

CITY AND COUNTY OF HONOLULU  
DEPARTMENT OF BUDGET AND FISCAL SERVICES

REVOCABLE PERMIT NO. RP-17-7496

Effective the 15<sup>th</sup> day of February, 2017, Horse Haven LLC, whose mailing address is 3853 Pokapahu Place, Honolulu, Hawaii 96816, hereinafter called the ("Permittee"), is hereby permitted to manage and operate the Stable Concession at Koko Head Regional Park at 408 Kealahou Street, Honolulu, Hawaii 96825, adjacent to, but not a part of, the Koko Crater Botanical Gardens located at 7491 Kokonani Street, Honolulu, Hawaii 96825 TMK: 3-9-012-008 ("Premises"), based on the terms, covenants and conditions set forth herein and attached hereto. The Permittee shall be bound by the requirements set forth in the attached Specifications, Exhibit A, and General Terms and Conditions for Concession Revocable Permits (1/12).

This Revocable Permit is made without public notice of sealed bids pursuant to Section 102-2(b)(7) of the Hawaii Revised Statutes, shall not exceed twelve (12) months and may be revoked on notice of thirty (30) days or less.

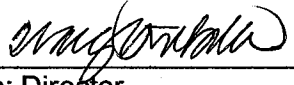
THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

1. The start date of this Revocable Permit is conditioned upon the successful completion of the Permittee making the necessary repairs to the stables and support buildings to get the Premises to a safe and usable condition, as listed in the Department of Parks and Recreation Permit Nos. P171251 dated 9/8/16, P171536 dated 10/31/16, P171607 dated 11/21/16, P171750 dated 12/14/16 and P171907 dated 1/13/17.
2. This Revocable Permit shall be effective on the commencement date listed on the Notice to Proceed and shall not exceed a period of twelve (12) consecutive months.
3. The Permittee, in consideration of the Concession Revocable Permit granted and other valuable consideration agrees to pay the City a monthly concession permit fee as listed in the attached Specifications.

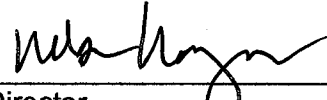
4. In case of any dispute as to the interpretation of any provision under the Permit, the interpretation of the Director of Budget and Fiscal Services shall control.
5. Unless amended by the Director of Budget and Fiscal Services and signed by him, all terms and conditions set forth herein shall remain in full force and effect.

[End of page, signatures on following page]

CITY AND COUNTY OF HONOLULU

By:   
Its: Director  
Department of Enterprise Services

CITY AND COUNTY OF HONOLULU

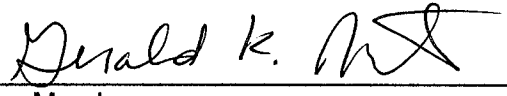
By:   
Its: Director  
Department of Budget and Fiscal Services  
*81 2/27 2/28*

Date: FEB 24 2017


CITY AND COUNTY OF HONOLULU

By:   
Its: Director  
Department of Parks and Recreation

HORSE HAVEN LLC

By:   
Its: Member

APPROVED AS TO FORM AND LEGALITY:

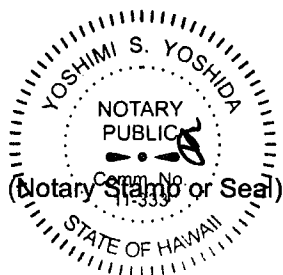
  
City and County of Honolulu  
Deputy Corporation Counsel  
ERNEST H. NOMURA

STATE OF HAWAII

PERMITTEE'S ACKNOWLEDGMENT

STATE OF Hawaii )  
City & \_\_\_\_\_ COUNTY OF Honolulu ) S.S.

On this 3rd day of February, 2017, before me appeared Gerald K. Mount, and \_\_\_\_\_, to me known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are Member Manager and \_\_\_\_\_ of Horse Haven LLC the Permittee named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument on behalf of the Permittee, and acknowledges that he/she/they executed said instrument as the free act and deed of the Permittee.



[Signature]  
(signature)  
Yoshimi S. Yoshida  
(Print name)

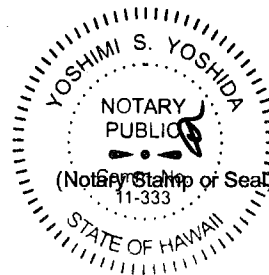
Notary Public, State of Hawaii

My Commission Expires: 11/13/2019

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: City & County of Honolulu Department of Budget & Fiscal Services

Undated at time  
Doc. Date: \_\_\_\_\_ of notarization No. of Pages: 1st Jurisdiction:  
FEB 03 2017  
Signature of Notary \_\_\_\_\_ Date of Certificate  
Yoshimi S. Yoshida  
Printed Name of Notary



SPECIFICATIONS FOR THE  
STABLE CONCESSION AT  
KOKO HEAD REGIONAL PARK

1. SCOPE OF PERMIT

Upon the Notice to Proceed date to manage and operate the Stable Concession at Koko Head Regional Park, the Permittee shall have the exclusive right to provide to patrons at the Stable Concession at Koko Head Regional Park the following Activities and Events:

Activities:

Horse training, riding lessons, horse boarding;

Events:

Horse shows and equestrian sporting events;  
Equestrian type educational seminars;  
Community service events.

A prepared plan for any Event must be submitted a minimum of thirty (30) calendar days prior to the event date, to the Officer in Charge ("OIC") for the City Department of Parks and Recreation ("DPR") written approval.

Participants in Activities, including boarder owners, and participants in Events shall be required to sign the Release of Waiver and Claims (Exhibit C). Permittee shall keep the originally signed release forms and provide copies of forms at inspections or upon request from the City.

The Permittee shall provide all patrons for their signature, a waiver of liability form which shall waive the City from any and all claims, demands, liabilities resulting from activities within the scope of this permit (see previous paragraph).

The trails that are authorized for riding within the Concession Premises and the times of use shall be approved by the OIC.

The Permittee shall ensure that horses are kept on the approved trails and that the flora and fauna of the Koko Head Stables ("Stables") are not damaged or destroyed by the horses. The Permittee shall be responsible for any damage or destruction of the flora and fauna. The Premises shall not be used for any purpose other than as specified herein.

2. DESCRIPTION OF PREMISES

The Premises covered by this Permit is the Koko Head Regional Park Stable site, an area of approximately 8.5 acres, located in the Koko Head Regional Park, Honolulu, Hawaii, as shown on the map marked Exhibit A attached hereto and made a part hereof.

Permittee acknowledges that there are no structures on the premises resembling living quarters or a cottage. The Permittee will be responsible, at its own expense, to provide a self-contained manager's office being manned as necessary for the protection of the animals and with the approval of DPR. A maximum of two (2) employees may be in the self-contained manager's office. This office must be approved by the City Department of Planning and Permitting and DPR.

The Premises are also situated on conservation district land. Therefore, any new improvements, additions or construction will require a Conservation District Use Application approved by the State

Board of Land and Natural Resources and prior written approval of the City and its regulatory agencies.

The Premises is under the jurisdiction of the DPR, therefore, all rules and regulations relating to the use of the property must adhere to all rules and regulations as stated in the Revised Ordinances of Honolulu, Chapter 10. Grading of the Premises or surrounding area and removal of trees and other plants shall be not permitted without prior written approval of the City. All facility changes must have prior written approval of the City and its regulatory agencies.

### 3. OPERATIONAL CONTROL

- a. Hours of Operation. The Concession shall be opened for business for boarding operations Tuesday through Saturday from 7:00 AM to 7:00 PM and by appointment to provide additional services. The Permittee shall post hours, approved by the OIC, of when the public is allowed on the premises with rules and regulations for the accessible areas. The facility shall be closed for maintenance on Sundays and Mondays.

Any changes to the operational hours can be made only with written approval by the OIC. The OIC reserves the right to regulate the operating hours of the Concession, including blocking sufficient time to inspect the Premises and conduct repairs. The Permittee shall not be permitted a fee reduction to offset any closure by the City for inspection and repairs.

Any special event, including but not limited to, equestrian events, rodeos, horse shows, etc., requiring the use of the stable areas must be requested in writing with DPR's Permit Office located at the Fasi Municipal Building, 650 South King Street, Honolulu, Hawaii 96813, at least thirty (30) calendar days prior to the event to assure attendance to the event does not adversely impact the neighborhood and the Botanical Gardens. Permittee will be required to make necessary notifications to the community in a timely manner including the Neighborhood Board.

- b. Prohibited Uses. The Permittee is prohibited from the following:

- 1) Conducting any part of its operation in any area other than in the area specified in the Specifications Section Item 2, Description of Premises, without prior written approval of the OIC.
- 2) Using the Premises or any part thereof nor allowing the same to be used by anyone for any purpose other than those listed in the Specifications Section Item 1, Scope of Permit herein.
- 3) Using or allowing the use of the Premises used for any illegal purpose, immoral or indecent activity, or for lodging or sleeping purposes, nor shall it permit disorderly persons to remain upon or loiter within the Concession area.
- 4) Allowing smoking within the Premises. The Permittee shall post signs within the Premises stating that smoking is prohibited in accordance with Revised Ordinances of Honolulu, as amended, § 41-21.1, et seq.
- 5) Promoting the feeding of wildlife or sale of any products for such a purpose.
- 6) Allowing personal pets or other animals other than horses belonging to the Permittee or any employee or volunteer of the Permittee, to be within or around the Premises with the exception of one (1) goat, one (1) donkey and one (1) dog, each on a leash at all times and/or

put in an enclosed area for the educational program.

- 7) Allowing the dispensing of alcoholic beverages.
  - 8) Interfering with free access and passage with the Premises and adjacent public areas by City personnel and government personnel.
- c. Conduct of Business. The Permittee shall, to the satisfaction of the OIC, conduct its operation in such manner so as to avoid:
- 1) Creating, commissioning or maintaining a nuisance on the Premises;
  - 2) Causing or creating unusual or objectionable noises, noxious smoke, gases, vapors or odors.
- d. Service and Price Controls. The Permittee shall provide the following services to the public at prices not to exceed the prices prevailing at similar operations on Oahu:
- 1) Horse Boarding and Stalls
    - a) Stalls shall be available to the public for boarding of horses.
    - b) Horse stalls shall be maintained in a safe and sanitary condition at all times.
    - c) Proper care of the stalls and horses shall include but not be limited to, daily cleaning of the stalls and bedding, and providing of two (2) feedings per day.
    - d) Trained personnel shall be available for exercising and grooming of boarded horses, including the care of all stable gear.
  - 2) Individual and Group Riding Lessons
    - a) The number of horses available to provide riding lessons shall be approved by the OIC. Horses shall be properly trained for beginners as well as advanced students.
    - b) The group lessons and educational classes may include but not be limited to the following:
      - (1) Summer Horsemanship course which includes riding and fundamental horse care.
      - (2) Participation in the City's Summer Fun Programs and in cooperation with community groups and organizations, such as scouts, schools and underprivileged groups.
  - 3) The Permittee may provide horse training and trail riding on the Concession Premises. The prices charged for these services shall not exceed the prices prevailing at similar operations on Oahu.

#### 4. PERMITTEE'S FISCAL CONTROL AND RECORD KEEPING

- a. Concession Fee Payment. The monthly concession fee shall be \$1,100.00 per month. The fee for the first month shall be due within seven (7) days after the Notice to Proceed commencement

date. For the following eleven (11) months, the Permittee shall pay the City, in advance, without notice or demand the month concession fee on the twenty-fifth (25<sup>th</sup>) day of the month preceding the month for which the concession fee is applicable.

- b. Payment. All checks for payment of the monthly concession fee shall be made payable to the "City and County of Honolulu" and submitted to the following:

Original Check:  
Department of Budget and Fiscal Services  
City and County of Honolulu  
Division of Treasury – Concessions  
530 South King Street, Room 115  
Honolulu, Hawaii 96813

Copy of Check sent to:  
Department of Enterprise Services  
City and County of Honolulu  
Concessions  
777 Ward Avenue  
Honolulu, Hawaii 96814

Or faxed to: (808) 768-1513

A copy of the check payment must be submitted to Department of Enterprise Services as stated above.

Failure to pay any part of the monthly concession fee when due shall be deemed to constitute a breach of contract and shall be grounds for termination of this permit by the City. Without prejudice to any of the other remedies herein given the City, interest at the rate of one percent (1%) simple interest per month or fraction thereof shall be assessed for any overdue payment of the monthly concession fee.

- c. Payment of Taxes and Other Charges.

The Permittee shall pay any and all taxes and charges attributable to or assessed against the operation and management of the concession.

The Permittee shall contract and pay for refuse collection and all utility services individually (gas, water, cesspool, telephone, cable television and electricity) charged to its own meters for billing. The electrical meter number for this concession is 305585.

Should the Permittee's operation require any additional utility capacity services and/or outlets beyond those presently available in the premises, the cost of such installation and hook-up shall be at the Permittee's expenses unless otherwise approved in writing by the OIC.

- d. Business Records and Income Accountability

Delete Section 7 of the General Terms and Conditions in its entirety and replace with the following:

- 1) Business Records. The Concessionaire shall maintain and keep accurate books of accounts and records in accordance with accounting procedures approved by the Director which shall detail all concession revenues and expenditures. Such books and records shall include tax reports of every kind. Said books, records and tax reports shall be kept for a period of not less than one (1) year following the end of the contract term or until City auditors have had reasonable opportunity to audit the same.

All books and records shall be kept separately for this concession, exclusive of any other business operation of the Concessionaire.



The Director shall reserve the right at all reasonable times to access the Concessionaire's books, accounts, records and reports, including tax reports, and on twenty-four (24) hour notice reserve the right to complete an audit of the Concessionaire's entire business affairs and records relating to the concession operation. If the audit reveals that the Concessionaire underestimated the amount of gross income for any month by two percent (2%) or more of the true amount thereof, the Concessionaire shall then be responsible to pay for the cost of the audit. If the Concessionaire understates the amount of its gross income for any month, whether knowingly, mistakenly or otherwise, by five percent (5%) or more of the true amount thereof, the same shall be deemed to constitute a breach of contract.

2) Income Accountability. Within ten (10) working days after the close of each month, the Concessionaire shall furnish the Director a statement certified by the Concessionaire reporting the gross income for the prior month. Such statement shall itemize the gross monthly income for the prior month from the following sources:

- a) Stabling;
- b) Horse training;
- c) Riding lessons;
- d) All other revenue including membership fees and event revenues.

If the Concessionaire understates the amount of its gross income for any month, whether knowingly, mistakenly or otherwise, by five percent (5%) or more of the true amount thereof, the same shall be deemed to constitute a breach of contract.

In addition, the Concessionaire shall furnish any other information or report as requested by the OIC or the Director.

The Director shall be the final judge in determining concession gross income not otherwise covered in the contract.

The statement shall be sent to the following:

Director of Budget and Fiscal Services  
City and County of Honolulu  
Division of Treasury – Concessions  
530 South King Street, Room 115  
Honolulu, Hawaii 96813

Director of Enterprise Services  
City and County of Honolulu  
777 Ward Avenue  
Honolulu, Hawaii 96814

## 5. CONCESSION PREMISES – EQUIPMENT, FURNITURE FIXTURES AND DECOR

### a. “As Is” Provision

The Permittee acknowledges and accepts the Premises, including all improvements, buildings and structures, in ‘AS IS, WHERE IS’ condition, with any and all defects whether known or unknown to the Permittee.

The Permittee shall make sure that all equipment, buildings, furniture, fixtures, fencing and décor are in compliance with all applicable statutes, rules, regulations, ordinances and industry standards including but not limited to regulations of the U.S. Department of Agriculture (USDA), Occupational Safety and Health Administration (OSHA), American Society for the Prevention of Cruelty to Animals (ASPCA) and the U.S. Humane Society guidelines. Permittee shall allow said organizations to inspect the Premises should there be any need to perform an inspection. There are certain equipment, building, furniture, fixtures, fencing and décor that are being delivered to the Permittee that are not usable – See Exhibit B. The Permittee is not responsible to repair all of these items if Permittee is not making use of them.

- b. Equipment, Furniture, Fixtures and Décor. The Permittee shall, at its own expense, provide, install and maintain all equipment, furniture, fixtures, fencing and decor necessary for the operation of the Premises. The Permittee is also responsible for all repairs, alterations and improvements prior to opening the Concession and during the term of this permit as further described in the General Terms and Conditions Section, Item 16, Alterations or Improvements. All such equipment, furniture, fixtures, fencing and decor shall be subject to prior written approval of the OIC and shall be in compliance with all applicable laws, statutes, rules, regulations, and ordinances, including the requirements of the State Department of Health.

No installation of equipment, furniture, fixtures or decor of the Premises which requires alteration, modification or affixing to the Premises, including utility lines to service such equipment shall be permitted without prior the written approval of the OIC. Installation shall be performed by licensed contractors with appropriate permits and must conform to industry standards.

The Permittee shall provide the OIC a listing of all its equipment installed, repaired and/or replaced, with a cost breakdown for each item in the concession building. The listing shall state whether the equipment is new or used.

Temporary equipment may be used during the first thirty-day (30) period with prior written approval of the OIC.

All equipment including the City's property mentioned in Exhibit B were not delivered to the Permittee in good order.

- c. Disposal of Garbage, Rubbish and Other Refuse. The Permittee shall, at its own expense, arrange for adequate sanitary handling and disposal from the Premises of all garbage, rubbish, deceased animals and other refuse caused by or resulting from the operation of the Concession. Piling of boxes, cartons, barrels or other similar items shall not be permitted on the Premises.

The Permittee shall arrange to have all refuse removed from the premises regularly in accordance with a removal schedule approved by the OIC.

- d. Maintenance and Clean-Up. The Permittee shall at all times keep and maintain the Premises, equipment (including structures listed in Exhibit B that the Permittee chose to repair and utilize), supplies, the grounds, the trails and all areas used by it in a clean and sanitary condition in compliance with all applicable laws, ordinances, rules, regulations, statutes and guidelines, including the requirements of the State Department of Health, and to the satisfaction of the OIC.

The Permittee shall at all times be responsible to maintain and keep the area surrounding the Concession Premises free and clear of trash and other unsightly objects attributable to the Concession operation.

The Permittee shall be responsible for the proper upkeep of the Concession Premises and provide landscaping and maintenance only within the Concession Premises to complement the surrounding aesthetics of the Koko Head Regional Park. All trimming of trees will be conducted by the City. Request to trim trees will be coordinated with and submitted to the OIC. Proper upkeep includes and is not limited to cutting back of weeds, trimming of shrubbery, maintaining fencing, painting and repair of wooden structures and corrals.

In the event the Permittee is found to be in nonconformance, the Permittee shall, within five (5) days of receipt of written notice from the OIC, maintain, clean and/or make repairs necessary to conform to the Contract requirements. Failure to comply shall be deemed to constitute a breach of Contract and the City shall reserve the right to terminate this Permit.

- f. Maintenance and Repair Work. The Permittee shall be responsible for the cost of any maintenance and repair work to the Premises including the cost of repairs or replacements due to damage caused by malicious mischief, vandalism, unlawful entry or fire.
- g. Inspection by the City. The City shall reserve the right to enter the Premises at all reasonable times for the purpose of examining the state of repair and condition of the Premises and equipment, and also for the purpose of determining whether the terms, covenants and conditions contained in the Contract are being fully and faithfully observed and performed.

Failure to correct any reported discrepancy shall be deemed to constitute a breach of Contract and the City shall reserve the right to terminate this Permit.

- h. The City will not be responsible or liable for any damages to the property, equipment, supplies, structures which occur due to vandalism, fire and natural disaster.

## 6. INSURANCE

Delete Section 13 of the General Terms and Conditions in its entirety and replace with the following:

- a. The Concessionaire shall procure or cause to be procured and maintained (as provided herein), at no cost to the City, during the life of this contract and any extensions thereof, all insurance to cover the operations under this contract, that may be required under the laws, ordinances or regulations of any governmental authority, including but not limited to the coverage stated below. The Concessionaire shall either include all tiers of subcontractors, if any, under the policies required under Paragraphs a.2) through a.4), to the extent permitted by law, or shall require all subcontractors to maintain all coverage described in Paragraphs a.1) through a.4) below.
  - 1) Workers Compensation and Employers Liability Insurance. The Concessionaire shall maintain workers compensation and employers liability insurance. Workers compensation coverage shall be in accordance with State statutes. Employers liability coverage shall provide limits of not less than \$100,000 each accident for bodily injury by accident or \$100,000 each employee, \$100,000 aggregate, for bodily injury by disease. This policy shall contain a waiver of subrogation in favor of the City.
  - 2) Commercial General and Umbrella Liability Insurance. The Concessionaire shall maintain commercial general liability (CGL) and if necessary commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence, and general aggregate. CGL insurance shall be written on ISO occurrence form, CG 00 01 (or a substitute form providing equivalent coverage), and shall cover liability arising from premises, operations, property

and equipment, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The City shall be included as an insured under the CGL, and under the commercial umbrella, if any. The policy(ies) shall contain a waiver of subrogation in favor of the City.

- 3) Business Automobile Liability Insurance. The Concessionaire shall maintain business auto liability (including no-fault coverage) and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used by the Concessionaire in the performance of this contract. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- 4) Builder's and Installation Risk. During any period of construction, remodeling, or installation, the Concessionaire shall procure or cause to be procured Builder's Risk or installation insurance covering loss or damage to materials, supplies and equipment to be built, installed or otherwise incorporated into the premises. The City shall be included as additionally insured under such policy or policies.

b. The insurance specified above shall:

- 1) Provide that such insurance is primary coverage with respect to all insured for claims arising from the Concessionaire's negligent acts and/or omissions or misconduct; and that any insurance (or self-insurance) carried by the City shall be excess and non-contributing;
- 2) Contain a standard Cross Liability endorsement providing that the insurance applies separately to each insured, applicable to policies specified in Paragraphs a.2) and a.3) above;
- 3) Not be terminated, cancelled, not renewed or substantially changed without thirty (30) days prior written notice to the City, except for non-payment of premium;
- 4) Be provided by insurers authorized to do business in the State of Hawaii, and with a current Best's rating of not less than A-, or otherwise as approved by the City.

c. Certificates of Insurance:

- 1) The Permittee will provide and maintain current certificates of insurance, prepared by a duly authorized agent, or if requested, copies of the policies evidencing the insurance in effect at all times during the period of this agreement as required herein to the City.
- 2) Certificates shall clearly identify the project by name and/or contract number.
- 3) Certificates shall show the Certificate Holder as the City and County of Honolulu, and be delivered to the Director of Budget and Fiscal Services, 530 South King Street, Honolulu, Hawaii 96813.

**GENERAL TERMS AND CONDITIONS  
FOR CONCESSION REVOCABLE PERMITS  
FOR THE CITY AND COUNTY OF HONOLULU**

1. **DEFINITIONS.** Whenever used herein:

- A. "ADJUSTED GROSS INCOME" means Gross Income less the State General Excise Tax.
- B. "AS IS, WHERE IS" means the Concession Premises in its present condition and location without any warranties and the Permittee is responsible for the maintenance and repair to the Concession Premises.
- C. "BUILDING SYSTEMS" means any air conditioning, electricity, water, heating, chilled water, ventilating, mechanical, lighting, telephone and telecommunications systems, sanitary (sewer) and storm drainage systems and all other utilities and mechanical systems which serve any portion of, or are located and used by the Permittee in the City building.
- D. "CITY" means the City and County of Honolulu.
- E. "CONCESSIONAIRE" or "PERMITTEE" means the party entering into the Contract with the City.
- F. "CONTRACT" means the properly-executed written agreement that includes the Concession Requirements, General Terms and Conditions for Concession, Revocable Permits, properly-executed written modifications of the Contract, and all exhibits and documents referenced in the aforementioned list of documents.
- G. "DAYS" means calendar days unless otherwise specified.
- H. "DIRECTOR" or "BFS Director" means the Director, Department of Budget and Fiscal Services of the City or his/her authorized representative.
- I. "GROSS INCOME" means and includes all receipts and all revenues, inclusive of any and all taxes, from operations, sales, orders taken, and services rendered from, about, or by reason of the operation of the Concession by the Permittee; provided that the following shall be excluded from the computation of gross income:
  - (1) Receipts from the sale or trade-in value of any of the Permittee's furniture, fixtures or equipment used in the Concession operation.
  - (2) Receipts from the sale of uniforms or clothing when such uniform or clothing are required to be worn by such employees.
  - (3) Gratuities or tips given by patrons or customers to the employees.

In case of any doubt on the interpretation of gross income, the interpretation given by the Director shall govern and control.
- J. "NON-STRUCTURAL PORTION OF THE CONCESSION PREMISES" means and

includes all nonstructural installations in and about the Premises, in good condition and repair, including, without limitation, the maintenance, replacement and repair of any storefront, doors, door assemblies, window casements, glazing, plumbing, gas lines and the following which serve the concession premises: pipes, electrical wiring, and conduits, and ventilation and any air conditioning system ("the HVAC system, if applicable) that services the Concession.

- K. "OFFICER-IN-CHARGE" or "OIC" means the Director of the Department of Enterprise Services of the City or his/her authorized representative.
- L. "PERMITTEE" or "CONCESSIONAIRE" means the party entering into the Contract with the City.
- M. "PREMISES" is the area designated in Exhibit A and includes the area within the interior walls, ceilings, and top of the floor and also includes storefronts, doors, door assemblies, window casements, glazing, plumbing, gas lines, pipes, electrical wiring and conduits and ventilation and any air conditioning system that services the Concession or any appurtenances which support the Concession equipment, or fixtures.
- N. "PURCHASING DIVISION" means the Division of Purchasing, Department of Budget and Fiscal Services of the City.

2. CONSTRUCTION OF CONTRACT

Whenever the context of the Contract requires it, the masculine shall be deemed to embrace and include the feminine and neuter, and the singular shall be deemed to embrace and include the plural.

3. COURT RULING

In the event, any term, covenant, or condition of the Contract is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant, or condition of the Contract, provided that such invalidity does not materially prejudice the rights and obligations of either the City or the Permittee contained in the valid terms, covenants, or conditions of the Contract.

4. SECTION AND SUBSECTION HEADINGS

The section and subsection headings throughout this instrument are for the convenience of the City and the Permittee and are not intended nor shall they be used to construe the intent of the Contract or any part thereof, or to modify, amplify, or aid in the interpretation or construction of any of the provisions thereof.

5. INTERPRETATION OF CONTRACT

In case of any doubt as to the meaning of any term in the bid proposal, special provisions, requirements, specifications, exhibits, plans, general terms and conditions and all other documents herein, the interpretation by the Director shall control. All directions and explanations required or necessary to complete the Contract shall be formulated by the Director or his/her authorized representative.

6. EXECUTION OF CONTRACT

Within ten (10) days after receiving the Contract documents from the City or within such further time as the Director may allow, the Permittee shall execute and submit to the Director the Contract, together with satisfactory security, pursuant to the applicable provisions herein.

The Permittee shall execute the Contract as follows: In the case of a domestic corporation, the title or titles of the person or persons signing must be stated and the corporate seal affixed thereto. In the case of a foreign corporation, if the corporate seal is not readily available, a copy of a resolution of the Board of Directors of such corporation, or other written evidence of authority signed by an officer of the corporation, authorizing the person or persons signing to execute bids, contracts and all other necessary documents in connection therewith shall be attached. Where the Permittee is an association or group, the title or titles of the person or persons signing must be stated and an affidavit of the association or group must be attached which acknowledges the authority of the signer or signers to sign bids, contracts and all other necessary documents in connection therewith for the association or group.

The City reserves the right to cancel the award of the Contract at any time prior to the signing of the Contract by the City.

7. BUSINESS RECORDS AND INCOME ACCOUNTABILITY

A. Business Records

The Permittee shall maintain and keep accurate books of accounts and records in accordance with accounting procedures approved by the Director which shall detail all concession revenue and expenditures. The books and records shall include tax reports of every kind. The books, records and tax reports shall be kept for a period of not less than one year following the end of the Contract term or until City auditors have had reasonable opportunity to audit the same.

All books and records shall be kept separately for this concession, exclusive of any other business operation of the Permittee.

The Director shall reserve the right, at all reasonable times, to access the Permittee's books, accounts, records and reports, including tax reports, and on twenty-four (24) hours notice have the right to complete an audit of the Permittee's entire business affairs and records relating to the concession operation. If the Permittee, whether knowingly, mistakenly or otherwise, understates the amount of its gross income for any month by five percent (5%) or more of the true amount thereof, the same shall be deemed to constitute a breach of Contract.

B. Income Accountability

The Permittee shall furnish the Director with a statement certified by the Permittee reporting the gross income for the prior month within ten (10) working days after the close of each month. Such statement shall itemize the gross monthly income for the prior month as required in the Concession Requirements for each specific Concession.

If the Permittee, whether knowingly, mistakenly or otherwise, understates the amount of its gross income for any month by five percent (5%) or more of the true amount thereof,

the same shall be deemed to constitute a material breach of Contract.

In addition, the Permittee shall furnish any other information or report as requested by the Officer-in-Charge or the Director.

The Director shall be the final judge in determining Concession gross income not otherwise covered in the Contract.

The statement and copy shall be sent to the following departments:

**Original:**

Department of Budget and Fiscal Services  
City and County of Honolulu  
Division of Treasury – Concessions  
530 South King Street, Room 115  
Honolulu, Hawaii 96813

**With Copy to:**

Department of Enterprise Services  
City and County of Honolulu  
Concessions  
777 Ward Avenue  
Honolulu, Hawaii 96814

The Permittee must provide a copy of the gross income report to the Department of Enterprise Services to the address noted above.

8. EMPLOYEES/VOLUNTEERS

The Permittee shall maintain an adequate and trained staff of employees or volunteers to provide efficient, prompt and courteous service during hours of operation.

The Permittee's employees and/or volunteers shall wear some sort of identification so the public is aware of who the employees/volunteers are. All employees and volunteers must obtain TB clearances prior to the start of work.

The Permittee shall be responsible for scheduling employees and volunteers to adequately service the public during the hours that the facility is in operation. The Permittee shall employ and utilize volunteers with good moral character, neat appearance and polite manners. The City shall have the right to eject from the Premises any employee or volunteer staff of the Permittee whose conduct is improper, inappropriate or offensive. The Permittee shall then be responsible to provide an adequate replacement when requested by the City.

The Permittee's employees and volunteers shall be fluent in English to be able to communicate effectively with patrons and customers.

Non-employees or non-hired staff are not permitted within the workplace.

The Permittee shall be in compliance with all related federal and state labor laws.

9. NON-DISCRIMINATION

The Permittee shall operate the Concession and render the services required without discrimination as to race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record.



10. SIGNS AND ADVERTISING

The Permittee shall furnish, install and maintain signs listing the prices of the items for sale. All signs shall be approved in writing by the Officer-in-Charge as to size, appropriateness, design and location before installation.

No hawking, solicitation or unauthorized advertising shall be made by the Permittee or its employees on or outside of the Premises or on a public address system.

The Permittee shall not engage in or have any form of advertising without prior written approval of the Officer-in-Charge. Signs, flyers or other promotional materials shall not be posted on windows.

11. PUBLIC PAY TELEPHONE AND ATM MACHINES

The City reserves the right to furnish public pay telephones or automated teller machines (ATM) on the Premises in locations to be approved by the Officer-in-Charge. All commissions from the telephones and ATM machines shall belong to the City under its Contract with the specific services.

12. VENDING MACHINES

Written approval must be received from the Officer-in-Charge prior to placing any vending machines. The gross receipts accruing to the Permittee from the gross sales of vending machines shall be included as Concession gross income.

13. INSURANCE REQUIREMENTS

The Permittee shall, at its own expense, procure and maintain any and all insurance to cover the Permittee's operations that may be required under any applicable federal, state or local law, statute or ordinance or regulation, including but not limited to applicable workers' compensation and automobile liability insurance. In addition, the Permittee shall carry the insurance listed below from insurance company(ies) authorized to do business in the State of Hawaii and maintain such insurance throughout the term of the Contract.

A. **Commercial General Liability Insurance.** Commercial General Liability (CGL) insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate, and at least \$1,000,000 Products/Completed Operations aggregate and if sale of alcohol is permitted as a part of the Concession agreement, \$1,000,000 Liquor Liability. Such insurance shall include Fire Legal Liability coverage with limits of \$100,000, to cover City provided equipment and furnishings under this Concession agreement. This policy shall include the City and County of Honolulu as additional insured.

B. **Workers' Compensation and Employer's Liability Insurance.** This policy shall cover against all claims of the Permittee's employees working in any capacity whose duties require their presence on the premises. Workers' Compensation insurance shall be in accordance with State statutes; Employer's Liability coverage shall provide limits of no less than \$500,000 each accident for bodily injury by accident or \$500,000 each employee, \$500,000 aggregate, for bodily injury by disease. Such insurance shall include a waiver of subrogation in favor of the City.

- C. **Property Insurance.** The Permittee shall procure the necessary property insurance to cover risks of loss or damage to the Permittee's equipment, materials, supplies, furnishings, fixtures and improvements and betterments.
- D. **Builder's and Installation Risk.** During any period of construction or remodeling or installation, the Permittee shall procure or cause to be procured Builder's Risk or installation insurance covering loss or damage to materials, supplies and equipment to be built, installed or otherwise incorporated into the Premises. The City will be included as additional insured under such policy or policies.
- E. The insurance required hereinabove shall not be terminated, cancelled or not renewed without thirty (30) days prior written notice to the City, except for non-payment of premium.
- F. Upon execution of the Permit, and throughout the term of the Permit, the Permittee shall provide and maintain current certificates of insurance prepared by a duly authorized agent demonstrating coverage under the policies set forth above.

Copies of all current (policies) certificates covering the Permittee's Premises must be sent to:

Department of Budget and Fiscal Services  
 City and County of Honolulu  
 Division of Purchasing  
 530 South King Street, Room 115  
 Honolulu, Hawaii 96813

Department of Enterprise Services  
 City and County of Honolulu  
 Concessions  
 777 Ward Avenue  
 Honolulu, Hawaii 96814

14. **ASSUMPTION OF RISK**

The Permittee shall assume the risk of any loss or damage to its property left on the Premises. The City and all its officers, agents and employees shall not be held responsible or liable for any loss of, or damage to, the aforesaid property while on the Premises, regardless of how or the manner in which any such loss or damage is sustained.

15. **INDEMNIFICATION**

The Permittee shall indemnify, save and hold harmless the City and all its officers, agents and employees from any and all deaths, injuries, losses and damages (including attorney's fees and costs) to persons or property, and any and all claims, demands, liabilities therefore occasioned wholly or in part by the acts or omissions of the Permittee, its officers, agents, employees, patrons or any persons admitted to the Premises of the Concession; provided, however, the Permittee shall not be responsible for such portion of damages, if any, proximately caused by the negligence or intentional misconduct of the City. It is expressly acknowledged and agreed that the obligation set forth herein this section is independent of any obligations to procure insurance for the benefit of the City as required in the Contract.

16. **ALTERATIONS OR IMPROVEMENTS**

The Permittee shall not make alterations or repairs to the Premises without prior written approval of the Officer-in-Charge. Any permanent addition or fixture to the buildings or Premises shall become the property of the City at no cost to the City. Permanent additions or fixtures shall mean items which are not free standing but are affixed or attached to the building or Premises, such as

but not limited to shelving and cabinets, range hood (includes motor, fan, duct, and accompanying fire suppression system), ceiling fans, built-in range and built-in refrigerators, tables, chairs and benches which are anchored in place to the ground or floor, plumbing, water heater, grease traps and sinks.

The Permittee shall promptly discharge all debts incurred in making any such alteration or repair, and within sixty (60) days after completion, render to the Officer-in-Charge receipted bills for all such debts. In the event mechanic and material men liens should attach on the said Premises, the Permittee shall dissolve such liens within fifteen (15) days from the date of such attachment and shall provide the City with a certified copy of the lien release.

17. DAMAGE OR DESTRUCTION TO PREMISES

If the Premises are damaged or destroyed, in whole or in part, by act of God, war, fire, or other catastrophe due to no fault on the part of the Permittee and the same cannot be repaired with reasonable diligence within three (3) months after such occurrence, and during said three-month period, if the Permittee is unable to continue the operation of this Concession, the Permittee may thereupon terminate the Contract as of the date of such damage or destruction and pay the concession fee only up to the time of such damage or destruction.

18. EXCUSE OF PERFORMANCE

Performance under the Contract by the Permittee will be excused only by reason of the following causes:

- A. When such performance is prevented by destruction or damage to the Premises as specified in Section 17 hereinabove.
- B. When such performance is prevented by an act of the public enemies of the State of Hawaii or of the United States of America.
- C. When such performance is prevented by any job action conducted by any public employee organization which prevents patrons from utilizing the Permittee's services.

19. MODIFICATION OF CONTRACT TERMS

- A. Any modification, including any decrease in the concession fee as proposed by the Permittee in the Bid Proposal, shall not be allowed, except only as provided under HRS §102-10 as follows:

“§102-10 Modification of contract terms. If during the term of the contract (including contracts which have been executed and are presently in force) there has been a reduction of fifteen percent or more in volume of business of the concessionaire for a period of sixty days or more, computed on the average monthly gross income for the eighteen months prior to the period or as long as the concessionaire has been in the business, whichever period is shorter, and such reduction as determined by the officer letting the contract is caused by construction work conducted during the period of time on, or within or contiguous to, the public property upon which the concession is located by either the state or county governments, or both, the officer, with the approval of the governor in the case of a state officer and the chief executive of the respective county in the case of a county officer, may modify any of the terms of the contract, including the

agreed upon rent, for a period which will allow the concessionaire to recoup the amount lost by such reduction; provided that if the contract includes provisions allowing modification for the above contingencies, this section shall not be applicable thereto; provided further that this provision shall not apply to any particular concession if the application thereto may impair any contractual obligations with bondholders of the State or counties or with any other parties.”

- B. The parties may amend the Contract to allow a related use only in accordance with Hawaii Revised Statutes Chapter 102-13, and such Contract modifications shall be executed in writing by both parties.

20. NO SUBLETTING

The Permittee shall not sublet the whole or any part of the Premises, hypothecate or mortgage the Contract or any of its rights.

21. NOVATION OR CHANGE OF NAME

- A. No assignment of Contract. No City Contract is transferable, or otherwise assignable, without the written approval of the Director.
- B. Recognition of a successor in interest; assignment. When in the best interest of the City, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that: the transferee assumes all of the transferor's obligations; the transferor remains liable for all obligations under the Contract but waives all rights under the Contract as against the City; and unless the transferor guarantees performance of the Contract by the transferee, the transferee shall furnish all required bonds.
- C. Change of name. In the event a Permittee requests a change in the name in which it holds a Contract with the City, the Director shall, upon receipt of a document indicating such change of name (i.e., amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting Permittee to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the Contract are thereby changed.
- D. Reports. All change of name or novation agreements effected hereunder shall be reported to the Director within thirty (30) days of the date that the agreement becomes effective.

22. DEATH OR DISABILITY OF THE PERMITTEE

In the event of the death or disability of the Permittee during the term of the Contract, the executor or administrator of the estate of the Permittee or the Permittee acting personally or by guardian, whichever the case may be, shall dispose of the Contract and the Concession covered by the Contract within two (2) months after such death or disability, or within such further time as may be allowed by the Director. The Permittee may thereupon request an assignment of Contract. Such a request for assignment will be coordinated by the Director and shall not be granted except by written approval of the Director to an assignee with similar or better qualifications than the Permittee, including but not limited to financial qualifications and tax clearance.

23. BREACH OF CONTRACT, BANKRUPTCY, INSOLVENCY

In the event the Permittee fails to pay the Concession fee when the same becomes due, whether the same shall or shall not have been legally demanded, or fails to provide the services required herein, or fails in any other respect to faithfully observe or perform any condition or covenant of the Contract and such non-performance is not excused as provided herein, or if the Permittee becomes bankrupt or insolvent or makes an assignment for the benefit of its creditors, or if the Permittee files any debtor proceedings or takes any proceedings of any kind or character whatsoever under any provisions of the Federal Bankruptcy Act seeking any readjustment, arrangement, postponement, composition, or reduction of the Permittee's debts, liabilities, or obligations, or if any such proceedings under the Federal Bankruptcy Act should be taken against the Permittee and the same shall not be frivolous, or if the Permittee abandons the Concession Premises, or suffers the Contract or interest thereunder to be taken under any writ of execution, the City shall thereupon reserve the right to enter into and upon the Premises or any part thereof in the name of the whole, and at its option terminate the Contract and thereupon take possession of the Premises and all improvements and equipment thereon and thereby become wholly vested with all right, title and interest of the Permittee and of those claiming under it, all without service of notice or resort to any legal process and without being deemed guilty of any trespass or becoming liable for any loss or damage which may be occasioned thereby, and without prejudice to any other remedy or right of action which the City may have for arrears of Concession fee or for other or preceding breach of covenant of the Contract on the part of the Permittee.

In such an event as described herein, including breach of Contract due to nonpayment, the City may terminate the Contract immediately without any prior notice.

24. SURRENDER OF PREMISES UPON TERMINATION

Upon termination of the Contract, other than for the breach thereof, the Permittee shall remove its merchandise, furniture and equipment and shall peaceably surrender possession of the Premises and City equipment. All permanent equipment and fixtures shall become the property of the City at no cost to the City.

The Permittee shall have three (3) calendar days immediately following the termination date of the Contract to remove its properties ready the Premises for inspection by the City by the fourth (4th) calendar day following the termination date of the Contract. In the event the Permittee fails to remove its properties and satisfactorily clean the Premises within the specified time or within such further time as the Officer-in-Charge may allow, the properties remaining shall vest to the City or be disposed of at the Permittee's expense and further, the Permittee shall be responsible to pay for any cleaning, repair and replacement cost that needs to be done by the City.

25. SEXUAL HARASSMENT POLICY

The Permittee shall have and enforce a policy prohibiting sexual harassment. The Permittee's sexual harassment policy must set forth the same or greater protection than those contained or required by City Ordinance No. 93-84. The ordinance is applicable to the Permittee's business and includes the following:

- A. Prohibitions against an officer's or employee's sexual harassment of the following:

- (1) Another officer or employee of the employer;
  - (2) An individual under consideration for employment with the employer; or
  - (3) An individual doing business with the employer;
- B. A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under Paragraph A. above;
  - C. A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;
  - D. A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;
  - E. Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;
  - F. Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;
  - G. A provision requiring the use of the "reasonable person of the same gender standard," to determine if sexual harassment has occurred. Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the same gender as the alleged victim. If the alleged victim is a woman, the "reasonable person of the same gender standard" shall be equivalent to and may be called the "reasonable woman standard";
  - H. Disciplinary actions which may be imposed on an officer or employee who committed a prohibited act; and
  - I. For a Permittee with at least five (5) employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

The policy required under this section shall be in effect for at least the duration of the Permittee's Contract with the City.

The action of the Permittee in signing of the Concession Contract shall constitute its pledge and acceptance of the provisions for the sexual harassment policy as required by City Ordinance No. 93-84.

City Ordinance No. 93-84 is on file and available for viewing in the Division of Purchasing. A Permittee needing a copy may pick up the ordinance from the Office of the City Clerk, City Hall, 530 South King Street, Room 203, Honolulu, Hawaii.

26. ACCEPTANCE OF CONCESSION FEE

The acceptance of the Concession fee, percentage fee, or any sum reserved in the Contract by the City shall not be deemed to be a waiver by the City of any breach by the Permittee of any term, covenant or condition contained in the Contract.

27. INDEPENDENT CONTRACTOR

The Permittee is deemed to be an independent contractor and not the agent, employee, partner, or joint venturer of the City.

28. LAWS TO BE OBSERVED

The Permittee shall observe, perform and comply or require compliance with all governmental laws, ordinances, rules and regulations of the United States, State of Hawaii, City and County of Honolulu, or any department or agency thereof, which in any manner affect the construction and installation of the Concession facilities, and in the operation and maintenance of the concession. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto.

29. PERMITS AND LICENSES

The Permittee shall procure and keep current all permits and licenses, pay promptly all charges and fees, and give all notices necessary and incidental to the due and lawful operation of the Concession.

30. COSTS OF ENFORCEMENT AND LITIGATION

In the event the City, without any default, be made a party to any litigation other than condemnation or like proceedings, commenced by or against the Permittee arising out of its use or occupancy of the premises or attributable to any structure or objects placed thereupon or therein by the Permittee, the Permittee shall then be responsible to pay all costs and reasonable attorney fees incurred by or imposed upon the City in connection with such litigation.

31. NOTICE

All notices, submissions or requests between the parties to this Contract shall be in writing and shall be deemed to have been duly given or made when mailed, first-class postage. Notices, submissions or requests shall be forwarded to:

Department of Budget and Fiscal Services  
Division of Purchasing  
City and County of Honolulu  
530 South King Street, Room 115  
Honolulu, Hawaii 96813

The City shall not be responsible for the Permittee's failure to receive notices or correspondence issued by the City, in particular if the Permittee fails to check or receive its mail. The date on which the notice or correspondence was mailed shall be the official date on which the notice or correspondence shall be deemed to have been duly given.

32. INCORPORATION BY REFERENCE OR ATTACHMENTS; PRECEDENCE

Whenever separate bid proposal, special provisions, requirements, specifications, exhibits or plans are referenced or attached hereto, they shall be considered a part of the Contract as if contained herein. Should any of the bid proposal, special provisions, requirements, specifications, exhibits or plans conflict with these General Terms and Conditions, said bid proposal, special provisions, requirements, specifications, exhibits or plans shall govern.

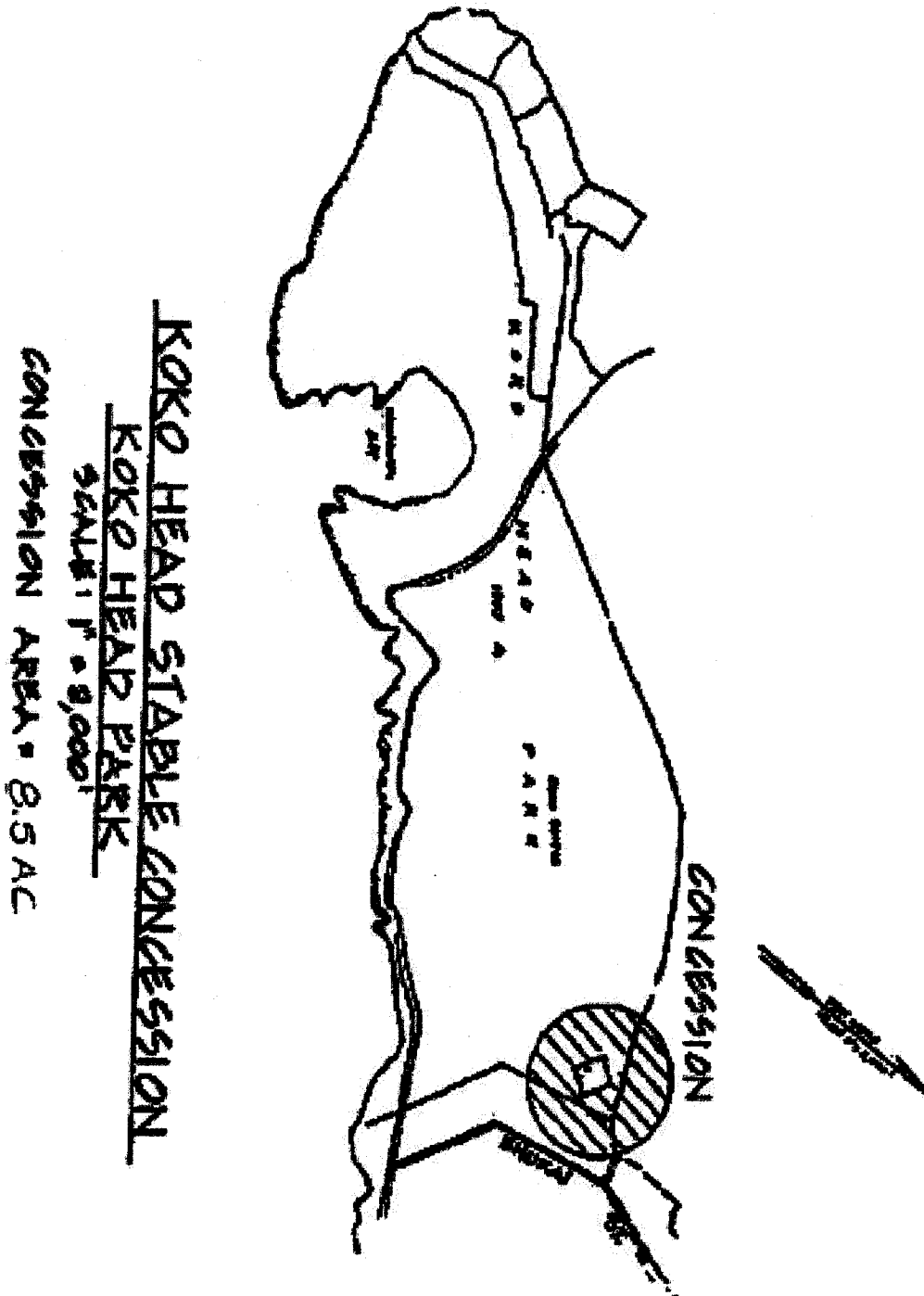
33. TERMINATION BY THE CITY

- A. Termination for convenience. When the interest of the City so requires, the City may terminate this Contract, in whole or in part without cause and at the convenience of the City. The Director will provide a thirty (30) day or less written notice of the termination to the Permittee when termination becomes effective.
- B. Permittee's obligations. The Permittee shall incur no further obligations in connection with the terminated work and on the dates set in the notice of termination the Permittee will stop work to the extent specified. The Permittee shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Permittee shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the City's approval. The Director may direct the Permittee to assign the Permittee's right, title, and interest under terminated orders or subcontracts to the City. The Permittee must still complete the work not terminated by the notice to termination and may incur obligations as are necessary to do so.
- C. Right to goods. The Director may require the Permittee to transfer title and deliver to the City in the manner and to the extent directed by the Director any completed goods, the partially completed goods and materials, parts, tools, fixtures, plans, drawings, information, and contract rights, hereinafter called "manufacturing material," as the Permittee has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The Permittee shall, upon direction of the Director, protect and reserve property in the possession of the Permittee in which the City has an interest. If the Director does not exercise this right, the Permittee shall use the Permittee's best efforts to sell such goods and manufacturing materials. Use of this section in no way implies that the City has breached the Contract by exercise of the termination clause.



EXHIBIT A



KOKO HEAD STABLE CONCESSION

KOKO HEAD PARK

SCALE: 1" = 2,000'

CONCESSION AREA = 8.5 AC

**Exhibit B**  
**City Property – Koko Head Stables**

All structures on the property including:

- a. Corrals and rinks - repaired
- b. 2 stable structures – stable closest to lower rink is not repaired and ½ of the lower portion of the long bar is not repaired.
- c. Structure with office and restroom – not repaired
- d. Tack room and adjoining structure – not repaired
- e. 2 sheds for storage of feed and maintenance equipment for the property - repaired
- f. One tiled structure for storage, fencing around the perimeter of the property – not repaired

All structures listed above were not usable when delivered to the Permittee. All repairs completed to make the property usable were completed by the Permittee.

Exhibit C

**RELEASE AND WAIVER OF CLAIMS**

The undersigned, who is or may be a participant in equestrian activities including, without limitation, horseback riding, horse grooming, horse cleaning, stall cleaning, riding lessons, trail and beach rides, horse jumping, horse shows, clinics, parades, polo matches or practice, organized events, and all other equestrian activities of every kind and description (hereinafter "Equestrian Activities"), being carried out

(a) at Koko Crater Stables, located at 408 Kealahou Street, Honolulu, Hawaii, HI 96825, (hereinafter "Center"), owned by the City and County of Honolulu, Department of Parks and Recreation, (hereinafter "Owner"), and operated by Horse Haven LLC, a Hawaii Limited Liability Company, (hereinafter "Operator"), Gerald K. Mount, Jane R. Mount, Brigitte M. Egbert, Aaron Wallen and Michelle W. Mizutani.

or

(b) using horses or other equipment located at the Center or owned, leased, or otherwise controlled by Operator, or using horses boarded at the Center by other owners (collectively referred to as "Horses and Equipment") whether used on or off the Center premises, in consideration of the use of Center facilities, Horses and Equipment, agrees to the following:

1. GENERAL RELEASE. The undersigned hereby releases and waives any claims that the undersigned and those listed below may now or hereafter have against Owner, City and County of Honolulu, Department of Parks and Recreation, and/or Operator, Horse Haven LLC, and all of their owners, operators, employees, agents, guests, licensees, invitees, independent contractors, work persons, barn help, privies, (hereinafter collectively referred to as the "Released Parties"), from and against any and all liabilities, claims, judgments, losses, damages, costs or expenses of whatever kind or nature, including all attorney's fees, which the undersigned and those listed below may incur as a result of their Equestrian Activities undertaken at the Center or including without limitation, personal injury and/or death and damages to property (including injury to or death of horses) resulting therefrom, including loss of income, earnings, bodily injury, pain and suffering, emotional or mental distress and any and all medical concerns and conditions related thereto.

2. ASSUMPTION OF RISK. The undersigned acknowledges and understands that the Equestrian Activities, whether undertaken at the Center or elsewhere and whether using the horses and equipment or not, involve the risk of personal injury and/or death, and the damage to personal property (including injury to and/or death of horses) which may result from undersigned's participation in Equestrian Activities. Such injuries may be caused by animals, horses, other

participants, the undersigned, instructors, trainers, acts of God and nature, field conditions including uneven or damaged terrain, the presence of moisture, mud and/or flooding of the terrain, obstacles and obstruction upon or under the terrain and other natural or manmade conditions which may be hazardous to the undersigned or create hazards in the undersigned's Equestrian Activities. The undersigned further acknowledges knowing and understanding that the Equestrian Activities are **INHERENTLY DANGEROUS AND ASSUMES ALL RISK OF INJURY OR DEATH AND/OR DAMAGE WHICH MAY RESULT THEREFROM FOR ANY REASON WHATSOEVER.**

**3. INDEMNIFICATION.** The undersigned hereby agrees to indemnify, defend and hold harmless the Released Parties, and all neighboring property owners, and/or their assigns, from and against any and all liabilities, claims, judgments, losses, damages, costs or expenses of whatever kind or nature, including all attorney fees, which the undersigned, those persons listed below and any guest, licensee, invitee or any other person claiming by or through the undersigned, may sustain, inflict or cause in connection with their participation in Equestrian Activities, use of the horses and equipment or presence on or in the Center or Center facilities, including injury to or death of other horses, damage to cars or other property of other persons or personal injury to or death of said other persons.

**4. REIMBURSEMENT.** The undersigned agrees that in the event any claim is made against the Released Parties for any damage or injury for which the undersigned has released or indemnified the Released Parties pursuant to this Release and Waiver of Claims, and for which any of the Released Parties is found liable, the undersigned shall pay such claims within thirty (30) days notice thereof being given to undersigned. In the event the undersigned does not make such payment within the time period allotted, then all sums shall be due and owing together with interest at the rate of twelve percent (12%) per annum. In the event of an action to collect such sums, the Owner/Operator shall be entitled to place a lien, or hold, or liquidate personal property of the undersigned located in or on the Center. In the event of an action to collect such sums, the prevailing party in such action shall be entitled to an award of reasonable attorney fees incurred thereby. For the purposes of this provision, notice shall be deemed given upon personal delivery of three (3) days after depositing said notice with the U.S. Postal Service, addressed to the undersigned at their current address in the records of the Owner/Operator, postage prepaid, registered or certified, return receipt requested.

**5. BINDING EFFECT AND CONTINUED NATURE.** The foregoing provisions shall be fully binding upon and shall be effective against the undersigned, its heirs, successors, legal representatives or assigns and shall apply to the actions of the undersigned personally, the undersigned's family, guests, employees or agents. This Release shall be continuing in nature, and shall apply to the persons mentioned in the preceding paragraphs who use the Horse and Equipment, which are present at the Center and/or any neighboring properties upon which they are

riding.

6. GOVERNING LAW AND VENUE. This Release and Waiver of Claims shall be governed by the laws of the State of Hawaii, without regard to conflicts of laws. The undersigned agrees that the sole venue for any civil action resulting hereunder shall be the appropriate Court of the First Circuit, State of Hawaii.

7. SEVERABILITY. If any portion of this Release and Waiver of Claims is found to or held to be invalid, the remaining portions of it shall remain in full force and effect.

8. OTHER RIGHTS HELD BY RELEASED PARTIES NOT LIMITED BY THIS DOCUMENT. This Release and Waiver of Claims does not in any way limit or reduce any protection, limitation, or immunity from suit otherwise enjoyed by the Released Parties as a result of any other agreements, or of any legislation, statute, regulation, ordinance, or other law of the State of Hawaii or any political subdivision of the State of Hawaii.

9. COUNTERPARTS AND FACSIMILE or PDF SIGNATURES. The undersigned and Release Parties agree that this Release and Waiver of Claims may be executed in counterparts. When each has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and, when taken together, shall constitute a Release and Waiver of Claims, which shall be binding upon undersigned and Released Parties. In making proof of the Release and Waiver of Claims, it shall not be necessary to produce or account for more than a single counterpart containing the respective signatures of each of the parties. Facsimile signatures or signatures in portable documents format (pdf) shall be deemed original signatures for all purposes.

10. ACKNOWLEDGEMENT. The undersigned and Released parties each acknowledge that the terms of this Release and Waiver of Claims have been read, that its provisions are fully understood and that it has been signed as their free act and deed.

11. MERGER AND AMENDMENTS. This Release and Waiver of Claims contains the entire Release and Waiver of Claims between the undersigned and Released Parties and supersedes all prior and contemporaneous releases and understandings in connection therewith. This Release and Waiver of Claims shall not be altered, amended, modified or otherwise changed in any respect, to particular whatsoever, except in a writing duly executed by the undersigned and Released Parties.

12. CONSTRUCTION. This Release and Waiver of Claims shall be construed without regard to the identity of the person(s) who drafted the provisions contained herein. Each and every provision of this Release and Waiver of Claims shall be construed as though each of the undersigned and Released Parties participated equal in the drafting thereof. As a result of the foregoing, any rule of construction against the drafting party shall not be applicable.

13. NUMBER. In this Release, the singular shall include the plural and plural shall include the singular as the case may be.

14. WAIVER AND AMENDMENT. No provision of this Release and Waiver of Claims may be amended or waived except by a writing signed by the undersigned and Released Parties, and a waiver of any one provision of this Release and Waiver of Claims shall not be deemed a waiver of any other provision.

15. EFFECTIVE DATE. The effective date of this Release and Waiver of Claims shall be the date that this Release and Waiver of Claims is fully executed by the undersigned and Released Parties.

THIS DOCUMENT AFFECTS AND LIMITS YOUR LEGAL RIGHTS. READ THIS DOCUMENT CAREFULLY BEFORE SIGNING.

In WITNESS WHEREOF, this document is executed on \_\_\_\_\_, 20\_\_\_\_\_.

-----  
Print Name

-----  
Signature

Address: -----  
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PARENT OR GUARDIAN CONSENT:

Each of those persons signing above on behalf of themselves is a parent or legal guardian of the minor(s), being under 18 years of age, listed below. They hereby represent and warrant that they are also entering into this Release and Waiver of Claims on behalf of such minors, subjecting said minor(s) to all terms and conditions of this Release of Waiver of Claims.

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Print Name

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Relationship to above minor