under the Second Preferred Fleet Mortgage, except as provided in this Article VI.

(b) This Mortgage has the right of succession on payment or discharge of the Second Preferred Fleet Mortgage.

(c) So long as the Second Preferred Fleet Mortgage is outstanding, the Mortgagee may exercise the rights and remedies provided for herein only under the following circumstances:

(iv) with the prior written consent of the Second Mortgagee; or



- (v) the Shipowner or the Mortgagee shall have tendered to the Second Mortgagee all amounts secured by the Second Preferred Fleet Mortgage; or
- (vi) (x) a Vessel shall have been seized or arrested (and such seizure or arrest shall not have been released for a period exceeding fifteen days) by the Second Mortgagee or shall have been seized or arrested by others; or (y) the Shipowner shall commence any case, proceeding or other action, or have any case, proceeding or other action commenced against it under any domestic or foreign law relating to bankruptcy, insolvency, reorganization or relief of debtors; and the Mortgagee shall have determined that the failure to assert its rights or remedies hereunder can reasonably be expected to jeopardize the validity or priority of this Mortgage.

(d) To the extent that the provisions of the Second Preferred Fleet Mortgage require the Shipowner to do something prohibited hereby or to refrain from doing something required hereby, or require a distribution of funds other than as provided herein, no Event of default shall result from the Shipowner's compliance with such provisions. So long as any portion of the debt to the Second Mortgagee is outstanding, the Mortgagee may not require the Shipowner to comply with the provisions of this Mortgage to the extent that they require different or additional performance than that required by the Second Preferred Fleet Mortgage unless the Mortgagee has obtained the prior written consent of the Second Mortgagee.

(e) This Mortgage may not be amended without the prior written consent of the Second Mortgagee. The Second Mortgagee may from time to time amend the Second Preferred Fleet Mortgage in any respect, including, without limitation, by increasing the discharge amount of the Second Preferred Fleet Mortgage without the consent of the Mortgagee.

(f) The Mortgagee acknowledges that the Second Mortgagee owes no duty to the Mortgagee in respect of this Mortgage, except that, in connection with the sale of a Vessel by the Second Mortgagee, the Second Mortgagee shall provide the Mortgagee with the same notice of sale that it provides any buyer.

(g) Notwithstanding any other provisions of this Mortgage, the Mortgagee agrees with the Shipowner, for the benefit of the Second Mortgagee that the Mortgagee shall not take any action or present any position in connection with this Mortgage inconsistent with, or in opposition to, the validity, enforceability or priority of the Second Preferred Fleet Mortgage as against this Mortgage, nor shall the Mortgagee take any action or present any position in connection with this Mortgage that has the effect of hindering, delaying, impeding, interfering with, or opposing the Second Mortgagee's enforcement of its rights under the Second Preferred Fleet Mortgage, even if the Second Mortgagee's efforts to obtain the value of its collateral would not yield any proceeds to the Mortgagee hereunder.

IN WITNESS WHEREOF, the Shipowner has caused this Third Preferred Fleet Mortgage on the Vessel to be duly executed on May 30th, 2007, and delivered to be effective as of the day and year first above written.

**HAWAII SUPERFERRY, INC.**

By: [Signature]  
Name: John L. Garibaldi  
Title: President

ACKNOWLEDGMENT

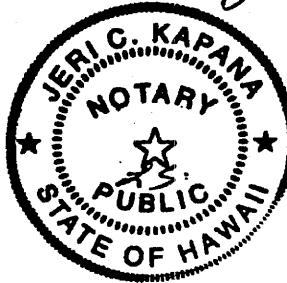
STATE OF Hawaii )  
COUNTY OF Honolulu )

ss.:

On this 23rd day of April, 2007, before me personally appeared John L. Garibaldi to me known, who, being by me duly sworn, did depose and say that he resides at Honolulu Hawaii; that he is the President of Hawaii Superferry, Inc., a Hawaii corporation, the entity described in and which executed the foregoing instrument; and that he signed his name thereto by the order of the Board of Directors of said corporation and acknowledged the same to be his act and deed as such on behalf of the corporation.

Given under my hand and seal this 23rd day of April, 2007.

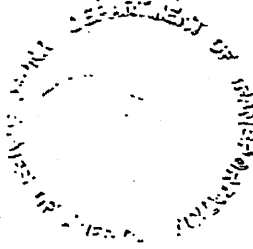
[Signature]  
Notary Public **Jeri C. Kapana**  
My Commission Expires 7-23-07



**CONSENT OF FIRST MORTGAGEE**

The United States of America, represented by the Secretary of Transportation, acting by and through the Maritime Administrator, as Mortgagee under that certain First Preferred Fleet Mortgage executed on May 2, 2007, and filed and recorded on May 30th, 2007, at Falling Waters, West Virginia, with the National Vessel Documentation Center of the United States Coast Guard, as amended, modified or supplemented from time to time, hereby consents to the grant of the foregoing mortgage in favor of the State of Hawaii, Department of Transportation.

(SEAL)



UNITED STATES OF AMERICA  
SECRETARY OF TRANSPORTATION

BY: MARITIME ADMINISTRATOR

By: [Signature]  
Secretary  
Maritime Administration

Date Signed: May 2, 2007

Attest:  
[Signature]  
Assistant Secretary  
Maritime Administration

)  
) ss.:  
DISTRICT OF COLUMBIA )

I, the undersigned, a Notary Public in and for the District of Columbia, do hereby certify that Dawn Threet, Secretary, Maritime Administration, the United States of American, personally appeared before me in said District, the aforesaid officer being personally well know to me as the person who executed the foregoing Consent of First Mortgage, and acknowledged the same to be his act and deed as said officer.

Given under my hand and seal this 2nd day of May, 2007.

[Signature]  
Notary Public  
My Commission Expires 3/14/09

Jeannette S. Riddick  
Notary Public, District of Columbia  
My Commission Expires 02-14-2009



