

STATE CONCESSION AGREEMENT NO. DOT-A-16-0001

STATE OF HAWAI'I
DEPARTMENT OF TRANSPORTATION
AIRPORTS DIVISION

CONCESSION AGREEMENT

FOR

THE MANAGEMENT AND OPERATION OF

THE AUTOMOBILE

PARKING FACILITIES

AT

KONA INTERNATIONAL AIRPORT AT KEAHOLE,
ISLAND OF HAWAI'I

CONCESSION AGREEMENT FOR THE
MANAGEMENT AND OPERATION OF THE
PARKING FACILITIES
AT
KONA INTERNATIONAL AIRPORT AT KEAHOLE
ISLAND OF HAWAI'I

TABLE OF CONTENTS

NOTICE TO BIDDERS.....	NB-1 to NB-2
INSTRUCTIONS TO BIDDERS (IB).....	IB-1 to IB-13
ATTACHMENT 1	
HISTORY OF PASSENGER TRAFFIC – SCHEDULE 1	1-1 to 1-3
ATTACHMENT 2	
HISTORY OF GROSS RECEIPTS – SCHEDULE 2.....	2-1
ATTACHMENT 3	
QUESTION SUBMITTAL FORM, PRE-BID CONFERENCE	
QUESTION SUBMITTAL FORM, FINAL WRITTEN QUESTIONS	
<u>BID INTENT PACKAGE</u>	
APPENDIX A - NOTICE OF INTENTION TO BID.....	A-1
ATTACHMENT 1 - QUALIFICATION QUESTIONNAIRE.....	A-1-1 to A-1-8
ATTACHMENT 2 - TAX CLEARANCE CERTIFICATES.....	A-2-1
<u>BID PROPOSAL PACKAGE</u>	
APPENDIX B - BID PROPOSAL.....	B-1 to B-6
ATTACHMENT 1 - AFFIDAVIT OF NON-COLLUSION	B-1-1 to B-1-2
ATTACHMENT 2 - BID BOND.....	B-2-1 to B-2-2

TABLE OF CONTENTS

(Cont.)

APPENDIX C - CONCESSION AGREEMENT C-1 to C-101

ATTACHMENT 1 - EXHIBITS A THROUGH E

ATTACHMENT 2 - TENANT IMPROVEMENT GUIDELINES, MANUALS 1 & 2

ATTACHMENT 3 - ENVIRONMENTAL PRESERVATION GUIDELINES

ATTACHMENT 4 - DEVELOPMENT STANDARDS FOR LEASED
AIRPORT PROPERTY

ATTACHMENT 5 - DEPARTMENT OF TRANSPORTATION ASSIGNMENT OF
LEASE AND PREMIUM EVALUATION POLICY

ATTACHMENT 6 - DEPARTMENT OF TRANSPORTATION SUBLEASE
EVALUATION POLICY

ATTACHMENT 7 - LIST OF PARKING REVENUE CONTROL SYSTEM
EQUIPMENT PURCHASED BY OPERATOR

ATTACHMENT 8 - OPERATIONAL DATA REPORTS

APPENDIX D - CONCESSION BOND D-1 to D-3

NOTICE TO BIDDERS
CONCESSION AGREEMENT FOR THE
MANAGEMENT AND OPERATION OF THE
AUTOMOBILE PARKING FACILITIES
AT KONA INTERNATIONAL AIRPORT AT KEAHOLE

Tenders by sealed bids for a Concession Agreement for the Management and Operation of the Automobile Parking Facilities ("Concession") at Kona International Airport at Keahole Island of Hawai'i, State of Hawai'i, for a Concession Agreement period of five (5) years will be received by the State of Hawai'i, by its Director of Transportation, c/o Airports Division, Property and Business Development Office, Department of Transportation, Honolulu International Airport, Inter-Island Terminal Building, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawai'i 96819-1880, up to 2:00 p.m. on Wednesday, June 15, 2016, at which time and place they will be publicly opened and read. The State reserves the right to cancel the bid opening for any reason whatsoever.

The Concession bid documents describing the Concession, including, without limitation, the Concession Agreement, may be obtained from the State's Airport Division, located at the Honolulu International Airport, Inter-Island Terminal Building, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawai'i 96819-1880. The Concession bid documents may be purchased upon the tender of the nonrefundable sum of FORTY AND NO/100 DOLLARS (\$40.00) in United States currency or certified check. The Concession bid documents may also be downloaded at hidot.hawaii.gov/airports/doing-business/concession-notices without charge.

The Concession bid documents are subject to revision(s) at any time prior to bid opening. Any revisions, changes, or amendments to the Concession bid documents will be posted and available for download at hidot.hawaii.gov/airports/doing-business/concession-notices.

The Concession bid documents for the Concession will include (1) this Notice to Bidders, (2) Instructions to Bidders, (3) Bid Intent Package, including the Notice of Intention to Bid, (4) Bid Proposal Package, (5) Concession Agreement, (6) Concession Bond form, and (7) all of the attachments thereto.

A Pre-Bid Conference will be conducted by the State on Tuesday, February 16, 2016, commencing at 9:00 a.m., to familiarize prospective bidders with the nature of the Concession Bid documents, including the Concession Agreement, and to preliminary respond to questions Bidders may have. Deadline for submission of questions to be considered at the Pre-Bid Conference is Tuesday, February 2, 2016. All questions, including those for the Pre-Bid Conference, must be submitted in writing, except at the Pre-Bid Conference where the State will handle a limited number of oral questions. The deadline for submitting final written questions will be on Tuesday, March 8, 2016, and the State will thereafter provide final written responses to all questions properly submitted by Tuesday, April 12, 2016. Prospective bidders are advised to attend the Pre-Bid Conference which will begin promptly at 9:00 a.m. at the Airports Division, Administration Conference Room, located at Kona International Airport at Keahole, Kona, Hawai'i.

Persons needing special accommodations at the Pre-Bid Conference due to disabilities may notify the Department's Airports Division, by calling (808) 838-8674, or by writing to the State of Hawai'i, Department of Transportation, Airports Division, c/o Property and Business Development Office, Honolulu International Airport, Inter-Island Terminal, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawai'i 96819-1880, or by facsimile at (808) 838-8753.

Each prospective Bidder will be required to: (1) fill out and properly complete a Bid Intent Package, including, without limitation, a completed Notice of Intention to Bid and Qualification Questionnaire; and (2) submit the foregoing completed items, together with: (a) financial statement or statements; (b) other documents and tax clearance certificates, to the Department's Airports Division, located at Honolulu International Airport, Inter-Island Terminal Building, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawai'i, 96819-1880, no later than 4:00 p.m., on Friday, May 6, 2016. The questionnaire(s) included as part of the Bid Intent Package will be considered confidential and will not be made available for inspection or copying by the general public.

Any individual, corporation, limited liability company, partnership, joint venture or other entity (including: (1) any entity in which the Bidder is an owner and (2) any stockholders, members, partners or owners of the bidder) shall be deemed not qualified to bid if it is in arrears in any payment, or in default or any obligations, including taxes and special assessments, owing to the U.S. Internal Revenue Service and/or the State of the Hawai'i or any of its political subdivisions (including default as a surety or failure to perform faithfully and diligently any previous agreement, lease, license, permit, or any other type of contract with the State or any of its political subdivisions).

A stockholder of a closely-held corporation, a member of a limited liability company, a partner in a partnership or joint venture and an owner of an entity is defined as the holder of a ten percent (10%) or more ownership interest in the corporation, limited liability company, partnership, joint venture or entity.

Any qualified individual, corporation, limited liability company, partnership, joint venture, or other entity may submit a Bid for the Concession after timely submission of an acceptable Bid Intent Package. All bidders will submit bid proposals using the forms furnished by the State as part of the Concession Bid documents.

The State desires to actively promote the growth and development of Disadvantaged Business Enterprise (DBE) participation in concessions awarded at all public airports in the State of Hawai'i. In accordance with Title 49, Subtitle A, Parts 23 and 26, Code of Federal Regulations, entitled "Participation by Disadvantaged Business Enterprises in Airport Concessions" and "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," respectively, it is the policy of the State to ensure that DBE firms have an equal opportunity to receive and participate in concessions at all public airports.

Accordingly, a DBE goal of fifteen percent (15%) has been established and all qualified DBEs are encouraged to compete for or participate in the Concession. Each business wishing to compete or participate as a DBE must be certified by the State by the deadline (date and time) set for the submission of the Bid Proposal Packages. For information and assistance in applying for DBE certification, please call the State Airports Division DBE Program Manager at (808) 838-8703.

The State reserves the right to reject any and all bids and to waive any defects in the bids or cancel this invitation for bids when, in the opinion of the State's Director of Transportation, such rejection, waiver or cancellation will be in the best interest of the State and the general public.



FORD N. FUCHIGAMI
Director of Transportation

INSTRUCTIONS TO BIDDERS (IB)
PERTAINING TO THE
CONCESSION FOR THE
MANAGEMENT AND OPERATION OF THE
AUTOMOBILE PARKING FACILITIES
AT
KONA INTERNATIONAL AIRPORT AT KEAHOLE

1. PURPOSE

Bids are invited from all interested and qualified parties for the management and operation of the Automobile Parking Facilities at Kona International Airport at Keahole ("Concession"). The State of Hawai'i, Department of Transportation, Airports Division ("State"), seeks a creative and well-qualified organization to establish and operate the Concession at Kona International Airport at Keahole ("Airport") for a period of five (5) years.

The Concession will be operated in accordance with the Concession Agreement (Appendix C (Concession Agreement) of the Concession bid documents) and from the space at the Airport described therein. Award of the Concession Agreement will require the successful bidder to execute the Concession Agreement and comply with and satisfy all the terms and conditions therein, including, without limitation, improving, furnishing and operating the Concession spaces.

2. OBTAINING BID MATERIALS

Copies of the Concession Bid documents, including the Concession Agreement, describing the terms and conditions of the Concession, may be examined and/or obtained from the Administration Office, Airports Division, Honolulu International Airport, Inter-Island Terminal, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawai'i 96819 ("Airports Office"). The Concession Bid documents may be purchased upon tender to the State of the nonrefundable sum of FORTY AND NO/100 DOLLARS (\$40.00) in United States currency or certified check. The Concession Bid documents may also be downloaded at hidot.hawaii.gov/airports/doing-business/concession-notices without charge.

Concession Bid documents are subject to revision(s) at any time prior to bid opening, and any revisions, changes, or amendments to the Concession Bid documents will be posted and available for download at hidot.hawaii.gov/airports/doing-business/concession-notices.

The Concession Bid documents for the Concession include the Notice to Bidders, these Instructions to Bidders, the Bid Intent Package, the Bid Proposal Package, the Concession Agreement, the Concession Bond, and all attachments thereto.

3. PRE-BID CONFERENCE

A pre-bid conference to explain the objectives and requirements for the Concession and to preliminarily respond to questions will be held on Tuesday, February 16, 2016, at 9:00 a.m., Hawaiian Standard Time (“HST”) at the:

Department of Transportation
Airports Division, Administration Conference Room
Kona International Airport at Keahole
Kona, Hawai‘i 96732-2327

All prospective bidders should attend this conference. Reservations are not necessary, but may be made by contacting:

Property and Business Development Office
Department of Transportation
Airports Division
Honolulu International Airport
400 Rodgers Boulevard, Suite 700
Honolulu, Hawai‘i 96819-1880
Telephone (808) 838-8674
Facsimile (808) 838-8753

State representatives will be available to preliminarily respond to questions at this conference. To minimize the possibility of misunderstandings, all questions for the pre-bid conference are to be submitted in writing by mail, parcel delivery, courier service, or personal delivery and received at the Airports Office, no later than 4:00 p.m. HST on Tuesday, February 2, 2016. The State does not warrant or guarantee that all written questions will be addressed at the pre-bid conference. However, at the pre-bid conference, if time permits, the State representatives will respond to a limited number of verbal questions. Any oral responses given by State representatives at the pre-bid conference will be preliminary and subject to further revisions and clarification as part of the State's written response.

The deadline for submitting all written questions, including the resubmission of any submitted for the pre-bid conference, which a prospective bidder desires to obtain the State’s written response for will be 4:00 p.m., HST on Tuesday, March 8, 2016.

All questions should be submitted on the form provided as Attachment 3 to these Instructions to Bidders.

A summary containing all written questions properly submitted for or on the specified deadline of March 8, 2016, together with the State’s final written responses, will be made available to all bidders, regardless of whether they attend the pre-bid conference, via the State

website at hidot.hawaii.gov/airports/doing-business/concession-notices by Tuesday, April 12, 2016. All prospective bidders should not rely on oral representations made at any time and should instead rely on the written State responses to the questions, which shall be entitled "The State's Response to Written Concession Questions." This shall comprise the State's final response to the questions unless the State decides to amend or supplement the State's responses. As a result of the pre-bid conference or otherwise, changes to the Concession Bid documents which are deemed appropriate by the State may be made, and will be posted on the website at the address above before the date scheduled for receipt of sealed bid proposals.

4. BID INTENT PACKAGE: NOTICE OF INTENTION TO BID, QUALIFICATION AND DBE QUESTIONNAIRES, AND TAX CLEARANCE CERTIFICATES.

Bidders are required by state statute to submit a fully completed Notice of Intention to Bid (Appendix A and all attachments). A prospective bidder's failure to submit its fully completed Notice of Intention to Bid, together with the remainder of the Bid Intent Package, by the deadline date and time specified in the Notice to Bidders, shall disqualify the prospective bidder from submitting a bid proposal, unless the specified deadline for the submission of bid proposals is postponed via written notice from the State.

The Bid Intent Package includes the following: (1) Notice of Intention to Bid (Appendix A); (2) the Qualification Questionnaire (Appendix A, Attachment 1); and (3) Tax Clearance Certificates (Appendix A, Attachment 2). The Bid Intent Package must be submitted by the specified deadline, Friday, May 6, 2016, 4:00 p.m. HST, and properly completed in accordance with the instructions contained therein. The State will use the Bid Intent Packages submitted for purposes of evaluating the qualifications of the prospective bidder.

5. QUALIFICATION OF BIDDERS

A bidder must, at the time its bid is submitted, be capable of performing all of the terms and conditions of the Concession Agreement. Before any prospective bidder shall be entitled to submit a bid for the Concession, the State shall be satisfied that each prospective bidder has the financial ability, experience, and competence to satisfactorily perform and complete the terms and conditions of the Concession Agreement. At a minimum, each prospective bidder must have at least five (5) years of experience in the past ten (10) years in managing and operating a public automobile parking facility with a minimum of 500 parking spaces, and an annual combined sales total, for such parking lot(s) or concession(s) in excess of THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00).

If a bidder is a joint venture, each joint venture partner must have at least five (5) years of experience in the past ten (10) years in managing and operating a public automobile parking, and at least one partner must have the necessary experience in managing and operating a public parking facility with a minimum of 500 parking spaces and an annual combined sales total of

such parking lot(s) or concession(s) in excess of THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00).

For purposes of evaluating prospective bidders' qualifications, a prospective bidder must submit its fully completed Bid Intent Package (Appendix A and Attachments). The Bid Intent Package may contain any additional information considered pertinent by the prospective bidder with respect to its qualifications to bid on and operate the Concession and its proposed method of Concession operation. Whenever it appears to the State that any prospective bidder is not fully qualified or able to fully perform and complete the terms and conditions of the Concession Agreement, the State shall, after affording the prospective bidder an opportunity to be heard, and if the State is still of the opinion that the bidder is not fully qualified to fully perform and complete the terms and conditions of the Concession Agreement, refuse to receive or consider any bid proposal submitted by such prospective bidder.

All information contained in the questionnaire forms of the Bid Intent Package shall remain confidential as required by Section 102-3, Hawai'i Revised Statutes ("HRS"). Questionnaires submitted by an unsuccessful bidder shall be returned after the Concession Agreement has been awarded.

6. SUBMISSION OF BIDS

Each bid is required to be (1) made using the Bid Proposal Package provided by the State, particularly the Bid Proposal forms contained therein (Appendix B); (2) properly completed and executed by the bidder, whose signature must be witnessed, acknowledged and notarized in the presence of a notary public; and (3) addressed/submitted to the Director of Transportation, c/o Airports Division, Property and Business Development Office, Department of Transportation Inter-Island Terminal, Suite 700, Honolulu International Airport, 400 Rodgers Boulevard, Honolulu, Hawai'i 96819-1880, at or before the deadline date and time set for the submission of bid proposals.

Each Bid Proposal (Appendix B) must be submitted in a sealed envelope properly marked on the outside as follows:

"BID FOR THE MANAGEMENT AND OPERATION OF THE AUTOMOBILE PARKING FACILITIES CONCESSION AT KONA INTERNATIONAL AIRPORT AT KEAHOLE.

To help ensure confidentiality of each Bid Proposal, the State suggests each bidder use the envelope provided by the State at the pre-bid meeting. If a Bid Proposal is to be mailed, the provided envelope should be enclosed within another mailer.

Each Bid Proposal submitted to the State shall be comprised of the following items (hereafter collectively the "Bid Proposal Package"):

- a. The Bid Proposal (Appendix B);
- b. Affidavit of Non-Collusion (Appendix B, Attachment 1);
- c. Bid Deposit or Bid Bond (Appendix B, Attachment 2);

All Bid Proposals submitted to the State will be opened and read publicly on the date and time, and at the place specified, in the Notice to Bidders, unless the deadline date and time set for the submission of bid proposals is postponed via written notice from the State.

The State may reject a Bid Proposal for any of the following reasons:

- a. If it shows any alterations, erasures, or irregularities of any kind or additions not called for;
- b. If it is conditional or incomplete;
- c. If it fails to comply with any of the requisite conditions and/or any of the ACDBE requirements;
- d. If more than one (1) Bid Proposal is received from an individual, corporation, limited liability company, partnership, joint venture, or any other legal entity under the same or different names and more than one (1) Bid Proposal remains in the State's possession at bid opening;
- e. If the bidder (whether an individual, corporation, limited liability company, partnership, joint venture, or other entity (including (1) any entity in which the bidder is an owner and (2) any stockholders, members, partners, or owners of the bidder) is in arrears in any payment, or in default of any obligation, including taxes and special assessments, owing to the U.S. Internal Revenue Service and/or the State of Hawai'i or any of its political subdivisions (including default as a surety or failure to perform faithfully and diligently any previous agreement, lease, license, permit, or any other type of contract with the State or any of its political subdivisions). A stockholder of a closely-held corporation, a member of a limited liability company, a partner in a partnership or joint venture and an owner of an entity is defined as the holder of at least a ten percent (10%) or more ownership interest in the corporation, limited liability company, partnership, joint venture or entity; or

f. If the bidder fails to submit to the State the required Tax Clearance Certificates from the U.S. Internal Revenue Service, the State of Hawai'i Department of Taxation, and the Counties of Kaua'i, Maui, Hawai'i and the City and County of Honolulu, as required by Appendix A, Attachment 2 of the Concession Bid documents.

The State reserves the right to cancel or reschedule the Concession Bid opening for any reason whatsoever. The State also reserves the right to reject any or all bid proposals and waive any defects when, in the opinion of the State's Director of Transportation, such rejection or waiver will be in the best interest of the State. The State reserves the right to reject a bid proposal offering the highest financial return if the bidder is not deemed responsible by the State. If the highest and best bid proposal or any other bid proposal is rejected, or if the bidder to whom the Concession Agreement was awarded fails to enter into the Concession Agreement and furnish satisfactory security, the State may award the Concession Agreement to the responsible bidder who submitted the next highest and best bid proposal.

7. CONCESSION FEE

For each year of the Concession Agreement term, the annual Concession Fee shall be the greater of the following:

a. Minimum Annual Guaranteed Fee. The minimum annual guaranteed fee (hereafter the "MAG") for the first year of the Concession Agreement shall be, as set forth in the Operator's Bid Proposal, and for each succeeding agreement year the MAG shall be 85% of the actual annual fee paid and payable to the State (either MAG or percentage) for the preceding year; or

b. Percentage Fee. For the term of this Concession Agreement, sixty-five percent (65%) of the Operator's annual gross receipts generated from, related or attributable to, or connected with the Concession at Kona International Airport at Keahole.

c. Upset Fee. The upset MAG for the first year of the Concession Agreement shall not be less than NINE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$950,000.00).

During the term of this Concession Agreement, the State may be constructing improvements to the airport terminal buildings and surrounding areas. As a result of construction projects, the State may require the Operator under the Concession Agreement to consolidate, adjust, and modify its activities to accommodate the changes required by the construction.

8. BID DEPOSITS

The required minimum value of the bid deposit is set by Section 102-6, HRS. Each bidder shall submit a bid deposit, which shall be in a sum of not less than five percent (5%) of the Total Bid Proposal, provided that when the amount bid exceeds \$50,000.00, the bid deposit shall be a sum not less than \$2,500.00 plus two percent (2%) of the bid amount over \$50,000.00. The bid deposit shall be based on the total bid proposal for the first year of the Concession Agreement. The bid deposit must be submitted along with the bidder's Bid Proposal (Appendix B).

The bid deposit shall be in the form of legal tender, a surety bond conforming to the requirements of Section 102-6, HRS, or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, in a sum equal to that required, payable at sight or unconditionally assigned to the State's Director of Transportation.

If a surety bond is submitted, it shall: (1) be issued in accordance with Section 102-6, HRS; (2) name the State of Hawai'i, by its Director of Transportation, as obligee; (3) be on the Bid Bond form provided (Appendix B, Attachment 2); (4) be executed by the bidder as Principal, and by any bonding company listed in the United States Treasury List, as surety; provided that the bond furnished by any surety listed shall not exceed the bonding capacity rating of that surety on the United States Treasury List; (5) be in a sum equal to that required; and (6) be conditioned upon the bidder entering into the Concession Agreement and furnishing satisfactory security in the form of the Concession Bond (and other applicable requirements) within ten (10) business days after the bidder has received the Concession Agreement for execution or within such further time as the State's Director of Transportation may allow, in writing, if the bidder is awarded the Concession Agreement.

9. LATE SUBMISSIONS

It is the responsibility of each bidder to ensure that the following are completed and submitted to the State by the stated applicable deadlines: (1) Final Written Concession Questions; (2) Bid Intent Package; (3) the Bid Deposit or Bid Bond; and (4) Bid Proposal Package. The State assumes no responsibility or liability for any bidder's lateness in the submission of the (1) Final Written Concession Questions, (2) Bid Intent Package, (3) the Bid Deposit or Bid Bond, or (4) Bid Proposal Package to the State due to mail or other delivery service delays. If any or all of the foregoing required items is/are received by the State after the stated applicable deadline(s), it/they will not be considered and will be returned to the bidder without opening in accordance with Section 102-5, HRS.

10. WITHDRAWAL OR MODIFICATION OF BID INTENT PACKAGE, BID PROPOSAL PACKAGE AND BID BOND

The Bid Intent Package, or any part thereof, or the Bid Proposal Package, in its entirety, may be withdrawn by written notice, telegram, or mailgram which must be received by the State prior to the applicable dates and times stated herein for submission of the Bid Intent Package and the Bid Proposal Package, respectively.

A substitute submittal of all or a part of the Bid Intent Package will be accepted by the State so long as a written request to withdraw the previous Bid Intent Package, or part thereof, is received simultaneously with or prior to the substitute Bid Intent Package or part thereof and the substitute Bid Intent Package or part thereof is received prior to the applicable date and time deadline for submission of the Bid Intent Packages.

A substitute submittal of the Bid Proposal Package, will be accepted by the State so long as a written request to withdraw the previous Bid Proposal Package is received simultaneously with or prior to the substitute Bid Proposal Package and the substitute Bid Proposal Package is received prior to the applicable date and time deadline for submission of the Bid Proposal Packages.

Errata sheets for the Bid Intent Package may be submitted prior to the applicable date and time deadlines for submission of the Bid Intent Package so long as the total of all corrections to a submittal does not exceed two typed 8.5" x 11" pages. Changes requiring more than two such pages require withdrawal of the Bid Intent Package and the subsequent submission of a substitute Bid Intent Package. This subsequent submission of a substitute Bid Intent Package must be: (1) received by the State prior to the applicable date and time deadline for submitting the Bid Intent Packages and (2) submitted in a sealed envelope and properly marked as required for the Bid Intent Package and each page must clearly be labeled "Substitute Submittal #1" or "Substitute Submittal #2" as applicable.

11. AWARD OF BID, EXECUTION OF CONCESSION AGREEMENT, AND CONCESSION BOND

The qualified bidder whose "Total Bid Proposal" offered in its Bid Proposal to the State for the first year of the Concession Agreement term is greater than that of all other qualified bidders, or who otherwise prevails as provided in this section will be recommended to the State's Director of Transportation for award of the Concession Agreement.

In the event of a tie between two or more qualified bidders, the State will request that each such qualified bidder involved in the tie submit in a sealed envelope to the State within ten (10) days after such bidder's receipt of the State's written request to so submit, such bidder's best and final offer with respect to the Concession. Each such bidder shall use the amount of the MAG bid for the first year of the Concession Agreement term involved in the tie as the minimum

upset price for the MAG. All such bid proposals setting forth each bidder's best and final offer shall be opened in the same manner as the opening of the initial Bid Proposal Packages. In case of a further tie between bidders, the highest qualified Bid Proposal will be determined in accordance with the same procedure applied in the evaluation of the initial Bid Proposal Packages. This process will be repeated until the State selects the highest qualified Bid Proposal or the State decides to reject all Bid Proposal Packages and cancel the solicitation for this Concession.

The Bid Proposal Package, including attachments, and instructions to complete them are contained in Appendix B of the Concession bid documents.

The award of the Concession Agreement should be made within thirty (30) calendar days after the bid opening, provided however, the award may be delayed for a reasonable additional time period to permit investigation by the State into the completeness, accuracy, and truthfulness of the representations made by the bidder to whom the Concession Agreement is proposed to be awarded. The State reserves the right to reject any and all bid proposals and to re-advertise a call for tenders if the State determines that a rejection of all bid proposals is warranted and is in the best interest of the State.

The Concession Agreement (Appendix C) shall be executed by the successful bidder, whose signature shall be witnessed, acknowledged and notarized by a notary public, and returned to the State, together with a Concession Bond satisfactory to the State, within ten (10) business days after the bidder has received the Concession Agreement for execution, or within such further time as the State's Director of Transportation may allow in writing.

Failure on the part of the successful bidder to execute, notarize and return the Concession Agreement to the State, and to submit to the State an acceptable Concession Bond as required, within ten (10) business days after the bidder has received the Concession Agreement for execution, or within such further time as the State's Director of Transportation may allow in writing, shall be just cause for the annulment of the award and forfeiture of the bidder's bid deposit or bid bond to the State. If the successful bidder refuses or fails to execute the Concession Agreement within the required time, the State may award the Concession Agreement to the next highest responsible qualified bidder or cancel the solicitation and publish another call for tenders.

The Concession Bond, or equivalent security as described in the Concession Agreement, shall be in the amount equal to four (4) months of the MAG for the appropriate agreement year period and shall be maintained in full force and effect by the successful bidder at all times from the commencement date of the Concession Agreement until no less than ninety (90) calendar days after the later of: (a) expiration or sooner termination of the Concession Agreement, or (b) the end of any holdover period. The sureties on the Concession Bond must be properly licensed and authorized to do business under the laws of the State of Hawai'i. The Concession Bond shall be maintained by the successful bidder, at its sole cost and expense, and shall cover

the successful bidder's compliance with, and full and complete performance of, the terms and conditions of the Concession Agreement; provided that suits thereon by the State or anyone else entitled to do so may be commenced in accordance with applicable law.

If the State, in its sole discretion, permits the successful bidder to use on the Concession Bond, sureties who are not properly licensed and authorized to do business under the laws of the State of Hawai'i, such sureties must meet the requirements of all applicable laws, statutes, rules and regulations, particularly Section 102-12, Hawai'i Revised Statutes.

If the Concession Bond is for a period less than that required under the Concession Agreement, the successful bidder, as Operator under the Concession Agreement, at least sixty (60) calendar days prior to the expiration date of the Concession Bond, shall submit another Concession Bond providing the coverage required under the Concession Agreement at least ninety (90) days beyond the expiration date of the Concession Agreement or any holdover period. If the State should receive a notice that the Concession Bond has been or will be canceled, the Operator under the Concession Agreement shall provide the State with a replacement Concession Bond providing the coverage required under the Concession Agreement, from the effective date and time of the bond cancellation so that there is no period of time wherein a Concession Bond does not cover the Concession Agreement, as provided for herein. Such a replacement Concession Bond must be forwarded to and received by the State at least twenty (20) calendar days prior to the effective date and time of the prior bond cancellation or expiration.

In the event that a replacement Concession Bond or another Concession Bond is not received by the State at least twenty (20) days prior to the effective date and time of the bond cancellation or expiration, as stated, the Operator shall be deemed in default, regardless of whether notice of breach or default or time to correct the breach or default has been provided to the Operator by the State, and the full face amount of the Concession Bond shall be immediately payable to the State as liquidated damages. The Operator shall also be deemed in default and the full face amount of the Concession Bond shall be immediately payable to the State as liquidated damages if the Operator shall fail to properly furnish the final licensed independent certified public accountant's annual verification report as prescribed under the Concession Agreement.

The successful bidder shall pay the State an administrative fee in the sum of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) in United States currency or certified check, which fee payment shall be delivered to the State, together with the executed and notarized Concession Agreement and satisfactory Concession Bond.

If the State receives a properly executed Concession Agreement, a satisfactory Concession Bond, and the required administrative fee payment in the sum of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) within the required time, the Bid Deposit shall be returned to the successful bidder that is awarded the Concession Agreement. The bid deposits made by unsuccessful bidders shall be returned to them after the Concession Agreement has been entered into or if the Concession Agreement is not awarded or entered into, after the determination by the

State's Director of Transportation to publish another call for tenders or to cancel the solicitation for this concession.

12. AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE ("ACDBE") PARTICIPATION IN PROCUREMENT OF GOODS AND SERVICES

During the term of this Concession Agreement, if a successful bidder is not a certified ACDBE but procures, purchases, or enters into contracts with certified ACDBEs for the acquisition of goods and services relating to a successful bidder's operation and/or maintenance of a Concession at the Airport, the value or consideration paid for such goods and services must be reported to the State.

13. FUTURE/OTHER CONCESSIONS

While the State makes no guarantees regarding possible future actions, prospective bidders should be aware that the State reserves the right to provide parking areas, other than the Automobile Parking Facilities, to its employees, airlines, and other tenants and concessionaires incidental to their businesses at the Airport, with the understanding that the State will not grant a similar concession to anyone else during the term of the Concession Agreement, except to the extent provided in Appendix C, Concession Agreement, Article III. (Management and Operating Rights).

14. TAXES

The successful bidder shall pay: (1) all applicable taxes levied by the United States Government and the State of Hawai'i based on the revenues derived from the Concession; and (2) real property taxes, if any, levied by the County of Hawai'i for the Premises granted under this Concession Agreement.

15. GENERAL INFORMATION

Attachment 1 to Instruction to Bidders (IB) provides information regarding passenger counts at the Airport. Attachment 2 to IB provides the reported gross receipts for the Concession at the Airport from July 2005 to June 2015. Attachments 1 and 2 to IB are for the general information of prospective bidders only and will not form any part of the Concession Agreement. The State does not guarantee nor warrant the correctness of the information contained in said Attachments or any information regarding passenger counts and gross receipts which may be found in any other document pertaining to this Concession, including any submittals which may be made to the Board of Land and Natural Resources, State of Hawai'i.

Bidders are further advised that figures pertaining to passenger traffic at the Airport and gross receipts from the Concession in prior years are representations of historical activity and not

necessarily indicative of future trends or activity levels. Such passenger traffic may be affected by changes in airport activity, airport construction or other events, which may alter conditions.

Although bidders should acquaint themselves with passenger, visitor, airport user, and customer traffic patterns and conditions existing at the Airports, it should be noted that such patterns or conditions are always subject to change, adjustment, or alteration, and therefore, cannot be considered permanent. The successful bidder will not be provided compensation nor allowed any adjustments to the annual or total guaranteed concession fee owed to the State over the five (5)-year term of the Concession Agreement should future passenger traffic levels affect the Concession, unless otherwise provided in the Concession Agreement or by State law.

The State is responsible for providing operational and functional airport facilities and in so doing will seek to provide reasonable and practical routing for passengers and users. Changes to security screening locations and other sites may be required during the period of this Concession Agreement. Such changes will be made at the sole discretion of the State and will not provide the basis for any claim by the successful bidder for any compensation, rebate or rental adjustment, if passenger, visitor, user, or customer volume, access, or traffic patterns are altered or reduced.

16. OTHER REQUIREMENTS

Each bidder shall carefully examine all documents relating to this Concession and judge for itself all the circumstances and conditions affecting its bid proposal. The bidder's failure to make such examination and to investigate thoroughly shall not be grounds for any claim that the bidder did not understand the terms, conditions, or procedures set forth in the Concession Bid documents, including the Concession Agreement, or that there were any circumstances that prevented, inhibited or adversely affected the bidder's ability to understand or understanding of the terms, conditions, or procedures set forth in the Concession Bid documents. A bidder shall have the burden to notify the State's Director of Transportation, in writing, of any ambiguity, inconsistency, or conflict in the Concession Bid documents, including the Concession Agreement, prior to the applicable deadlines for submission of the Bid Proposal Packages. Failure to so notify the State's Director of Transportation, in writing, shall be deemed to be a waiver of that bidder's right to claim an ambiguity, inconsistency, or conflict in the Concession bid documents, including the Concession Agreement.

17. ATTACHMENTS TO IB

1. Attachment 1 to IB, Schedule 1 re (History of Passenger Traffic)
2. Attachment 2 to IB, Schedule 2 re (History of Gross Receipts)
3. Attachment 3 to IB, Question Submittal Form, Pre-Bid Conference
Attachment 3A to IB, Questions Submittal Form, Final Written Questions

18. APPENDICES

A. Bid Intent Package

Appendix A, Attachment 1 (Qualification Questionnaire)

Appendix A, Attachment 2 (Tax Clearance)

B. Bid Proposal Package

Appendix B, Attachment 1 (Affidavit of Non-Collusion)

Appendix B, Attachment 2 (Bid Bond)

C. Concession Agreement

Appendix C, Attachment 1 (Exhibits)

Appendix C, Attachment 2 (Tenant Improvement Guidelines, Manuals 1 & 2)

Appendix C, Attachment 3 (Environmental Preservation Guidelines)

Appendix C, Attachment 4 (Development Standards for Leased Airport Property)

Appendix C, Attachment 5 (Department of Transportation Assignment of Lease and Premium Evaluation Policy)

Appendix C, Attachment 6 (Department of Transportation Sublease Evaluation Policy)

Appendix C, Attachment 7 (List of Parking Revenue Control system Equipment Purchased by Operator)

Appendix C, Attachment 8 (Operational Data Reports)

D. Concession Bond

ATTACHMENT 1 TO IB
HISTORY OF PASSENGER TRAFFIC

Airport statistical data on passenger counts are presented in the following tables.

KONA INTERNATIONAL AIRPORT AT KEAHOLE
INTER-ISLAND/OVERSEAS PASSENGERS
(ARRIVALS, DEPARTURES, THROUGH)

YEAR	INTER-ISLAND	OVERSEAS	TOTAL
2005	1,913,335	1,036,224	2,949,559
2006	1,986,123	1,018,029	3,004,152
2007	2,185,698	982,499	3,168,197
2008	1,826,324	933,223	2,759,547
2009	1,715,550	996,858	2,712,408
2010	1,578,487	1,071,006	2,649,493
2011	1,596,833	1,082,883	2,679,716
2012	1,697,125	1,144,810	2,841,935
2013	1,739,095	1,107,571	2,846,666
2014	1,669,913	1,209,803	2,879,716
2015 (Jan-June)	826,214	678,779	1,504,993

Bidders are advised that figures pertaining to the number of inter-island/overseas passenger arrivals and departures in prior years are representations of historical activity and not necessarily indicative of future trends or activity levels. Such passenger traffic may be subject to changes in airport activity, construction or other events which may alter conditions.

THE DEPARTMENT OF TRANSPORTATION DOES NOT WARRANT NOR GUARANTEE THE CORRECTNESS OF THE INFORMATION CONTAINED IN THIS ATTACHMENT.

KONA INTERNATIONAL AIRPORT AT KEAHOLE
 INTER-ISLAND/OVERSEAS PASSENGERS
 (DEPLANEMENTS)

YEAR	INTER-ISLAND	OVERSEAS	TOTAL
2005	918,706	549,494	1,468,200
2006	959,930	520,969	1,480,899
2007	1,051,125	509,561	1,560,686
2008	873,049	493,349	1,366,398
2009	822,055	527,248	1,349,303
2010	754,757	567,372	1,322,129
2011	799,861	547,303	1,347,164
2012	844,281	584,615	1,428,896
2013	863,745	555,220	1,418,965
2014	830,215	606,754	1,436,969
2015 (Jan-June)	407,073	335,933	743,006

Bidders are advised that figures pertaining to the number of inter-island/overseas passenger arrivals and departures in prior years are representations of historical activity and not necessarily indicative of future trends or activity levels. Such passenger traffic may be subject to changes in airport activity, construction or other events which may alter conditions.

THE DEPARTMENT OF TRANSPORTATION DOES NOT WARRANT NOR GUARANTEE THE CORRECTNESS OF THE INFORMATION CONTAINED IN THIS ATTACHMENT.

ATTACHMENT 2 TO IB

HISTORY OF GROSS RECEIPTS
AUTOMOBILE PARKING FACILITIES
KONA INTERNATIONAL AIRPORT

CONTRACT YEAR	GROSS RECEIPTS
JULY 2005 - JUNE 2006	\$1,387,099
JULY 2006 - JUNE 2007	\$1,537,957
JULY 2007- JUNE 2008	\$1,671,203
JULY 2008 - JUNE 2009	\$1,791,936
JULY 2009 - JUNE 2010	\$1,890,122
JULY 2010 - JUNE 2011	\$1,863,403
JULY 2011 - JUNE 2012	\$1,822,712
JULY 2012 - JUNE 2013	\$1,871,740
JULY 2013 - JUNE 2014	\$1,880,557
JULY 2014 - JUNE 2015	\$2,043,656

Bidders are advised that the foregoing information pertaining to reported gross receipts from the Management and Operation of the Automobile Parking Facilities at Kona Airport in prior years are merely representations of past trends or historical activity levels based on the best information available to the Department of Transportation, and are not necessarily indicative of future trends or activity levels.

THE DEPARTMENT OF TRANSPORTATION DOES NOT WARRANT NOR GUARANTEE THE ACCURACY OF THE INFORMATION CONTAINED IN THIS ATTACHMENT.

ATTACHMENT 3 TO IB

QUESTION SUBMITTAL FORM (PRE-BID QUESTIONS)

CONCESSION: MANAGEMENT AND OPERATION OF THE AUTOMOBILE
PARKING FACILITIES AT KONA INTERNATIONAL AIRPORT
AT KEAHOLE

BIDDER'S NAME: _____

ADDRESS: _____

SUBMITTED BY: _____ TITLE: _____

TELEPHONE: _____ DATE: _____

QUESTION(S): _____

(Must be submitted by 4:00 p.m., Tuesday, February 2, 2016)

ATTACHMENT 3A TO IB

QUESTION SUBMITTAL FORM, FINAL WRITTEN QUESTIONS

CONCESSION: MANAGEMENT AND OPERATION OF THE AUTOMOBILE
PARKING FACILITIES AT KONA INTERNATIONAL AIRPORT
AT KEAHOLE

BIDDER'S NAME: _____

ADDRESS: _____

SUBMITTED BY: _____ TITLE: _____

TELEPHONE: _____ DATE: _____

QUESTION(S): _____

(Must be submitted by 4:00 p.m., Tuesday, March 8, 2016)

APPENDIX A

BID INTENT PACKAGE

CONCESSION FOR THE

MANAGEMENT AND OPERATION OF

THE AUTOMOBILE PARKING FACILITIES

AT

KONA INTERNATIONAL AIRPORT AT KEAHOLE

ISLAND OF HAWAI'I, HAWAI'I

STATE OF HAWAI'I

Name of Bidder (Print) _____

Mailing and Business Address (Print) _____

APPENDIX A

NOTICE OF INTENTION TO BID

Date: _____

Director of Transportation
Department of Transportation
c/o Airports Division
ATTN: Property and Business Development
Honolulu International Airport
Inter-Island Terminal Building
400 Rodgers Boulevard, Suite 700
Honolulu, Hawai'i 96819-1880

Dear Sir:

You are hereby notified that it is the intent of the undersigned to bid on the Concession for the Management and Operation of the Automobile Parking Facilities at Kona International Airport at Keahole, Island of Hawai'i, State of Hawai'i.

Attached hereto are the fully completed Qualification Questionnaire (Appendix A, Attachment 1), Tax Clearance Certificates (Appendix A, Attachment 2).

Very truly yours,

(Name of Firm or Individual)

By _____
(Signature)

Title: _____

(Address)

(City, State, Zip Code)

(Telephone No.)

APPENDIX A, ATTACHMENT 1
QUALIFICATION QUESTIONNAIRE

All information requested in the Qualification Questionnaire must be furnished by each bidder, and must be submitted with the Bid Intent Package and the Notice of Intention to Bid. Statements must be complete and accurate and in the form requested. Omission, inaccuracy, or misstatement may be cause for finding the prospective bidder not qualified to bid on this Concession.

(NOTE: The Qualification Questionnaire shall be kept confidential as required by Section 102-3, Hawai'i Revised Statutes)

1. Provide the name of the bidder exactly as it is to appear on the Concession Agreement:

2. Provide the mailing address and place of business (street address), telephone number, and facsimile number of the bidder:

3. The bidder, if selected, intends to carry on the business as:

Individual (), Partnership (), Joint Venture (), Corporation (),
Limited Liability Company (), or Other (). If "Other", attach explanation.

4. Provide the Federal Identification Number (Federal I.D. No.) and State of Hawai'i Department of Taxation General Excise Tax (G.E.T.) License Number for taxation purposes:

Federal I.D. No.: _____

Hawai'i General Excise Tax License No.: _____

5. If the bidder is a partnership or joint venture, attach a copy of the partnership agreement or joint venture agreement and answer the following:

A. Name, address, and percentage interest of each partner of the partnership or each member of the joint venture:

<u>Name</u>	<u>Address</u>	<u>Percentage Interest</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. Date of Organization: _____

C. General or Limited Partnership (if applicable): _____

D. Where Recorded _____
County State Date

E. Registered in Hawai'i: Yes / No

If yes, as of what date: _____

F. If bidder is part of a parent organization or larger partnership or joint venture or any other form, provide an organizational chart showing bidder's position and position of general and/or limited partners and any other related or controlling entity.

6. If the bidder is a corporation or a limited liability company, answer the following:

A. When incorporated/formed: _____

B. In what state or country: _____

C. Authorized to do business in Hawai'i: Yes / No

If yes, as of what date: _____

D. How is the corporation held:

Publicly () Privately ();

if publicly-held, list how and where the corporation's stock is traded: _____

E. Name, address, experience in the business, and shares of stock or membership interests held by the following officers:

Officer	Name	Address	Shares of Stock or Membership Interests	% of Total	Experience in the Business
President					
Vice President					
Secretary					
Treasurer					
Other					

F. Name, address, and shares of stock or membership interests held by each Member of the Board of Directors or Management Committee:

Name	Address	Shares of Stock or Membership Interests	% of Total

G. Name, address and shares of stock or membership interests held by other "principal" stockholders or members. (A "principal" stockholder or member is defined as a stockholder or member who holds 10% or more of the outstanding stock or membership interests of the corporation or limited liability company, respectively.)

Name	Address	Shares of Stock or Membership Interests	% of Total

Total Capitalization: \$ _____

Amount of capital stock or membership interests subscribed: \$ _____

Amount paid-in: \$ _____

H. Is the majority (i.e., more than fifty percent (50%) ownership of the corporation or limited liability company held by a parent company?

Yes _____ No _____

If yes, please provide the information required by the preceding Items 6.A. through 6.G. for the parent company, and the information required by the preceding Items 6.A. through 6.G. for all other majority-owned subsidiaries of the parent, and indicate the percentage of ownership for each subsidiary.

I. Does the corporation or limited liability company have any majority-owned (i.e., more than fifty percent (50%) owned) subsidiary companies?

Yes _____ No _____

If yes, please provide the information required by the preceding Items 6.A. through 6.G. for all subsidiary companies, and indicate the percentage of ownership in each subsidiary company.

J. If bidder uses trade names, doing-business-as-names, or other names in its business to identify bidder, list the names and bidder's connection with each entity or part of its business.

K. If bidder is part of a parent company or subsidiary of a larger corporate structure or similar sub-entity of a larger organization, provide an organizational chart showing bidder's position in the organization.

7. If bidder is a joint venture, provide all applicable information in response to all questions in the preceding Items 5 and 6 for each joint venture member.

8. Summary of Experience:

To complete this Qualification Questionnaire, each bidder must submit a narrative response that describes in detail how the bidder meets the minimum qualification requirement of at least five (5) years of experience within the past ten (10) years in managing and operating a public automobile parking facility in the United States, with a minimum of 500 parking spaces, and an annual combined sales total, for such parking lot(s) or concession(s) in excess of Three Million and No/100 Dollars (\$3,000,000.00). Please follow the format set forth below for your response. The following information must be included:

A. Automobile Parking Management experience as an owner and/or operator, specifically experienced in managing and operating public automobile parking facilities located in the United States.

(1) Names, nature. For the past ten (10) years, the names and addresses of public automobile parking facilities located in the United States which were managed and operated by the bidder, together with a brief description of the nature and scope of such management and operation, including, without limitation, a description of the location and type of public automobile parking facilities managed and operated by the bidder (e.g. airport, harbor, port, transportation center, hotel, or other complex). If the experience claimed by the bidder is attributable to an entity other than the bidder, explain in detail how that experience qualifies the bidder to perform this Concession Agreement and meet the minimum qualification requirement.

(2) Period of Public Automobile Parking Facilities management and Operation. Number of years (including dates of public automobile parking facilities management and operation) the bidder has managed and operated said public automobile parking facilities, and the nature of the bidder's relationship to the public automobile parking facilities (how managed and operated).

B. Gross receipts. Gross receipts derived or generated from the bidder's management and operation of each public automobile parking facility for each of the past five (5) years. If said Automobile Parking Management business has not operated for the past five (5) years, please provide the gross receipts for the years the business has been operating. If the bidder has owned another business within the last five (5) years, and is using that experience to meet the minimum qualification criteria, please provide the gross receipts for that business. For each of the qualifying years for said Automobile Parking Management business and/or other businesses, each bidder must attach evidence of such gross receipts by way of an Audited Statement of Revenues of the bidder named in this Qualification Questionnaire, prepared by a licensed, independent, certified public accountant, provided that an unaudited Statement of Revenues may be submitted for the bidder's

current operating year and the immediate prior operating year. Unaudited Statements of Revenues for the bidder's current year and immediate prior operating year must be accompanied by the signed statement from the bidder's licensed, independent, certified public accountant attesting that the Audited Statement of Revenues has not been prepared and completed for such years.

C. Ownership and operational experience. Each bidder must provide evidence of ownership and operational experience for each of the qualifying years, which evidence must be reasonably satisfactory to the Department. Without limiting the generality of the foregoing, each bidder must submit the following items:

(1) Organizational documents. Organizational documents, such as joint venture/partnership agreement(s), corporate articles/bylaws, share certificates, etc.

(2) Audited financial statements. A complete set of the entire Audited Financial Statements (Independent Auditor's Report, Balance Sheet, Statement of Revenues, Expenses, and Changes to Retained Earnings, Statement of Cash Flows, Notes to the Financial Statements, and all Supplementary Information) (hereinafter referred to collectively as the "Audited Financial Statements") of the bidder named in this Qualification Questionnaire for the most recent three (3) calendar years or fiscal years of operation. The Audited Financial Statements must be prepared and certified by a licensed, independent, certified public accountant. The Audited Financial Statements may not be prepared or submitted to the Department on a condensed or similar summary basis. For example, the submission of a condensed statement of assets, liabilities, and partners capital (regardless of whether the same was submitted as part of a federal or state tax return filing) will not be sufficient to satisfy the bidder's obligation herein to submit Audited Financial Statements.

(a) Individual. If the bidder is an individual, submit audited personal financial statements (net worth) in accordance with this Section 8.C.(2).

(b) Bidder recently formed.

[1] Bidder itself. If the bidder is a corporation, limited liability company, partnership, or joint venture that was formed within the last three (3) years, the bidder must submit Audited Financial Statements, as prescribed and set forth in the preceding Section 8.C.(2), for each year that the corporation, limited liability company, partnership, or joint venture existed; and

[2] Interest holders. Audited Financial Statements, as required pursuant to the preceding Section 8.C.(2), for the period prior to the formation of the corporation, limited liability company, partnership, or joint venture, respectively, to assure that a minimum of three (3) consecutive years of audited financial statements are submitted for the bidder:

a) For each principal stockholder if the bidder is a corporation (a principal stockholder is defined as a stockholder who owns or holds 10% or more of the outstanding stock of the corporation);

b) For each principal member if the bidder is a limited liability company (a principal member is defined as a member who owns or holds 10% or more of the outstanding membership interests in a limited liability company);

c) For each general partner, managing partner, and partner owning, having, or holding a 10% or more interest in the partnership, if the bidder is a partnership; or,

d) For each member if the bidder is a joint venture.

D. Prior name. State if the bidder has ever operated under another name and/or ownership structure, and if so, please identify all such names, and describe the ownership structures.

E. Landlords. Provide the names, addresses, and telephone numbers of owners, landlords and property managers for all operations listed in the preceding applicable sections.

9. References.

A. Non-affiliated businesses. Attach reference letters from at least three non-affiliated business owners.

B. Prior landlords. Attach reference letters from at least three (3) previous owners/landlords, if any.

C. Bidder's management experience. Contents of the reference letters required by the preceding Sections 9.A and 9.B herein, shall include information directly related to the bidder's ownership, management, and operational experience in the Automobile Parking Management business.

D. Banks. Attach credit reference letters from at least two (2) banks or other financial institutions with which the bidder regularly does business.

10. Other information. List and provide any other information the bidder may consider pertinent.

11. Affirmative Statement of Accuracy. The undersigned bidder represents and warrants to the State of Hawai'i, Department of Transportation as follows: (a) the undersigned person(s) are duly authorized representatives of the bidder; and (b) all information submitted by the bidder in this Proposal Intent Package is complete, accurate, and truthful.

NAME OF BIDDER: _____

By _____ Title _____ Date _____

Print Name

By _____ Title _____ Date _____

Print Name

By _____ Title _____ Date _____

Print Name

By _____ Title _____ Date _____

Print Name

Subscribed and sworn to before me this
_____ day of _____, 20_____.

Print Name: _____

Notary Public, _____ Judicial Circuit
State of _____

Doc. Description: _____

No. of Pages: _____

Notary signature

My Commission Expires: _____

APPENDIX A, ATTACHMENT 2

TAX CLEARANCE CERTIFICATES

The attached State of Hawai‘i, Department of Taxation Tax Clearance Application Form A-6, (Rev. 2014) is a sample of the form to be completed by each bidder and submitted to the Hawai‘i Department of Taxation for verification that all applicable State of Hawai‘i taxes and Federal income taxes of the bidding entity and all affiliated entities have been paid to the State of Hawai‘i and the U.S. Government, respectively. "Affiliated entities" is defined as any entity having more than fifty percent (50%) interest in the bidding entity; any company more than fifty percent (50%) owned by a company having more than fifty percent (50%) interest in the bidding entity; and any entity in which the bidding entity has more than fifty percent (50%) interest. Each bidder shall be responsible for obtaining Tax Clearance Certificates from the Hawai‘i Department of Taxation for itself and all affiliated entities.

Upon verifying that all applicable State of Hawai‘i taxes and Federal income taxes owed by the bidder and all affiliated entities have been paid to the State of Hawai‘i and the U.S. Government (specifically the U. S. Internal Revenue Service), respectively, the Hawai‘i Department of Taxation will issue the required Tax Clearance Certificate(s). The front page of the State of Hawai‘i Tax Clearance Application, if properly endorsed with a State approval stamp and an Internal Revenue Service approval stamp, will become the Tax Clearance Certificate.

Further, each bidder shall also apply for, obtain, and submit a tax clearance certificate issued by the Counties of Kaua‘i, Maui, Hawai‘i and the City and County of Honolulu, which certificate shall verify that all real property taxes, special assessments or other obligations of the bidder have been.

All tax clearance certificates must be submitted with the bidder's completed Bid Intent Package, including the Notice of Intention to Bid (Appendix A) and must be dated within one (1) month of the submission date for the bidder's Bid Intent Package.

STATE OF HAWAII — DEPARTMENT OF TAXATION
**INSTRUCTIONS FOR FORM A-6
TAX CLEARANCE APPLICATION**

(NOTE: References to “married”, “unmarried”, and “spouse” also means “in a civil union”, “not in a civil union”, and “civil union partner”, respectively.)

GENERAL INSTRUCTIONS

- This form is used to obtain a **State Tax Clearance**. (If you are reporting a bulk sale of business assets, you must also complete and attach Form G-8A, Report of Bulk Sale or Transfer.)
- This form may only be used to obtain a **Federal Tax Clearance** for the purpose of liquor licensing or entering into contracts/submitting bids with and/or seeking final payment of contracts from state or county agencies in Hawaii. Contractors winning the bids are not required to have their subcontractors obtain a tax clearance.
- The current version of Form A-6 must be used. Type or print clearly with a pen. After approval, the front page of the application will be your tax clearance certificate.
- Applications (Form A-6) are available at Department of Taxation and Internal Revenue Service (IRS) offices in Hawaii, and may also be requested by calling the Department of Taxation on Oahu at 808-587-4242 or toll free at 1-800-222-3229. This form can be downloaded from the Department of Taxation’s website at: tax.hawaii.gov
- Vendors selling goods and services to state, city, or county agencies may register with the Hawaii Compliance Express and have their tax clearance status available online for all state, city, or county contracts. Go to <https://vendors.ehawaii.gov> for more information.

LINE-BY-LINE INSTRUCTIONS

Line 1 — Applicant Information

Applicant’s Name. — Enter your legal name. The name appearing on your application must match the name on file with the State Department of Taxation, IRS, and, if applicable, the State Department of Commerce and Consumer Affairs.

Address. — Enter the address to which correspondence regarding this application for tax clearance should be mailed. In most cases, the address should be that which is on file with the Department of Taxation and/or IRS.

DBA (Doing Business As)/Trade Name. — If you have a trade or business name which is different from your legal/registered name, enter that name here.

Line 2 — Tax Identification Numbers

Hawaii Tax ID #. — Enter your Hawaii tax identification number. Enter “NONE” if you do not have one.

Federal Employer ID #. — Enter your 9-digit federal employer identification number (FEIN). Enter “NONE” if you do not have one.

Social Security #. — If you are an individual/sole proprietor, enter your social security number (SSN).

Line 3 — Applicant is a/an

Check the box which best describes your entity type.

If you are a Single Member LLC disregarded as separate from the owner, enter the owner’s FEIN/SSN in the space provided.

If you are a Subsidiary Corporation, enter the parent corporation’s name and FEIN in the space provided.

Line 4 — The Tax Clearance is Required For

Check the box(es) which correspond to your reason(s) for obtaining the tax clearance. The asterisk (“*”) indicates the reason for which a state and federal clearance is required.

Check the “Other” box if you are required to obtain a tax clearance for the credit for school repair and maintenance or for the purchase of cigarette tax stamps at the reduced rate.

Line 5 — No. of Certified Copies Requested

Enter the number of certified copies you are requesting. Please retain the tax clearance with the original red signature. When you require additional copies prior to the expiration date of the tax clearance certificate, submit the tax clearance with the original red signature with a request for the number of copies required. Each copy will bear an original green certified copy stamp. Photocopies of the original green certified copy stamped Form A-6 will be invalid.

Line 6 — Signature

Signature. — The application must be signed by an individual/sole proprietor/owner, trustee, executor, corporate officer (president, vice-president, secretary, treasurer, etc.) or general partner or member. An employee of your company or authorized agent may sign the application if he/she possesses a valid power of attorney. Power of attorney forms are available at the Department of Taxation (Form N-848) and IRS (Form 8821 or Form 2848) as indicated on page 1 of the application. Unsigned or unauthorized signatures on applications will be returned.

Print Name. — Enter the name of the person signing the application.

Print Date/Telephone/Fax/Title. — Enter the date the application is signed, and the telephone/fax number which the Department of Taxation or IRS can call during business hours should any questions arise while processing the application for tax clearance. Also enter the title of the person signing the application.

Line 7 — City, County, or State Government Contract

Indicate whether you are submitting a bid for a contract, entering into a contract, have an ongoing contract, completing a contract, and/or waiting for final payment on a contract.

If you are requesting a tax clearance for a completion/final payment of contract, please provide the name, agency, and telephone number of the contact person at the State or County Agency in the spaces provided.

Line 8 — Liquor Licensing

For liquor licensing purposes, indicate whether you are applying for an initial liquor license, renewing your current liquor license, transferring a liquor

license, or applying for a one time special event license.

Please Note: If you are renewing your liquor license or transferring the business to another entity (or person), the federal tax clearance requires compliance with the Bureau of Alcohol, Tobacco, and Firearms (ATF).

Line 9 — Contractor Licensing

Indicate whether you are applying for your initial contractor’s license or renewing your current license.

Line 10 — State Residency

Enter the date you arrived in the State of Hawaii or returned to the State of Hawaii if your reason for applying is residency status.

Line 11 — Accounting Period

If you file your tax returns on a calendar year basis (1/1 — 12/31), check the first box. If you file your tax returns on a fiscal year basis other than a calendar year, check the second box, and enter the month and day your fiscal year ends. For example, a corporation whose tax year is July 1st through June 30th would write “06/30” on the line provided.

Line 12 — Tax Exempt Organization

If you are a tax exempt organization, you must enter the Internal Revenue Code section that applies to your exempt status. For example: IRC §501(c)(3). Also, you must answer the questions in this section.

Line 13 — Individual

If you are an individual/sole proprietor who is married, enter your spouse’s name and social security number on the lines provided.

Line 14 — If You Do Not Have a General Excise Tax License and Require a Tax Clearance

If you do not have a general excise tax license and require a tax clearance, you must complete this section. Contact the State Department of Taxation if you have additional questions. Refer to page 2 of Form A-6 for the telephone number or mailing address.

Filing the Application for Tax Clearance

Applications may be submitted either in person, fax, by mail, or electronically. Mailing addresses and other contact information for the State Department of Taxation and the IRS are provided on page 2 of the application.

A “mailed-in” tax clearance application generally takes **10 - 15 business days** to process.

If all required returns have been filed and all required taxes, penalties, and interest have been paid, a “walked-in” tax clearance to any district tax office will generally be processed the same business day.

Form A-6 also can be filed electronically through the State’s Internet portal. An electronically filed tax clearance application generally takes **10 - 15 business days** to process. For more information, go to: tax.hawaii.gov/eservices/

STATE OF HAWAII — DEPARTMENT OF TAXATION
TAX CLEARANCE APPLICATION

Form A-6 can be filed electronically. See Instructions.

A tax clearance may be obtained through Hawaii Compliance Express for all state, city, or county government contracts. See Instructions.

(NOTE: References to "married", "unmarried", and "spouse" also means "in a civil union", "not in a civil union", and "civil union partner", respectively.)

1. APPLICANT INFORMATION: (PLEASE TYPE OR PRINT CLEARLY)

Applicant's Name _____

Address _____

City/State/Postal/Zip Code _____

DBA/Trade Name _____

2. TAX IDENTIFICATION NUMBER:

HAWAII TAX ID # **W** _____ - _____

FEDERAL EMPLOYER ID # _____ - _____
(FEIN)

SOCIAL SECURITY # (SSN) _____ - _____ - _____

3. APPLICANT IS A/AN: (MUST CHECK ONE BOX)

- CORPORATION
- INDIVIDUAL
- LIMITED LIABILITY COMPANY
- Single Member LLC disregarded as separate from owner; enter owner's FEIN/SSN _____
- Subsidiary Corporation; enter parent corporation's name and FEIN _____
- S CORPORATION
- PARTNERSHIP
- LIMITED LIABILITY PARTNERSHIP
- TAX EXEMPT ORGANIZATION
- ESTATE
- TRUST

4. THE TAX CLEARANCE IS REQUIRED FOR: (MUST CHECK AT LEAST ONE BOX)

- CITY, COUNTY, OR STATE GOVERNMENT CONTRACT IN HAWAII *
- REAL ESTATE LICENSE
- FINANCIAL CLOSING
- HAWAII STATE RESIDENCY
- SUBCONTRACT
- OTHER _____
- CONTRACTOR LICENSE
- PROGRESS PAYMENT
- FEDERAL CONTRACT
- LOAN
- LIQUOR LICENSE *
- BULK SALES **
- PERSONAL

* IRS APPROVAL STAMP IS ONLY REQUIRED FOR PURPOSES INDICATED BY AN ASTERISK.

** ATTACH FORM G-8A, REPORT OF BULK SALE OR TRANSFER

5. NO. OF CERTIFIED COPIES REQUESTED:

6. SIGNATURE:

SIGNATURE

DATE

() - _____
TELEPHONE

() - _____
FAX

PRINT NAME

PRINT TITLE: Corporate Officer, General Partner or Member, Individual (Sole Proprietor), Trustee, Executor

FOR OFFICE USE ONLY
BUSINESS START DATE IN HAWAII IF APPLICABLE / /
HAWAII RETURNS FILED IF APPLICABLE 20____ 20____ 20____ _____
STATE APPROVAL STAMP (Not valid unless stamped)
*IRS APPROVAL STAMP
CERTIFIED COPY STAMP

POWER OF ATTORNEY. If submitted by someone other than a Corporate Officer, General Partner or Member, Individual (Sole Proprietor), Trustee, or Executor, a power of attorney (State of Hawaii, Department of Taxation, Form N-848) must be submitted with this application. **If a Tax Clearance is required from the Internal Revenue Service, IRS Form 8821, or IRS Form 2848 is also required.** Applications submitted without proper authorization will be sent to the address of record with the taxing authority. **UNSIGNED APPLICATIONS WILL NOT BE PROCESSED.**

PLEASE TYPE OR PRINT CLEARLY — THE FRONT PAGE OF THIS APPLICATION BECOMES THE CERTIFICATE UPON APPROVAL.

SEE PAGE 2 ON REVERSE & SEPARATE INSTRUCTIONS. Failure to provide required information on page 2 of this application or as required in the separate instructions to this application will result in a denial of the Tax Clearance request.

7. **CITY, COUNTY, OR STATE GOVERNMENT CONTRACT:** Bid/Entering Into or Ongoing Contract Completion/Final Payment
 For completion/final payment of contract, provide the name, agency, and telephone number of the contact person at the State or County Agency.
 Name: _____ Agency: _____ Telephone Number: _____
8. **LIQUOR LICENSING:** Initial Renewal Transfer-Seller Transfer-Buyer Special Event
9. **CONTRACTOR LICENSING:** Initial Renewal
10. **STATE RESIDENCY:** DATE APPLICANT ARRIVED OR RETURNED TO HAWAII _____
11. **ACCOUNTING PERIOD:** Calendar year Fiscal year ending (MM/DD) _____
12. **TAX EXEMPT ORGANIZATION:**
 A) Provide the Internal Revenue Code Section that applies to your exemption (e.g., 501(c)(3)). _____
 B) Does your organization file federal Form 990-T, Exempt Organization Business Income Tax Return? YES NO
 C) Is your organization required to file federal Form 990, Return of Organization Exempt From Income Tax, or federal Form 990-EZ, Short Form Return of Organization Exempt From Income Tax? YES NO
 If "YES", your organization is required to obtain a general excise tax license. Go to line 13.
 If "NO", go to line 12D.
 D) Does your organization have fundraising income? YES NO
 If "YES", your organization is required to obtain a general excise tax license.
13. **INDIVIDUAL:** Spouse's Name _____ SSN _____
14. **IF YOU DO NOT HAVE A GENERAL EXCISE TAX LICENSE AND REQUIRE A TAX CLEARANCE:**
 A) Description of your firm's business _____
 B) Has your firm had any business income in Hawaii? YES NO
 C) Has your firm had an office, inventory, property, employees, or other representatives in the State of Hawaii? YES NO
 D) Has your firm provided any services within the State of Hawaii (e.g., servicing computers, training sessions, etc.)? YES NO
Note: If you answer "Yes" to any of the above questions, you are required to apply for a general excise tax license.

FILING THE APPLICATION FOR TAX CLEARANCE

The completed application may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch. Applications which require an Internal Revenue Service Tax Clearance will be forwarded to the Internal Revenue Service after processing is completed by the Department of Taxation. Allow up to **10 to 15 business days** for processing between the Department of Taxation and the Internal Revenue Service.

State Department of Taxation
 TAXPAYER SERVICES BRANCH
 P.O. BOX 259
 HONOLULU, HI 96809-0259
 TELEPHONE NO.: 808-587-4242
 TOLL FREE: 1-800-222-3229
 FAX NO.: 808-587-1488
 or
 830 PUNCHBOWL STREET, RM 124
 HONOLULU, HI 96813-5094

Internal Revenue Service
 WAGE & INVESTMENT DIVISION
 -TC M/S H214
 FIELD ASSISTANCE GROUP 562
 300 ALA MOANA BLVD., #50089
 HONOLULU, HI 96850
 TELEPHONE NO.: 808-566-2748
 FAX NO.: 808-524-5950
 or
 TAXPAYER ASSISTANCE CENTER
 HONOLULU:
 300 ALA MOANA BLVD., RM 1-128

Applications are available at Department of Taxation and IRS offices in Hawaii, and may also be requested by calling the Department of Taxation on Oahu at 808-587-4242 or toll-free at 1-800-222-3229. The Tax Clearance Application, Form A-6, can be downloaded from the Department of Taxation's website at tax.hawaii.gov

-----FOR OFFICE USE ONLY-----

TYPE OF TAX	TAX RETURNS FILED STATUS	Clerk's Initials	ITEMS RECEIVED
INCOME			
GENERAL EXCISE/USE/ COUNTY SURCHARGE TAX			
HAWAII WITHHOLDING			
TRANSIENT ACCOMMODATIONS			
RENTAL MOTOR/TOUR VEHICLE/ CAR-SHARING VEHICLE			
UNEMPLOYMENT INSURANCE			
OTHER TAXES			

APPENDIX B

BID PROPOSAL PACKAGE

CONCESSION FOR THE MANAGEMENT AND OPERATION OF
THE AUTOMOBILE PARKING FACILITIES

AT

KONA INTERNATIONAL AIRPORT AT KEAHOLE

ISLAND OF HAWAI'I, HAWAI'I

STATE OF HAWAI'I

Name of Bidder (Print) _____

Mailing and Business Address (Print) _____

APPENDIX B

BID PROPOSAL

Director of Transportation
Department of Transportation
c/o Airports Division
ATTN: Property and Business Development Office
State of Hawai'i
Honolulu International Airport
Inter-Island Terminal Building
400 Rodgers Boulevard, Suite 700
Honolulu, Hawai'i 96819-1880

Dear Sir:

The undersigned, as Bidder, declares that with respect to the Concession for the Management and Operation of the Automobile Parking Facilities at Kona International Airport at Keahole on the Island of Hawai'i, Hawai'i ("Concession"), the Bidder has carefully examined all of the Concession Bid documents, including the Concession Agreement.

The Bidder understands and agrees that:

1. The attached Total Bid Proposal form (Appendix B, Page B-4) is to be used to evaluate my Bid Proposal for the Concession and the Concession Agreement. The Total Bid Proposal is the total minimum annual guaranteed (MAG) fees for Kona International Airport at Keahole offered to the State for the first (1st) year term of the Concession Agreement.
2. The MAG for the Second (2nd) Agreement Year, Third (3rd) Agreement Year, Fourth (4th) Agreement Year, and Fifth (5th) Agreement Year must be determined separately when due as prescribed in the Concession Agreement. On the Total Bid Proposal form (Appendix B, Page B-4), the MAG for the First (1st) Agreement Year is written in words under the first column labeled "Minimum Annual Guaranteed (MAG) Fee (Written in Words)." The corresponding MAG dollar amount for the first Agreement Year is then written in numerals in the second column of the Total Bid Proposal form which is labeled "MAG Dollar Amount (in Numerals)." The MAG dollar amount is then entered as the "Total Bid Proposal" amount at the bottom of the Total Bid Proposal form.

3. The qualified Bidder whose "Total Bid Proposal" (total MAG fees) offered in its Bid Proposal to the State is greater than each of the Total Bid Proposals of all of the other qualified bidders, or who otherwise prevails as provided in the Instructions to Bidders for this Concession, will be recommended to the Director of Transportation for an award of the Concession Agreement.

In the event of a tie between two or more qualified bidders, the State will request that each such qualified bidder involved in the tie submit in a sealed envelope to the State within ten (10) days after such bidder's receipt of the State's written request to so submit, such bidder's best and final offer with respect to the Concession. Each such bidder shall use the amount of the MAG fee bid for the first year of the Concession Agreement term involved in the tie as the minimum upset price for the MAG fee. All such bid proposals setting forth each bidder's best and final offer shall be opened in the same manner as the opening of the initial Bid Proposal Packages. In case of a further tie between bidders, the highest qualified Bid Proposal will be determined in accordance with the same procedure applied in the evaluation of the initial Bid Proposal Packages. This process will be repeated until the State selects the highest qualified Bid Proposal or the State decides to reject all Bid Proposal Packages and cancel the solicitation for this Concession.

4. In case of discrepancies between the words and numerals on the Total Bid Proposal form, the words shall govern and therefore, the State shall make appropriate corrections to the MAG Dollar Amount column before any final comparisons of bid proposals.
5. The Director of Transportation has the right to reject any and all bid proposals for the Concession, and to waive any defects when, in the Director's opinion, such rejection or waiver will be in the best interest of the State.
6. If the Bidder's Bid Proposal is accepted by the State and the Director of Transportation subsequently awards the Concession Agreement to the Bidder as the qualified and successful bidder, the Bidder shall:
 - a. execute the Concession Agreement (Appendix C) in the form provided by the State;
 - b. have its signature(s) acknowledged and notarized by a Notary Public;
 - c. return the executed and notarized Concession Agreement (Appendix C) to the State;

- d. submit to the State a good and sufficient Concession Bond as required and described in the Instructions to Bidders and the Concession Agreement;
- e. comply with, fulfill and satisfy all of the covenants, terms and conditions of the Concession Agreement; and
- f. pay to the State during each year of the five (5)-year term of the Concession Agreement, a total annual fee which shall be the greater of:
 - (1) Minimum Annual Guaranteed ("MAG") Fee. The MAG fee for the first year of the term of this Concession Agreement, as set forth in the Concessionaire's Bid Proposal, and the MAG for each succeeding concession agreement year shall be 85% of the actual annual fee paid and payable to the State (either MAG or percentage) for the preceding year; or
 - (2) Percentage Fee. Sixty-five percent (65%) of the Concessionaire's annual gross receipts generated from, related or attributable to, or connected with the Concession at Kona International Airport at Keahole.

TOTAL BID PROPOSAL

MINIMUM ANNUAL GUARANTEED (MAG) FEE
(Written in Words)

MAG DOLLAR AMOUNT
(In Numerals)

FIRST (1ST) AGREEMENT YEAR

KONA INTERNATIONAL AIRPORT AT KEAHOLE

_____ DOLLARS \$ _____

TOTAL BID PROPOSAL DOLLARS: \$ _____

NOTE: THE MAG FEE FOR THE AGREEMENT YEAR SHOULD BE ROUNDED TO THE NEAREST DOLLAR AMOUNT. THE MAG FEE FOR KONA INTERNATIONAL AIRPORT AT KEAHOLE FOR THE FIRST AGREEMENT YEAR SHALL NOT BE LESS THAN NINE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$950,000.00).

As part of this Bid Proposal, the Bidder submits herewith the following items:

1. Affidavit of Non-Collusion (Appendix B, Attachment 1)
2. Bid Deposit, referred to in Section 8 (Bid Deposits) of the Instructions to Bidders, or Bid Bond (Appendix B, Attachment 2)

DATED at _____, this _____ day of _____, 20_____.

Bidder

By _____
Its

By _____
Its

- NOTE:
1. Signature(s) must be acknowledged accordingly on the form attached hereto.
 2. Attach separate sheet evidencing authority of person(s) signing this Bid Proposal to sign the Bid Proposal on behalf of the Bidder, including acknowledgment of signatures by a Notary Public. This may be in the form of a resolution, minutes of the corporation, pertinent extract of the By-Laws duly certified by the Secretary of the corporation, a valid power of attorney duly recorded with the Bureau of Conveyances, etc. The State reserves the right to require that the Bidder submit updated information to evidence the authority of the person executing this Bid Proposal if the State, in its sole discretion, determines that the previously submitted evidence is not sufficiently current.

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 20____, before me
appeared _____ to me personally known, who
being by me duly sworn, did say that _____ is (are) the _____
of _____
and that said instrument was signed and sealed in behalf of said corporation by authority of its
Board of Directors, and the said _____
acknowledged said instrument to be the free act and deed of said corporation.

Print Name: _____
Notary Public, _____Judicial Circuit
State of _____

Doc. Description: _____
No. of Pages: _____

Notary signature

My Commission Expires: _____

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally
appeared _____ to me known to be the
person(s) described in and who executed the foregoing instrument, and acknowledged that _____
executed the same as _____ free act and deed.

Print Name: _____
Notary Public, _____Judicial Circuit
State of _____

Doc. Description: _____
No. of Pages: _____

Notary Signature

My Commission Expires: _____

APPENDIX B, ATTACHMENT 1

AFFIDAVIT OF NON-COLLUSION

STATE OF _____)

COUNTY OF _____)

_____ being first duly sworn deposes and says:

That the Bid Proposal filed herewith is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization, corporation or entity; that such Bid Proposal is genuine and not collusive or a sham; that said bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham Bid Proposal, and has not, directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham Bid Proposal, or refrain from submitting a Bid Proposal; that said bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid Proposal price of said bidder or of any other bidder, or to fix any overhead, profit, or cost element of such Bid Proposal price or that of any other bidder, or to secure any advantage against the Department of Transportation of the State of Hawai'i or anyone interested in the proposed Concession Agreement; that all statements contained in such Bid Proposal are true; that said bidder has not, directly or indirectly, submitted bidder's Bid Proposal price or any breakdown thereof or the contents thereof, or divulged information or data relative thereto, or paid or agreed to pay, directly or indirectly, any money, or other valuable consideration for assistance or aid rendered or to be rendered in procuring or attempting to procure the Concession Agreement, to any corporation, partnership, company, association, organization, or entity, or to any member or agent thereof, or to any other individual; and further that said bidder will not pay or agree to pay, directly or indirectly, any money or other valuable consideration to any corporation, partnership, company, association, organization, or entity, or to any member or agent thereof, or to any other individual, for aid or assistance in securing the Concession Agreement in the event the same is awarded to:

(Name of Individual, Partnership, Joint Venture or Corporation)

APPENDIX B, ATTACHMENT 2

BID BOND

Bond No. _____

(This Bid Bond, fully executed, may be filed as a bid deposit in lieu of the deposit of legal tender, or certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration required by Section 102-6, Hawai'i Revised Statutes.)

KNOW ALL BY THESE PRESENTS: That we, _____,

hereinafter called the "Principal," and _____,
_____, a corporation duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of Hawai'i, as Surety, are held and firmly bound unto the State of Hawai'i, and its successors and assigns, hereinafter called the "Obligee," in the sum of _____ DOLLARS (\$ _____), in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, legal representatives, successors and assigns, as the case may be, jointly and severally, and firmly by these presents.

WHEREAS, the Principal has submitted the accompanying Bid Proposal, dated _____ 20____, for a Concession Agreement with said Obligee for the Management and Operation of the Automobile Parking Facilities at Kona International Airport at Keahole within the State of Hawai'i (hereafter the "Concession").

NOW, THEREFORE, if the aforesaid Principal shall not withdraw its Bid proposal for a period of ninety (90) calendar days after the opening of bid proposals, and if awarded the Concession Agreement upon said Bid proposal, shall enter into the Concession Agreement with said Obligee within ten (10) business days after the Principal has received the Concession Agreement for execution and shall contemporaneously therewith or prior to the execution of such Concession Agreement, give to said Obligee the performance security (Concession Bond) in the form and amount as prescribed and set forth in the "Instructions to Bidders" with respect to and forming a part of said Concession Agreement, and in all respects in conformity with such Instructions, then this obligation shall be null and void; otherwise the Principal and Surety shall pay unto the Obligee the sum of _____ DOLLARS (\$ _____), as and for damages sustained by the Obligee as a result of a failure on the part of the Principal to meet all of the obligations of the Principal contained herein.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed at _____, this _____ day of _____, 20____.

(Principal)

By _____
Its

(Surety)

By _____
Its Attorney-in-Fact

(ACKNOWLEDGMENTS)

INDEX
TO
CONCESSION AGREEMENT

	<u>PAGE</u>
I	DEFINITIONS2
II	CONCESSION AGREEMENT STANDARDS5
III	MANAGEMENT OPERATING RIGHTS6
IV	PREMISES AND USE7
V	TERM.....8
VI	PAYMENT AND REPORTING REQUIREMENTS.....9
VII	AUTOMOBILE PARKING CHARGES22
VIII	OBLIGATIONS OF THE STATE23
IX	OBLIGATIONS OF THE OPERATOR24
X	TITLE TO PARKING REVENUE CONTROL SYSTEM (PRCS) INSTALLED BY OPERATOR31
XI	IMPROVEMENTS32
XII	SIGNS41
XIII	INGRESS AND EGRESS.....42
XIV	LIABILITY AND INDEMNITY43
XV	SURRENDER OF PREMISES AND USE OF THE AUTOMOBILE PARKING FACILITIES44
XVI	COMPLIANCE WITH LAWS45
XVII	RIGHTS-OF-ENTRY RESERVED.....56
XVIII	UTILITIES57
XIX	INSURANCE58
XX	DAMAGE OR DESTRUCTION64
XXI	TERMINATION BY THE STATE65
XXII	WAIVER.....71
XXIII	WITHDRAWAL.....72
XXIV	TERMINATION BY OPERATOR.....73
XXV	SUSPENSION OR ABATEMENT74
XXVI	SUBORDINATION74
XXVII	CONDEMNATION75
XXVIII	CONCESSION BOND79
XXIX	LITIGATION81
XXX	LIENS.....81
XXXI	ASSIGNMENT AND SUBLETTING82
XXXII	SUCCESSORS AND ASSIGNS90
XXXIII	NOTICES90
XXXIV	INTERPRETATION OF CONCESSION AGREEMENT90

XXXV	NO PARTNERSHIP	91
XXXVI	FORCE MAJEURE	91
XXXVII	ENTIRE AGREEMENT	93
XXXVIII	AMENDMENTS.....	93
XXXIX	INVALID PROVISION-SEVERABILITY.....	93
XL	NON-LIABILITY OF INDIVIDUALS	93
XLI	NONDISCRIMINATION	94
XLII	CIVIL RIGHTS PROVISION.....	94
XLIII	DISPUTES	95
XLIV	BROKERS	95
XLV	STATE RESERVATIONS	96
XLVI	SURVIVAL OF OBLIGATIONS	96
XLVII	QUIET ENJOYMENT	97
XLVIII	ACCORD AND SATISFACTION	97
XLIX	JOINT AND SEVERAL LIABILITY	97
L	ESTOPPEL STATEMENTS	98
LI	AUTHORITY.....	98
LII	CONSENTS	98
LIII	COUNTERPARTS	99
LIV	GOVERNING LAW	99

ATTACHMENTS
TO
CONCESSION AGREEMENT

- ATTACHMENT 1 - EXHIBITS A THROUGH E
EXHIBIT A - MAP OF KONA INTERNATIONAL AIRPORT
EXHIBIT B1-B7 - MAP(S) OF AUTOMOBILE PARKING
ACILITIES AT KONA INTERNATIONAL
AIRPORT
EXHIBIT C - OPERATOR'S PREMISES
EXHIBIT D - APPROXIMATE NUMBER OF AUTOMOBILE
PARKING SPACES IN THE AUTOMOBILE
PARKING FACILITIES AT KONA INTERNATIONAL
AIRPORT
EXHIBIT E - PUBLIC AUTOMOBILE PARKING RATES AT
KONA INTERNATIONAL AIRPORT
- ATTACHMENT 2 - TENANT IMPROVEMENT GUIDELINES, MANUALS 1 & 2
(May be reviewed and downloaded from the address below
<http://hidot.hawaii.gov/airports/doing-business/other/tenant-improvement-guidelines>)
- ATTACHMENT 3 - ENVIRONMENTAL PRESERVATION GUIDELINES
- ATTACHMENT 4 - DEVELOPMENT STANDARDS FOR LEASED AIRPORT
PROPERTY
- ATTACHMENT 5 - DEPARTMENT OF TRANSPORTATION, ASSIGNMENT OF
LEASE AND PREMIUM EVALUATION POLICY
- ATTACHMENT 6 - DEPARTMENT OF TRANSPORTATION
SUBLEASE EVALUATION POLICY
- ATTACHMENT 7 - LIST OF PARKING REVENUE CONTROL SYSTEM
EQUIPMENT PURCHASED BY OPERATOR
- ATTACHMENT 8 - OPERATIONAL DATA REPORTS

CONCESSION AGREEMENT
FOR THE MANAGEMENT AND OPERATION
OF THE
AUTOMOBILE PARKING FACILITIES
AT
KONA INTERNATIONAL AIRPORT AT KEAHOLE
ISLAND OF HAWAI'I
STATE OF HAWAI'I

This Concession Agreement, made and entered into this _____ day of _____, 20____, by and between the STATE OF HAWAI'I, DEPARTMENT OF TRANSPORTATION, by its Director of Transportation, hereafter referred to as the "STATE," and _____, a _____ authorized to do business in the State of Hawai'i, whose business and post office address is _____, hereinafter referred to as "OPERATOR";

WITNESSETH:

WHEREAS, the STATE, pursuant to Chapters 171, 261 and 263 of the Hawai'i Revised Statutes, is vested with certain control and jurisdiction over the operation of Airports within the State of Hawai'i; and more particularly that Airport located in the County of Hawai'i, Island of Hawai'i, State of Hawai'i, known as Kona International Airport at Keahole, shown and delineated on the map labeled Exhibit A, attached hereto and made a part hereof (hereinafter referred to as the "Airport"); and

WHEREAS, the STATE operates said Airport, in part, to provide for the servicing of aircraft and the comfort, accommodation and convenience of air travelers; and

WHEREAS, the STATE has solicited bid proposals for the management and operation of the Automobile Parking Facilities at the Airport; and

WHEREAS, bid proposals were received from qualified bidders, which were carefully analyzed and fully reviewed, and the STATE determined that the OPERATOR was the highest responsible bidder and awarded this agreement to operate the Concession (hereafter the "CONCESSION AGREEMENT") to the OPERATOR; and

WHEREAS, the OPERATOR desires to secure and enter into this CONCESSION AGREEMENT in accordance with the terms and conditions contained herein and its proposal, and agrees to provide equipment and services of the type and character required by the STATE to meet the needs of air travelers, passengers, visitors, customers and other users of the Airport; and

WHEREAS, the STATE desires to enter into this CONCESSION AGREEMENT for the management and operation of the Automobile Parking Facilities at the Airport;

NOW, THEREFORE, the STATE and the OPERATOR, for and in consideration of the premises, and of the mutual agreements, covenants, provisions, requirements, restrictions, terms, and conditions hereinafter contained to be kept and performed by STATE and the OPERATOR, respectively, DO HEREBY AGREE AS FOLLOWS:

ARTICLE I. DEFINITIONS

Unless the contexts indicate otherwise, as used herein, the term:

- A. “ADA” means Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq.
- B. “ADAAG” means United States Access Board’s ADA Accessibility Guidelines for Buildings and Facilities, Transportation Facilities, and Transportation Vehicles.
- C. “Airport” means the Kona International Airport at Keahole, County of Hawai‘i, Island of Hawai‘i, State of Hawai‘i.
- D. “Airport Concession Disadvantaged Business Enterprise” or “ACDBE” means a for-profit small business concern: (1) that is at least fifty-one percent (51%) owned by one or more individuals who are socially and economically disadvantaged, or, in the case of a corporation, one in which at least fifty-one percent (51%) of the stock is owned by one or more such individuals; (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and (3) that is certified by the State of Hawai‘i, Department of Transportation as a Disadvantaged Business Enterprise.
- E. “AOA” means the Airport Operations Area.
- F. “Automobile” means any device by which any person or property may be propelled, moved or drawn upon a highway or public street, notwithstanding that the popular name of such device is other than “automobile.”
- G. “Automobile Parking Facilities” means the public property set aside for public and employee parking lot operations at the Airport as described in Article III. and as shown on Exhibit B hereof, which may be amended from time to time without formal amendment hereto.
- H. “BEA” means Baseline Environmental Assessment as set forth in Article XVI.C.1. (Baseline and Concluding Environmental Assessments) hereof.

- I. “CEA” means Concluding Environmental Assessment as set forth in Article XVI.C.1. (Baseline and Concluding Environmental Assessments) hereof.
- J. “CFR” means Code of Federal Regulations.
- K. “Commencement Date” means 12:01 a.m. on _____.
- L. “Concession” means the right to manage and operate the Automobile Parking Facilities on the Premises subject to the terms and conditions of this CONCESSION AGREEMENT, at the Airport.
- M. “Concession Fee” means the greater of the Percentage Fees or the Minimum Annual Guarantee, as described in Article VI. (Payment and Reporting Requirements) hereof.
- N. “County” means the County of Hawai‘i.
- O. “CPA” means a Certified Public Accountant.
- P. “Director” means the Director of Transportation, State of Hawai‘i.
- Q. “DOH” means the State of Hawai‘i, Department of Health.
- R. “DOT-A” means the State of Hawai‘i, Department of Transportation – Airports Division.
- S. “Environmental Laws” means all federal, State of Hawai‘i, and local laws of every nature including statutes, ordinances, rules, regulations, codes, notices, standards, directives of every kind, guidelines, permits, licenses, authorizations, approvals, interpretations of the foregoing by any court, legislative body, agency or official, judicial decisions, judicial and administrative orders, rulings or judgments, or rules of common law which currently are in effect or which may come into effect through enactment, issuance, promulgation, adoption or otherwise, which in any way pertain to, relate to, or have any relevance to the environment, health or safety. These environmental laws include, but are not limited to, regulations and orders of the federal Environmental Protection Agency, and of the DOH.
- T. “Environmental Preservation Guidelines” means the manual (Attachment 3) prepared by the STATE which details the policies and procedures applicable to the decor of tenant Improvements at the Airport visible to the public, including any subsequent amendments thereto adopted by the STATE.
- U. “EPA” means the U.S. Environmental Protection Agency.
- V. “FAA” means the U.S. Federal Aviation Administration.

- W. “Governor” means the Governor, State of Hawai‘i.
- X. “Guests” mean and includes licensees, permittees, contractors, subcontractors, sub-subcontractors, Airport tenants, Airport employees, vendors, visitors, providers of utilities services and other services, customers, passengers, patrons, and invitees.
- Y. “HAR” means Hawai‘i Administrative Rules.
- Z. “Hazardous Substance” means and includes any chemical substance, radioactive materials, organic or inorganic material, controlled substance, object, condition, waste, living organism, or combination thereof which is, may be, or has been determined by the State of Hawaii or federal authority under any Environmental Laws to be hazardous to human health or safety or detrimental to the environment. This term includes, but is not limited to, petroleum hydrocarbons, asbestos, radon, polychlorinated biphenyls (PCBs), methane, fuels of any kind, and other materials, or substances that are, or may in the future be, regulated by the State of Hawai‘i or federal authorities.
- AA. “HRS” means Hawai‘i Revised Statutes.
- BB. “Improvements” means any and all buildings, structures, attachments, fixtures, equipment and articles permanently affixed or firmly embedded or fastened to land, buildings or other structures at the Airport.
- CC. “Land Board” means the Board of Land and Natural Resources of the State of Hawai‘i.
- DD. “NPDES” means the National Pollutant Discharge Elimination System.
- EE. “OPERATOR” means the bidder to whom the CONCESSION AGREEMENT is awarded and who enters into the CONCESSION AGREEMENT (Appendix C) with the STATE in accordance with the bidders Bid Proposal.
- FF. “OPERATOR’s Plans” means all designs, plans, specifications, drawings, cost estimates, schedules and timetables for and relating to construction and installation of Improvements and Personal Property at the Airport by the OPERATOR.
- GG. “Personal Property” means any and all of OPERATOR’s trade fixtures, office and business furnishings, decorations, signs, equipment and furniture, draperies, movable display cases and shelves, movable appliances and drinking fountains, communication instruments (including, without limitation, any and all telephones, radios, telegraph equipment, facsimile and copier machines, computers, file servers and other related equipment, cellular phones, and

televisions) and antennas, window air conditioning units, portable heaters, and other similar articles or chattels not firmly or permanently affixed to the Premises, the Automobile Parking Facilities or elsewhere at the Airport.

HH. “PRCS” means Parking Revenue Control System.

II. “Premises” means and includes those area described in Article IV. (Premises and Use) hereof, which may be amended from time to time, which the STATE makes available to the Operator to use for purposes of this Concession.

JJ. “Records” means OPERATOR’s books, ledgers, journals, accounts, records, reports, files, and all information created, processed, maintained, or stored electronically (such as on computer disks, files, software, hardware, and hard drives), including, without limitation, gross income tax reports, and records showing daily sales, and all other financial, sales, gross receipts, cost and expense, capital expenditure and depreciation and amortization, and accounting information, together with all pertinent Concession operations information.

KK. “SPCC Rules” means Spill Prevention Control and Countermeasure Rules.

LL. “SPCC Plan” means Spill Prevention Control and Countermeasure Plan.

“STATE” means the State of Hawai‘i, acting by and through its Department of Transportation, and any governmental department, agency, commission, or other subdivision thereof, as may succeed to the rights, duties, and powers of said Department.

MM. “Tenant Improvement Guidelines” means the manual (Attachment 2) prepared by the STATE which details specifications and guidelines to be adhered to for all Improvements, additions, and renovations made by the OPERATOR to the Premises, including any subsequent amendments thereto adopted by the STATE.

NN. “TSA” means the U.S. Department of Homeland Security, Transportation Security Administration, or its successor agency.

OO. “U.S.” means the United States of America.

ARTICLE II. CONCESSION AGREEMENT STANDARDS

A. Foundation. This CONCESSION AGREEMENT sets forth the obligations and privileges of the OPERATOR with respect to the management and operation of the Concession at the Airport.

B. Limitation. The Concession awarded hereunder confers upon the OPERATOR the exclusive right and obligation, except as otherwise stated herein, to manage and operate the

Automobile Parking Facilities Concession at the Airport in accordance with the terms and conditions of this CONCESSION AGREEMENT.

ARTICLE III. MANAGEMENT OPERATING RIGHTS

Subject to all of the terms and conditions of this CONCESSION AGREEMENT, the OPERATOR obligates itself to manage and operate the Automobile Parking Facilities at various locations within the Airport, as shown on Exhibits B-1 through B-7, hereafter collectively referred to as "Exhibit B". In the event of any change of the Automobile Parking Facilities to be managed and operated by the OPERATOR, as determined by the STATE, a revised Exhibit B will be substituted herein without formal amendment hereto. The OPERATOR hereby undertakes and agrees to perform all of the services provided for herein in connection with the operation of said Automobile Parking Facilities.

STATE reserves the right to: (1) to add or delete metered parking spaces, parking areas, and the number of parking entrances and exits at various locations on the Airport; (2) construct additional Automobile Parking Facilities to accommodate anticipated future Automobile parking requirements at the Airport; (3) decrease, alter, adjust or restrict the size and/or use of all or any part of the Automobile Parking Facilities, and any additional Automobile Parking Facilities which may hereafter be made available; (4) add lighting or security Improvements which are necessary for the safe operation of the Automobile Parking Facilities; (5) implement an electronic payment program; (6) establish a pre-cashiering system; (7) establish a reserved parking program; (8) designate portions of the Automobile Parking Facilities for valet service to be managed and operated by OPERATOR or a third party sub-contractor; and (9) provide shuttle vehicle service to the Automobile Parking Facilities by the STATE or through a STATE-designated sub-contractor. The exercise of any or all of the foregoing reserved rights shall be in the sole discretion of the STATE and may be exercised by the STATE at any time during the term of this CONCESSION AGREEMENT by giving to OPERATOR thirty (30) days advance notice in writing of STATE's intention to do so, unless such change or adjustment is necessitated by governmental actions or security concerns, or urgent Airport needs in which case notice may be shorter. The number of Automobile parking spaces shown on Exhibit D, which is attached hereto and hereby made a part hereof, is only an approximation of the present number of spaces, is given only for general information purposes, and does not constitute an agreement or warranty on the part of the STATE that the same number of spaces will be available at all times during the term hereof.

Regarding the Automobile Parking Facilities, the STATE shall have the right to reserve the Automobile parking spaces thereon, change or rearrange the entrances and exits, temporarily or permanently use such portions thereof as are necessary for the making of Improvements and repairs to said Automobile Parking Facilities, for the maintenance of facilities on said Automobile Parking Facilities, and for the installation of Improvements, service roads, or other facilities necessary for the operation and maintenance of the Automobile Parking Facilities or other areas at the Airport, as determined by the STATE, all in furtherance of the STATE's

obligations in the promotion and accommodation of air commerce and transportation. Nothing herein shall be deemed to be a leasing of the Automobile Parking Facilities, or the areas shown on Exhibit B, to the OPERATOR. The OPERATOR is only granted herein the right, privilege, and obligation to operate, manage, and maintain said Automobile Parking Facilities, the STATE retaining unto itself the ownership and possession thereof.

The STATE further reserves the right to provide parking areas, other than the Automobile Parking Facilities as shown on Exhibit B to its employees, airlines, and other tenants and OPERATORS incidental to their businesses at the Airport, with the understanding that the STATE will not award a similar Concession to a competitor of the OPERATOR, except as otherwise stated herein. The STATE also reserves the right to provide substitute areas to the OPERATOR in the event that any portion of the Automobile Parking Facilities is closed.

In the event the STATE determines that valet parking services are to be made available to patrons of the Automobile Parking Facilities, the STATE will offer OPERATOR a first right of refusal opportunity, under terms and conditions proposed by the STATE, to provide such valet parking services, whereupon OPERATOR shall have fifteen (15) calendar days from receipt of a written request from the STATE for a response, to provide written notice to the STATE of whether it accepts or declines the STATE's offer to provide such valet parking services at the Airport under the terms and conditions prescribed by the STATE. OPERATOR's failure to provide such written notice to the STATE within fifteen (15) days will be considered as OPERATOR's rejection of the opportunity to provide valet parking services at the Airport during the remaining term of the CONCESSION AGREEMENT, whereupon STATE may offer another OPERATOR(s) the opportunity to provide valet parking services at the Airport during the remaining term of this CONCESSION AGREEMENT on such terms and conditions as are determined by the STATE.

ARTICLE IV. PREMISES AND USE

In connection with the obligation to manage and operate the Automobile Parking Facilities at the Airport, the OPERATOR shall have the exclusive right to use those certain areas hereinafter called the "Premises" at the Airport described as follows and as shown on Exhibit C:

Space No.004-103, Exit Plaza Office of the Airport, containing an area of approximately 500 square feet as shown on Exhibit C.

The Premises shall be used solely to conduct business specifically associated with and in furtherance of the administration and operation of this Concession, and shall not be used for any other purposes.

The STATE reserves the right to change the locations and/or adjust (i.e., increase or decrease) the number of such locations at any time during the term of this Concession upon thirty (30) days advance written notice to OPERATOR, unless such change or adjustment is

necessitated by governmental actions or security concerns, or urgent Airport needs, in which case notice may be shorter. In the event of any change of the Premises assigned to the OPERATOR, a revised Exhibit C will be substituted herein without formal amendment hereto.

Except as otherwise Stated herein, the STATE shall not be responsible, and the OPERATOR shall have no claim against the STATE, for any costs or expenses incurred by the OPERATOR in relinquishing or relocating from any portion of the Premises or in adding new locations. All Premises provided hereunder shall be provided to the OPERATOR in “as-is” condition. This CONCESSION AGREEMENT allows the OPERATOR to operate this Concession from the Premises. At the cancellation or termination of this CONCESSION AGREEMENT, OPERATOR agrees to peaceably relinquish the Premises to the STATE in accordance with Article V. (Term) and Article XV. (Surrender of Premises and Use of the Automobile Parking Facilities).

ARTICLE V. TERM

A. Five-Year Term. The OPERATOR shall have the right to operate this Concession at the Airport upon the terms and conditions herein set forth for a term of five (5) years, commencing at 12:01 a.m. on _____, (referred to herein as the Commencement Date), and expiring at 12:00 midnight on _____, unless (1) sooner terminated pursuant to Articles XXI. (Termination by the STATE) or XXIV. (Termination by Operator), or (2) extended pursuant to Article V.B. (Holdover) hereof.

B. Holdover.

1. STATE’s Decision. The STATE may, but shall not be obligated to, permit the OPERATOR to holdover on or at the Premises, and continue to manage and operate the Automobile Parking Facilities, beyond the expiration of this CONCESSION AGREEMENT, subject to the terms and conditions set forth herein. In making its decision on whether to permit such a holdover, the STATE may consider any circumstances impacting thereon, including, without limitation: (1) the benefits and costs to the STATE of permitting such a holdover; (2) conditions under which a delay in putting the Concession out to bid could result in greater revenue to the STATE; (3) the potential revenue loss resulting from a gap in the provision of the Concession services from the end of this CONCESSION AGREEMENT and the start of a new agreement; (4) renovations of the Airport affecting the Concession; and (5) the potential disruption and adverse impact on the STATE’s overall concession program at the Airport. The STATE will notify the OPERATOR in writing of the STATE’s offer of a holdover tenancy. Within thirty (30) days of receipt of the STATE’s notice, the OPERATOR shall notify the STATE in writing as to the OPERATOR’s acceptance of said holdover tenancy. If the OPERATOR fails to so notify the STATE in writing within said thirty (30) day period, the OPERATOR shall be deemed to have rejected the STATE’s offer of holdover tenancy.

2. Holdover Time Period. The STATE, in its sole discretion, may permit the OPERATOR to hold over and operate from, at, and upon the Premises and manage and operate the Automobile Parking Facilities, in accordance with this Article V. (Term), for a period not to exceed one (1) year from the date of expiration.

3. Holdover Terms.

a. Month-to-Month Tenancy. If the STATE permits the OPERATOR to holdover on or at the Premises, and continue to manage and operate the Concession, such a holdover shall not be deemed a renewal or extension of this CONCESSION AGREEMENT, but shall create a month-to-month tenancy on the same terms and conditions of the CONCESSION AGREEMENT in effect immediately prior to the commencement of the holdover (hereinafter referred to as the "Holdover Start"), unless modified as deemed necessary by the STATE. Such modifications may include, but are not limited to, the OPERATOR's obligation to: (1) pay to the STATE the Concession Fee, rents and other charges in effect at the Holdover Start; (2) furnish and maintain a sufficient Concession Bond and adequate insurance coverage in accordance with the terms of this CONCESSION AGREEMENT in effect at the Holdover Start; and (3) provide defense, indemnity, and liability protection to the STATE as required by the terms of the CONCESSION AGREEMENT in effect at the Holdover Start.

b. Modifications. The STATE may, upon thirty (30) days prior written notice, after the Holdover Start, increase or otherwise amend the Concession Fee, rents and other charges payable by the OPERATOR to the STATE. The OPERATOR's obligation to furnish a sufficient Concession bond and adequate insurance coverage shall continue and extend no less than one year from the Holdover start and shall be renewed in the same manner, if deemed necessary by the STATE, upon expiration of such one-year period.

ARTICLE VI. PAYMENT AND REPORTING REQUIREMENTS

A. Payment to the STATE.

1. Annual Concession Fee. The OPERATOR shall pay to the STATE, without notice or demand, as and for the use of the Automobile Parking Facilities and the Premises and for the privilege of conducting the Concession at the Airport, for and during the term of this CONCESSION AGREEMENT, free from any and all claims, deductions and set offs against the STATE, and at such times and in such manner as hereinafter provided for the Term of this CONCESSION AGREEMENT, the annual Concession Fee, which shall be the greater of the Percentage Fees or the MAG.

a. Minimum Annual Guarantee. The MAG for the first year of the term of this CONCESSION AGREEMENT, as set forth in the OPERATOR's Bid Proposal, and the MAG for each succeeding agreement year shall be 85% of the actual annual fee paid and payable to the STATE (either MAG or percentage) for the preceding year; or

b. Percentage Fee. The Percentage Fee shall be sixty-five percent (65%) of the OPERATOR's annual gross receipts generated from, related or attributable to, or connected with the Concession at the Airport.

2. Space Rents.

a. Initial Allocation. The STATE shall assess the OPERATOR for the use of the Premises provided at the commencement of the CONCESSION AGREEMENT (“Initial Allocation”) out of the Concession Fee payable by the OPERATOR to the STATE hereunder, except as Stated in Article VI.A.2.b. (Additional Space) below. The STATE has determined the current total annual space rent for the Initial Allocation is, \$9,000.00 (NINE THOUSAND AND NO/100 DOLLARS) in accordance with the following space rental rates, building and exit plaza space rate of \$18.00 (EIGHTEEN AND NO/100 DOLLARS) per square foot per annum. Such rates are subject to adjustment by the STATE from time to time upon thirty (30) days prior written notice to OPERATOR.

b. Additional Space. Rent for any additional Premises requested by the OPERATOR and approved by the STATE, shall be calculated according to the formula above, but shall not be taken out of the Concession Fee payable by the OPERATOR to the STATE but shall constitute additional rent due and payable to the STATE at those same rates as referenced in Article VI.A.2.a. (Initial Allocation) above.

Any additional Premises from or on which the STATE requires the OPERATOR to operate the Concession shall be provided without rent.

B. Other Modes of Transportation. All fees and payments required of the OPERATOR by this CONCESSION AGREEMENT shall be paid by the OPERATOR, without diminution or abatement, regardless of the existence or creation of any alternate mode of transportation which serves the general public, whether or not such service is operated by public, quasi-public, and/or private bodies, and whether or not such service includes the Airport. Further, the OPERATOR hereby waives any and all claims, present or future that it may possess against any public, quasi-public, and private bodies, including the STATE, because of the existence or creation of said alternate mode(s) of transportation.

C. Gross Receipts Defined. The term “gross receipts” as used in this Article shall include all parking fees and charges received by or due to OPERATOR from the operation of the Concession, including cash or credit card receipts, regardless of actual collection in the case of the latter, including, but not limited to, gross receipts from parking meters, coin machines, and public and employee parking charges, without any deduction of taxes. Any shortages in revenues collected by the OPERATOR shall be the responsibility of the OPERATOR and shall not be deducted from gross receipts. Gross receipts shall include any administrative or operational fees assessed to users by OPERATOR due to the issuance and maintenance of monthly access cards. Gross receipts shall not include refunds to customers if, in the STATE’s

sole opinion, the basis of the refund is not the OPERATOR's negligence or error or, other reason agreed to by the STATE. Gross receipts for payments by credit cards shall be the net amount after bank-assessed credit card service charges are deducted. Gross receipts shall be subject to the Percentage Fees as identified in Article VI.A.1. (Annual Concession Fee) above.

The OPERATOR shall not be credited with, nor allowed any reduction in gross receipts which results from any arrangements for a rebate, kickback, or hidden credit given or allowed to any patron.

All gross receipts and fees as defined herein and received by OPERATOR in its operation of the Concession shall be deposited by the end of the next business day in a special account at a local financial institution on terms satisfactory to the Director.

D. Handling of Parking Fees. The gross receipts for parking at all locations under this CONCESSION AGREEMENT are public funds of the STATE and shall be deemed to be held in trust by the OPERATOR while the funds are in the OPERATOR's custody and control. If any of the gross receipts are lost, stolen or otherwise unlawfully removed from the control of the OPERATOR, the OPERATOR shall continue to be responsible, except where such loss or theft is the result of an external action which does not involve any employee of the OPERATOR, such as armed robbery, or does not result from the inadequacy of internal fiscal controls or condition(s) associated with the performance of employees or oversight and management by the OPERATOR. The OPERATOR shall deposit (in the financial institution account designated by the STATE) within two (2) business days of the discovery of such loss, theft or unlawful removal, a sum that covers said loss, theft or OPERATOR's unlawful removal of any gross receipts.

E. Reports.

1. Gross Receipts Reports. The OPERATOR, at OPERATOR's own expense, shall submit to the STATE on or before the twentieth (20th) day after the close of each calendar month of the term hereof, including the twentieth (20th) day of the month following the end of the CONCESSION AGREEMENT by expiration or sooner termination, at the place fixed by the STATE for payment, a written Statement, using forms prescribed or approved by the Director, to be certified as correct by the OPERATOR, or by a person duly authorized by the OPERATOR to so certify, showing in accurate detail the daily and monthly amount of gross receipts from its management and operation of the Concession for the preceding month ("Gross Receipts Reports"). The OPERATOR shall include such supporting documentation with its Gross Receipts Reports as may be required by the STATE from time to time. The STATE further reserves the right to require OPERATOR to submit further reports relating to the components of OPERATOR's gross receipts, e.g., cash and check collections, credit card receipts, collection overages and shortages, overcharges and undercharges, reduced rate collections, validated (no fee) tickets, etc., from the Concession as the STATE may require in its sole discretion.

2. Annual Audit. The OPERATOR, at OPERATOR's own expense, shall further submit to the STATE on or before the ninetieth (90th) day following the end of each year of this CONCESSION AGREEMENT, including the ninetieth (90th) day following the end of this CONCESSION AGREEMENT by expiration or sooner termination, at the place fixed by the STATE for payment, an audited report of monthly Gross Receipts and Percentage Fees separately stating its and each sub-tenant's Gross Receipts, containing an opinion, prepared and attested to by an independent licensed certified public accounting firm. The audited report shall include a schedule of monthly gross receipts and Percentage Fees paid to the STATE under this CONCESSION AGREEMENT, prepared in accordance with Generally Accepted Auditing Standards.

The report shall also be accompanied by a management letter containing the findings discovered during the course of the examination, recommendations to improve accounting procedures, revenue and internal controls, as well as significant matters under this CONCESSION AGREEMENT. In addition, the audit shall also include as a separate report, a comprehensive compliance review of procedures to determine whether the books of accounts, records and reports were kept in accordance with the terms of this CONCESSION AGREEMENT for the period of examination. Each audit and examination shall cover the period of this CONCESSION AGREEMENT. The last such report shall include the last day of operation. There shall be no changes in the scope of the reports and letters required hereunder without the specific prior written approval of the STATE.

3. Operational Data Reports. In addition to the Gross Receipts Reports referenced above, the OPERATOR, at OPERATOR's own expense, shall submit to the STATE on or before the twentieth (20th) day after the close of each calendar month of the term hereof, including the twentieth (20th) day of the month following the end of this CONCESSION AGREEMENT by expiration or sooner termination, at the place fixed by the STATE for payment, those other written Statements as required by Attachment 8 hereto, which is incorporated by reference herein and is subject to change from time to time at the STATE's sole discretion without formal amendment hereto. Such written Statements shall be certified as correct by the OPERATOR, or by a person duly authorized by the OPERATOR to so certify.

4. Airport Concession Disadvantaged Business Enterprises Monthly Reports. If the OPERATOR is not a certified Disadvantaged Business Enterprise, but procures, purchases, or enters into agreements with certified ACDBEs for the provision of goods and services relating to the operation and maintenance of the Concession, the Premises, or the Automobile Parking Facilities at the Airport, OPERATOR shall submit to the STATE on or before the twentieth (20th) calendar day of each and every month following the preceding month throughout the term of this CONCESSION AGREEMENT, including the twentieth (20th) consecutive, calendar day of the month following the end of the CONCESSION AGREEMENT whether by expiration or sooner termination, an itemized Statement or report listing the following specific information: (1) the names of all ACDBE vendors, suppliers, providers, or contractors of goods or services; (2) the dates of the billings, invoices, or bills of sale; (3) detailed descriptions of the

goods or services furnished or provided to OPERATOR by ACDBEs; and (4) the value or consideration paid by OPERATOR to each ACDBE for such goods and/or services.

5. Reporting Form and Style. The written Statements referred to herein shall be in such form and style and contain such details and breakdowns as the STATE may require. The STATE reserves the right to require that any or all such reports be submitted to the STATE in electronic format compatible with software utilized by the STATE, as disclosed to OPERATOR prior to commencement of this CONCESSION AGREEMENT. The STATE will consult with the OPERATOR at least thirty (30) days in advance of any changes in or to the electronic format of the reports to be submitted by the OPERATOR.

6. STATE's Right to Prepare. Without prejudice to any remedies herein provided for such default, after seven (7) days' advance written notice to the OPERATOR, if the OPERATOR shall fail to promptly furnish any monthly or annual report or Statement required hereunder, the STATE may have any such report or Statement prepared on the OPERATOR's behalf by an accountant to be selected by the STATE, at the sole cost and expense of the OPERATOR. The OPERATOR shall furnish to such accountant all Records requested for the purpose of preparing such reports, and the OPERATOR shall pay immediately to the STATE, upon notice from the STATE, all expenses incurred by the STATE in securing and obtaining such Records and having such reports or Statements prepared.

7. Estimate of Percentage Fees. In the event that Records have not been prepared and kept in accordance with the provisions set forth herein, the STATE may make assessments upon the OPERATOR, by recourse to such procedures selected by the STATE, which would produce a reasonable gross receipts estimate upon which the Percentage Fees may be computed, and the STATE shall, in addition to all other payments required herein, including any Percentage Fees based on an estimate by the STATE of the reasonable amount of gross receipts of OPERATOR, be entitled to demand and receive from the OPERATOR an additional payment of ten percent (10%) of the applicable Concession Fee.

F. Audited Financial Statements.

1. OPERATOR shall submit to the STATE upon its request a complete set of OPERATOR's entire detailed Audited Financial Statements, including, without limitation, Independent Auditor's Reports, Balance Sheets, Statement of Revenues, Expenses and Changes to Retained Earnings, Statement of Cash Flows, Notes to the Financial Statements, and all supplementary information, prepared by a licensed independent CPA, hereinafter collectively referred to as the "OPERATOR's Financial Statements". The STATE may request that OPERATOR submit OPERATOR's Financial Statements if any of the following occur:

a. Assignment or Sublease. OPERATOR requests STATE's consent to an assignment or sublease;

b. Financial Hardship. OPERATOR requests any type or claim of financial hardship or distress, or requests any type of financial relief under this CONCESSION AGREEMENT, such as rent or other type of financial relief;

c. Financial Impact. OPERATOR requests any change to the terms of this CONCESSION AGREEMENT (assuming such change is permissible), which, in the STATE's sole discretion, may have a significant financial impact on Concession operations;

d. Monetary Claim. OPERATOR submits a rent, financial, or other type of monetary claim under or pursuant to this CONCESSION AGREEMENT; or

e. STATE Determination. The STATE reasonably believes (based on STATE's written findings) that the submission of OPERATOR's Financial Statements is necessary to effectively assess and monitor Concession operations.

2. If the STATE evaluates any claims by OPERATOR of financial hardship or distress, or requests by OPERATOR for financial relief under this CONCESSION AGREEMENT, the STATE may, if it deems necessary after reviewing OPERATOR's Financial Statements and any other financial information submitted by OPERATOR, require OPERATOR to: (i) post additional security in the form of an additional surety bond(s); or (ii) increase the amount of the Concession Bond (as defined herein in Article XXVIII. [Concession Bond]). If the STATE determines that OPERATOR should provide the STATE with additional security regarding OPERATOR's ability to fully perform its obligations under this CONCESSION AGREEMENT, OPERATOR shall provide such additional security, such as a separate and additional surety bond(s) or a Concession Bond with increased dollar coverage, within five (5) business days after receiving the STATE's written notice.

G. Other Reports.

In addition to OPERATOR's Financial Statements required to be submitted pursuant to Article VI.F. (Audited Financial Statements) of this CONCESSION AGREEMENT, the STATE may request and OPERATOR shall submit to the STATE such other financial and statistical Statements, reports, and analyses, to be prepared by a licensed independent CPA (if requested by the STATE), as the STATE may deem necessary, in the STATE's sole discretion, to more accurately reflect and explain OPERATOR's financial position and results, in such form and detail as the STATE may direct. OPERATOR's Financial Statements and such other financial and statistical Statements, reports, and analyses as OPERATOR may be required to submit hereunder shall not be prepared and submitted in a condensed or similar summary basis. OPERATOR's submission of a condensed Statement of assets, liabilities, and partners' capital (regardless of whether the same was submitted as part of OPERATOR's federal or STATE tax return filings) shall not be sufficient to satisfy OPERATOR's obligations hereunder.

H. Financial Records Inspection.

1. Access to Records. OPERATOR hereby grants unto the STATE, at all reasonable times, access to all Records created, kept, maintained, updated, and prepared by or on behalf of OPERATOR relating to this Concession, including operations on the Premises and the Automobile Parking Facilities; including but not limited to books, ledgers, journals, accounts, records, reports, files, and all information created, processed, maintained, or stored electronically (such as on computer disks, files, software, hardware, and hard drives), including gross income tax reports and records showing daily sales, and all other financial, sales, gross receipts, cost and expense, capital expenditure and depreciation and amortization, and accounting information, together with all pertinent Concession operations information.

2. Right to Audit. OPERATOR shall ensure that the STATE receives a written response to the STATE's request to audit all or any portion of OPERATOR's Financial Statements and/or Records within forty-eight (48) hours of OPERATOR's receipt of the STATE's request. At any reasonable time thereafter, not to exceed five (5) days, OPERATOR shall permit a complete audit to be made by the STATE's accountant or by a CPA retained by the STATE, of OPERATOR's entire business affairs relating to the Concession business for the term of this CONCESSION AGREEMENT, including without limitation, OPERATOR's Financial Statements and/or Records. All of OPERATOR's Financial Statements and Records shall be available for inspection by the STATE and any auditor or accountant retained by the STATE on the Island of Hawai'i, in the State of Hawai'i.

3. OPERATOR shall Cooperate. OPERATOR shall cooperate fully in the making of any inspection, examination, or audit, and shall provide copies to the STATE of such of the OPERATOR's Financial Statements and Records as may be requested or needed by the STATE, at OPERATOR's sole cost and expense.

4. Failure to Comply. If OPERATOR fails to fully and promptly, by the deadlines required hereunder, comply with and satisfy OPERATOR's obligations hereunder, including furnishing copies of the OPERATOR's Financial Statements and Records requested by the STATE or the STATE's auditor or accountant, OPERATOR shall be deemed in default of this CONCESSION AGREEMENT and the STATE will have the right to assess additional charges against OPERATOR pursuant to Article VI.J. (Additional Charges) hereof, and/or to terminate this CONCESSION AGREEMENT under Article XXI. (Termination by the STATE) hereof.

5. Auditing Standards. It is agreed that examinations of the Records will be conducted in accordance with generally accepted auditing standards applicable to the circumstances, and as such, said examinations do not require a detailed audit of all transactions. Testing and sampling methods may be used in verifying reports submitted by OPERATOR, and any deficiencies ascertained by applying percentages of error obtained from such testing and sampling to the entire period of reporting under examination will be binding upon OPERATOR.

6. Audit Cost Reimbursement. If such audit by the STATE's accountant or by a licensed independent CPA retained by the STATE discloses that OPERATOR has underpaid the STATE by two percent (2%) or more for any period under examination, the STATE will, in addition to the remedies provided in Article VI.E. (Reports) hereof, be entitled to reimbursement from OPERATOR of all costs and expenses incurred in completing any such audit, in addition to any deficiency (together with applicable interest, service charge, and other charges) revealed or disclosed.

7. Termination for Underpayment. If such audit by the STATE's accountant or by a licensed independent CPA discloses that OPERATOR has underpaid the STATE by five percent (5%) or more for the period under examination, the STATE will have the right, in addition to all other rights the STATE may have under this CONCESSION AGREEMENT, upon ten (10) days' written notice to OPERATOR, to terminate this CONCESSION AGREEMENT.

I. General Payment Provisions.

1. Time of Payment.

a. Minimum Annual Guarantee. One-twelfth (1/12) of the MAG shall be paid monthly in advance by no later than the first (1st) day of each month during each agreement year starting on the first (1st) month of the term of this CONCESSION AGREEMENT. At OPERATOR's option, MAG payments may be made up to one (1) year in advance.

b. Percentage Fees. For any month in which the Percentage Fees exceed the MAG as prorated for that same month, the OPERATOR shall pay to the STATE the amount by which the Percentage Fees due for the Concession services provided hereunder exceed the MAG as prorated for that same month, by the twentieth (20th) day of the following month.

c. Annual Reconciliation. If monthly Concession Fee payments result in an overpayment for any agreement year during the term of this CONCESSION AGREEMENT, the OPERATOR shall file a reconciliation report, and may claim a refund or credit within ninety (90) days following the end of such agreement year.

d. Space Rent. One-twelfth (1/12) of the rent for the Initial Allocation and, if any, rent for additional Premises, as referenced in Article VI.A.2.b. (Additional Space) hereof, shall be paid monthly, in advance, but not more than one year in advance, on the first day of each month, beginning on the Commencement Date.

e. Utility Costs. Payment by the OPERATOR of the utility costs for the Premises as referenced in Article IV. (Premises and Use) of this CONCESSION AGREEMENT shall be made within twenty (20) days of the receipt of the STATE's invoice for such utilities.

f. Minimum Annual Guarantee Adjustment. The OPERATOR shall continue to pay through the initial one hundred twenty (120) days or less, of a new agreement year, the MAG in effect at the end of the last day of the immediately preceding agreement year, until the OPERATOR delivers its annual report as required in Article VI.E.2. (Annual Audit); provided however, at the STATE's sooner determination based upon the STATE's examination of the Concession Fee paid to the STATE by the OPERATOR and the OPERATOR's gross receipts reports submitted to the STATE during said preceding agreement year, if the MAG for a new agreement year can be determined by the STATE, upon the STATE's notice to the OPERATOR of such determination, the OPERATOR shall pay the MAG in accordance with the STATE's determination for the new agreement year. If the MAG for a new agreement year is not sooner determined by the STATE, then upon the OPERATOR's submission of its annual report, as required, and the STATE's validation of said annual report, the OPERATOR shall immediately pay the appropriate MAG for the new agreement year, including any adjustments to rents previously submitted by the OPERATOR during the initial days of the new agreement year.

2. Place of Payment. All payments of money, required to be made by the OPERATOR to the STATE hereunder, shall be submitted when due in legal tender of the U.S. at the STATE's designated office at the Airport, or to such other place as the STATE may designate in writing.

3. Interest Charges on Delinquent Accounts. Without prejudice to any other remedy available to the STATE, the OPERATOR agrees, in addition to any late or delinquent penalties or charges that may be assessed, and without further notice or demand, to pay interest to the STATE at the rate of twelve percent (12%) per annum on any amount payable which shall not have been paid when due, which interest shall be paid in addition to any delinquent balance payable to the STATE.

4. Accrued Concession Fee, Rent and Other Charges. The expiration or sooner termination of this Concession Agreement by the lapse of time, or otherwise, shall not relieve the OPERATOR of its obligation to pay any Concession Fee, rent, or other charges accrued during a period in which this Concession Agreement is or was in effect, and which are unpaid at the time of any such expiration or termination.

5. Pro Rata Payment. If this Concession Agreement terminates without fault of OPERATOR on any day other than the last day of any calendar month, the applicable MAG, Premises rent, and utility fees for said month shall be paid pro rata in the same proportion that the number of days this Concession Agreement is in effect for that month bears to the number of days in that month.

J. Additional Charges. In addition to the right of the STATE to charge and collect, upon demand, interest charges as provided in Article VI.I.3. (Interest Charges on Delinquent Accounts) of this Concession Agreement, or to terminate this Concession Agreement pursuant to Article XXI. (Termination by the STATE) hereof, the STATE may levy on and collect from the OPERATOR a charge of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) per day, paid in legal tender of the U.S. for each and every day the OPERATOR is in violation of any of the agreements, covenants, promises, provisions, requirements, reservations, restrictions, stipulations, terms, or conditions of this Concession Agreement; provided, however, that there shall be no levy unless the violation(s) continues beyond the period specified in Article XXI. (Termination by the STATE) hereof, for remedial actions(s); and provided further that separate charges may be levied by the STATE for violations of separate provisions by the OPERATOR even though the violation(s) may be concurrent. Payment of the additional charges by the OPERATOR shall be due and payable to the STATE on demand, and shall bear interest when not paid at the same rate and in the same manner as for other delinquent accounts, as prescribed and set forth in Article VI.I.3. (Interest Charges on Delinquent Accounts) of this Concession Agreement.

K. Liquidated Damages. If the OPERATOR fails to properly provide the services described in this Concession Agreement, or to perform all or any part of the OPERATOR's obligations herein within the time specified and agreed upon, and if such delay in performance is not excusable or does not arise from acts of God, fires, labor disputes, accidents, or other similar causes which are deemed by the STATE to be beyond the OPERATOR's control, the parties mutually agree that the STATE will be damaged thereby, but that the amount of such damage would be difficult, if not impossible, to ascertain or prove. Therefore, the parties mutually agree that, for each category of violation shown below in this Article VI.K. (Liquidated Damages) that occurs within a thirty (30) day period, the STATE shall first provide a written warning to the OPERATOR, and thereafter for each subsequent day that the violation persists within the same thirty (30) day period the OPERATOR shall pay to the STATE, in addition to the other payments due under this Concession Agreement, the following amounts as liquidated damages and not as a penalty:

1. Staffing at Exit Booths. Unless otherwise approved by the STATE based on OPERATOR's explanation of facts beyond its control that caused the failure, the OPERATOR shall pay to the STATE the amount of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) per hour or fraction thereof for each incident or occurrence, wherein the patrons' average wait in line to exit from the Automobile Parking Facilities over any hour-long period, exceeds three (3) minutes.

2. Maintenance. The OPERATOR shall pay to the STATE for each incident or occurrence of the OPERATOR's failure to comply with the STATE-approved schedule of maintenance, as referenced in Article IX.B. (Maintenance) hereof, the amount of ONE HUNDRED AND NO/100 DOLLARS (\$100.00).

3. Patron Assistance. The OPERATOR shall pay to the STATE for each incident or occurrence of the OPERATOR's failure to provide patron assistance, as referenced in Article IX.A.23. (Patron Assistance) hereof, the amount of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00).

4. Filing Reports on a Timely Basis. The OPERATOR shall pay to the STATE the amount of ONE HUNDRED AND NO/100 DOLLARS (\$100.00) per day or fraction thereof, for each day that a report or Statement required under this Article VI. (Payment and Reporting Requirements) has not been received by the STATE by the due applicable date.

5. Removal of Abandoned Automobiles. The OPERATOR shall pay to the STATE the amount of ONE HUNDRED AND NO/100 DOLLARS (\$100.00) per day for each day that an Automobile has not been removed from the Automobile Parking Facilities in accordance with Article IX.A.13. of this Concession Agreement.

The liquidated damages required by this section are imposed solely for inconvenience to the public and adverse effects to the operations at the Airport. Payment of liquidated damages shall not relieve OPERATOR of responsibility for physical damage, personal injury, or other harm caused by OPERATOR, its officers, employees, agents, or Guests. The STATE does not waive any of its rights or remedies under this Concession Agreement, such as for assessment of Additional Charges in accordance with Article VI.J. (Additional Charges), and/or pursuit of default and termination, or other remedies prescribed by law, that the STATE may be entitled to in addition to the imposition of liquidated damages.

L. Unaccounted for Exits Penalty.

The OPERATOR shall pay the following amounts to the STATE for any exit from the Automobile Parking Facility, either by key card or ticket, which cannot be matched to a corresponding entrance to said facility, either by key card or ticket, for each month:

<u>Number of Unaccounted for Exits</u>	<u>Penalty</u>
greater than 0.25% (twenty-five hundredths percent) up to 1.0% (one percent)	\$2.50 per exit
greater than 1.0% (one percent)	\$5.00 per exit

OPERATOR shall submit, with its operational data reports, a separate Statement which details the computation of the Unaccounted for Exits Penalty, and which indicates the number of unaccounted for exits for each month.

M. Partial Relief from Obligation. Under §102-10, HRS, if, during the term of this CONCESSION AGREEMENT, there has been a reduction of fifteen percent (15%) or more in the volume of Concession business at the Automobile Parking Facilities managed and operated by the OPERATOR, for a period of sixty (60) days or more, computed on the average monthly

gross receipts for the eighteen (18) months just prior to the sixty (60)-day period, or for as long as the OPERATOR has been in business under this CONCESSION AGREEMENT, whichever period is shorter, and such reduction, as determined by the STATE, is caused by construction work conducted by the STATE during the period of time on, within, or contiguous to such Automobile Parking Facilities, then, with the approval of the Governor, the STATE, in its sole discretion, may modify any of the terms of this CONCESSION AGREEMENT, including the agreed upon Concession Fee, for a period which will allow the OPERATOR to recoup the amount lost by such reduction, provided that this provision shall not apply to this CONCESSION AGREEMENT if the application hereto may impair any contractual obligations with bondholders of the STATE, or with any other parties. If §102-10, HRS, is revised or amended, the provisions contained in this Article VI.M. (Partial Relief from Obligation) will be revised or amended to conform to such changes to §102-10, HRS. If the OPERATOR elects to receive or receives the relief described in this Article VI.M. (Partial Relief from Obligation), the OPERATOR shall not be entitled to combine this relief with any other relief allowed under this CONCESSION AGREEMENT, including Article VI.N. (Relief Due to Economic Emergency) below.

N. Relief Due to Economic Emergency.

1. Conditions of Relief. In the event of an “economic emergency,” the STATE may, in its sole discretion, grant financial relief to the OPERATOR, in amounts to be determined by the STATE, in its sole discretion. An “economic emergency” is an event that satisfies at least the following conditions.

a. Reduction. The OPERATOR suffers a fifteen percent (15%) reduction in gross receipts for a period of sixty (60) days or more, computed on the OPERATOR’s average monthly gross receipts for the eighteen (18) months just prior to the date from which the OPERATOR requests relief or as long as the OPERATOR has been in business under this CONCESSION AGREEMENT, whichever period is shorter, provided that the Director may waive this requirement if, in the Director’s sole discretion, the Director determines that it is likely that the OPERATOR will suffer the required fifteen percent (15%) reduction in gross receipts; and

b. Conditions. Either of the following two (2) conditions occur:

(1) The occurrence of an event that is sudden, extraordinary, and generates relatively immediate severe adverse economic impacts for the STATE, as determined by the Director, in the Director’s sole discretion, including, without limitation, the force majeure events described in this CONCESSION AGREEMENT, and events such as a natural disaster, civil defense emergency (as determined by the Governor pursuant to Chapter 128, HRS), or acts of terrorism similar to the events of September 11, 2001 (hereinafter referred to as the “Sudden Event”); or

(2) The Director finds that, from and after the date the OPERATOR requests relief, there has been a significant decrease in airline passenger departures (hereinafter referred to as “enplanements”) from the Airport of twenty percent (20%) or more for a period of sixty (60) consecutive days or more, computed on the Airport’s average monthly enplanements for the eighteen (18) months just prior to the date from which the OPERATOR requests financial relief.

2. OPERATOR’s Financial Hardship Claim. The OPERATOR must submit a written request for relief to the STATE claiming financial hardship or distress and make available to the STATE such financial information as may be required by the STATE pursuant to Articles VI.F. (Audited Financial Statements) and VI.G. (Other Reports) hereof.

3. STATE Determines Amount and Extent of Relief. The STATE may, if it deems necessary after reviewing the OPERATOR’s Financial Statements and any other financial information submitted by the OPERATOR, modify the financial terms of this CONCESSION AGREEMENT, at the STATE’s sole discretion, including, without limitation, waiving a proportionate monthly amount of the MAG in the applicable agreement year during which the economic emergency occurs until: (a) the decrease in passenger enplanements at the Airport is cumulatively less than twenty percent (20%) as compared to the same time period in the previous year, for at least sixty (60) consecutive days; or (b) the decrease in OPERATOR’s gross receipts is cumulatively less than fifteen percent (15%) as compared to the same time period in the previous year, for at least sixty (60) consecutive days.

4. STATE may Terminate Relief at any Time. The STATE may at any time, at the STATE’s sole discretion: (a) terminate any financial relief granted by the STATE to the OPERATOR; (b) cancel and revoke any terms under which such financial relief was granted; and (c) reinstate the applicable financial terms under this CONCESSION AGREEMENT that were in effect immediately prior to the granting of financial relief by the STATE to the OPERATOR.

5. STATE may Impose Additional Conditions in Granting Relief. In granting any financial relief to the OPERATOR, the STATE may impose such other requirements as the STATE deems necessary, including, without limitation, additional reporting requirements to ensure that the STATE is able to timely monitor and assess the OPERATOR’s gross receipts and the OPERATOR’s financial condition.

6. No Impairment. This provision shall not apply to this CONCESSION AGREEMENT if the application thereto may impair any of the STATE’s contractual obligations to bondholders of the STATE or to any other entities. This determination shall be made by the STATE, in the STATE’s sole discretion.

O. Advance Parking Fees Collected. The OPERATOR shall turn over to the STATE or any party/entity identified by the STATE, any and all advanced parking fees which have been collected for periods beyond the term of this CONCESSION AGREEMENT and cannot deduct any Percentage Fee from such amounts.

The OPERATOR shall be entitled to any portion of advanced parking fees paid by any customer, employee, or patron which may have been collected by the prior OPERATOR before the Commencement Date of this CONCESSION AGREEMENT, where the fees collected by the prior OPERATOR are for parking beyond the term of the prior OPERATOR's agreement, and OPERATOR shall pay to the STATE the Percentage Fees applicable under this CONCESSION AGREEMENT to said advance parking fees.

P. Record Keeping. The OPERATOR shall retain and keep the Records available for a period not less than three (3) years after the end of each agreement year. Those Records and documents must be easily retrievable and stored in an organized manner to facilitate a timely audit, and shall be protected from loss in a location and manner acceptable to the STATE. All Records relating to the OPERATOR's performance under this CONCESSION AGREEMENT shall be kept in accordance with generally accepted accounting principles. The Records shall include, but not be limited to, a record of gross receipts from the Concession, a record of payments to the STATE as required by this Article VI. (Payment and Reporting Obligations) hereof, tax payments, exit transaction tapes or other source documents showing charges to parking patrons exiting the Automobile Parking Facilities, parking tickets issued and collected, the number of entries and exits via monthly access cards to the extent available from the PRCS, and any other pertinent information required by the provisions of this CONCESSION AGREEMENT, or which may be additionally required by the STATE pursuant to written notice from the STATE, all of which shall be kept at all times within the State of Hawai'i.

ARTICLE VII. AUTOMOBILE PARKING CHARGES

A. Public Automobile Parking Facilities Charges. The rates for transient public Automobile parking shall, at all times, be posted by the OPERATOR at each entrance to the public parking lots, and at each revenue collection point at all public parking exits in clearly legible signs, of a type and character approved by the Director. Public Automobile parking rates under the CONCESSION AGREEMENT are as shown in Exhibit E attached hereto. In the event any change to the public Automobile parking rates is approved by the STATE, a revised Exhibit E will be substituted herein without formal amendment hereto.

B. Maximum Rate. The Automobile parking rates noted in Paragraph A of this Article shall be the maximum chargeable by the OPERATOR unless the STATE gives its prior approval and authorization to a rate increase. OPERATOR is not authorized to separately charge to its customers any taxes it may be required to pay to the STATE on account of the revenue it derives under this CONCESSION AGREEMENT.

C. Employee Parking Facilities Charges and Locations. The OPERATOR agrees to place and maintain in effect separate monthly rates for employees, as hereinafter defined. No taxes may be added by the OPERATOR to these rates. As used herein, the term “employee” shall include all employees of any lessee, tenant, permittee, contractor, or OPERATOR of the Airport. Rates and parking locations for STATE employees shall be prescribed by the STATE. Employees shall be furnished monthly, pre-numbered hang tags or automated access system cards by the OPERATOR for control purposes. Employee parking shall be limited to the areas denoted in Exhibit B and any other area as may be determined by the STATE.

D. Special Employee Parking Procedures. The OPERATOR shall limit the number of employee parking permits to the amount allocated or prescribed for a particular Airport tenant by the STATE. A listing of tenant parking permit allocations will be provided by the STATE.

E. Late Payment Charges to Employees. The monthly parking fee for employees shall be paid, in advance, on or before the first day of each month. The OPERATOR may assess employees a late payment charge of ONE AND NO/100 DOLLAR (\$1.00) for each day, to a maximum of SIX AND NO/100 DOLLARS (\$6.00) per month that the payment of the employee parking fee occurs after the first business day of any month for which parking is purchased. The late payment policy shall be clearly posted where employees purchase parking permits. Any changes to such charges are subject to the prior written consent of the STATE. The late payment charge collected by the OPERATOR shall be included in the gross receipts of the Concession.

ARTICLE VIII. OBLIGATIONS OF THE STATE

In connection with the operation of the Concession at the Airport, the STATE shall:

A. Provide all the exit booths deemed necessary by the STATE for the operation by the OPERATOR of the Automobile Parking Facilities.

B. Provide and maintain paving (except for pavement with spikes or associated parking control devices), fencing, drainage, and overhead lighting fixtures, including lamps and replacement thereof, necessary for the preparation and use of the Automobile Parking Facilities.

C. Maintain in good order, condition and repair, all drainage and lighting fixtures at the Premises and the Automobile Parking Facilities.

D. Furnish, at the STATE’s expense, necessary utilities, as determined by the STATE, for the Automobile Parking Facilities.

E. Provide electric and other directional or information signs, repainting of parking lot markings, striping, repair of parking lot paving, boundary fencing, and landscaping.

F. Provide for security services to safeguard the Automobile Parking Facilities, and issue citations to enforce County ordinances and the rules and regulations of the STATE.

ARTICLE IX. OBLIGATIONS OF THE OPERATOR

A. Quality of Services. In the manner and method of operation of the Automobile Parking Facilities herein authorized OPERATOR shall maintain the highest degree and standards of courtesy. OPERATOR's representatives, agents, servants, and employees shall be polite, with no offensive conduct and demeanor and shall at all times during the term of this CONCESSION AGREEMENT, strictly comply with the following conditions and requirements:

1. OPERATOR shall conduct its operations in an orderly and proper manner, and shall not annoy, disturb or be offensive to customers, patrons, or other tenants of the Airport. The playing of radios, tape players, disc players, and other audio devices will not be permitted at the exit booths or by any employee engaged in any repair, maintenance, inspection, or other activity related to the management and operation of the Automobile Parking Facilities.

2. OPERATOR shall select and appoint, subject to the prior written approval of the STATE, a full-time manager of its management and operation of the Automobile Parking Facilities herein authorized. Such person must be an outstanding, highly qualified, and experienced manager of Automobile parking facilities, vested with full power and authority with respect to the method, manner, or conduct of the operation of the Automobile Parking Facilities at the Airport. Such manager shall be assigned to a duty station or office at the Airport where he or she shall be available during regular business hours. At all times during his or her absence, an equally qualified subordinate shall be in charge and available at such duty station.

The individual identified to provide management service on behalf of the OPERATOR shall be available to attend and participate in Airport committee meetings, and be available to consult, assist, and advise the STATE and its consultants and representatives on matters pertaining to the management, operation, maintenance, planning, or design of the Automobile Parking Facilities.

3. OPERATOR shall control the conduct, demeanor, and appearance of its officers, agents, employees, and representatives. Cashiers and other employees that interact with customers, or that work in the Automobile Parking Facilities (hereinafter referred to as "Attendants"), while on duty, shall wear uniforms, previously approved in writing by the STATE, which shall, at all times, be maintained in a neat, orderly, and clean condition. Such Attendants shall be trained by the OPERATOR to render a high degree of courteous and efficient service, and it shall be the responsibility of the OPERATOR to maintain close supervision over such Attendants to assure the rendering of a high standard of service to the public and the patrons of the Automobile Parking Facilities. Upon notice from the STATE concerning the conduct, demeanor, or appearance of any Attendants, the OPERATOR shall forthwith take all steps necessary to remove or correct the cause of any problem or issue noted by the STATE.

4. OPERATOR shall keep the Automobile Parking Facilities in operation and open a minimum of nineteen (19) hours every day for the services described herein. The OPERATOR shall provide personnel sufficient, in the opinion of the STATE, to maintain an excellent quality of service to the public at all times during the term of this CONCESSION AGREEMENT.

The OPERATOR shall supply, at its expense, all personnel required to operate the Automobile Parking Facilities and shall supply an adequate number of operating personnel such that no vehicle waits more than five (5) minutes in line to exit through the exit plaza(s), and that the average wait in line over any hour-long period does not exceed two (2) minutes, unless otherwise approved by the STATE based on OPERATOR's explanation of facts beyond OPERATOR's control that caused delay.

The OPERATOR shall also make every effort to ensure that processing time at the cashier booth is held to under thirty (30) seconds per Automobile.

At the main public parking lot exit plaza, Space No. 004-103, a minimum of one (1) lane shall be open and staffed at all times to service the parking patrons. The OPERATOR shall supply all exit lanes with a credit/debit card system, which system shall be capable of accepting a minimum of four (4) of the six (6) most widely circulated credit/debit cards in the U.S. These lanes must be clearly identified to the patrons. All fees, rentals, installation costs, equipment costs, etc., associated with the use of credit/debit cards shall be borne by the OPERATOR, but the bank or credit/debit card company commissions and/or fees associated with providing this service may be deducted from the OPERATOR's gross receipts.

5. Except as stated in Article IX.A.21. (Official Vehicles) and Article IX.A.22. (Emergency Conditions) hereof, OPERATOR shall collect from all persons utilizing said Automobile Parking Facilities the fees or charges set forth in Article VII. (Automobile Parking Charges).

6. OPERATOR shall furnish printed tickets or automated system access cards that are compatible with the ticket spitters or automated access systems in use at the Automobile Parking Facilities. These tickets and cards shall be numbered consecutively, with the printed ticket numbers guaranteed by the printer, and all cards logged to identify the individual to whom the card is issued.

7. The OPERATOR shall issue to each customer a consecutively pre-numbered receipt for each exit transaction.

8. In the event a ticket or access card is lost by a patron of the Automobile Parking Facilities, the OPERATOR shall provide all necessary information on a lost ticket report, collect appropriate charges due from the patron, and, where applicable, initiate immediate termination of access privileges provided by the lost card.

9. OPERATOR shall conduct its operation on a fair, equal, and non-discriminatory basis to all users of the Automobile Parking Facilities and shall charge fair, reasonable, and not unjustly discriminatory prices for services; provided that the OPERATOR may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers/users, subject to the prior written approval of the STATE.

10. OPERATOR shall install, remove, maintain, repair or replace all parking meters or self collection boxes at its expense when and where deemed necessary by the STATE. Meter or self collection box rates shall be subject to prior approval by the STATE.

11. OPERATOR shall post the applicable parking rates at the entrances of all public parking lots.

12. OPERATOR shall post signs that: (1) indicate: "VEHICLES LEFT OVER 30 DAYS ARE SUBJECT TO TOWING AT OWNER'S EXPENSE. IN ADDITION, OWNER SHALL BE HELD RESPONSIBLE FOR ALL ACCUMULATED PARKING COSTS. EXTENDED PARKING IS AVAILABLE THROUGH WRITTEN AUTHORIZATION FROM PARKING OFFICE. CALL (808-329-5404.) FOR INFORMATION"; (2) indicate: "VEHICLES NOT PARKED IN MARKED STALLS OR NON-VALET VEHICLES PARKED IN DESIGNATED VALET STALLS OR VALET STAGING AREAS WILL BE CITED AND SUBJECT TO REMOVAL BY TOWING"; (3) identify towing location and recovery procedures; and (4) indicate the parking lot's hours of operation.

13. OPERATOR shall be responsible for the removal and storage of abandoned Automobiles from the Automobile Parking Facilities whenever it has been determined that said Automobiles have been parked in excess of thirty (30) days without prior arrangements having been made therefor. Such removal shall be accomplished within fourteen (14) days of the expiration of the allowed storage period. The STATE will use reasonable efforts to provide impound vehicle storage space on the Airport, subject to such terms and conditions as may be determined by the STATE, and the OPERATOR will be required to arrange for the direct and immediate removal of all derelict and abandoned Automobiles as required herein.

14. The OPERATOR shall not tow or remove any Automobile without prior approval of the Airport duty manager of the Automobile being cited. Automobiles moved for clearance of obstruction or because of a hazard or safety problem, or violation of parking regulations, shall be removed only after a law enforcement officer has issued a violation citation. Such Automobiles shall be relocated to a safe, acceptable alternate location where retrieval may be obtained by the owner after payment of the requisite towing fees and charges. The OPERATOR shall make recovery opportunity available to the Automobile owner during office hours. The OPERATOR must afford the vehicle owner the opportunity for a pre or post tow

hearing due process in connection with the vehicles towed from STATE property to retrieve his/her towed vehicle at the cost of the at-fault party.

15. In the event a stolen Automobile is found within the Automobile Parking Facilities and is recovered by its owner, the OPERATOR shall allow the owner to remove his/her Automobile free of parking charges if the owner presents a statement signed by the Airport Manager or a law enforcement officer verifying that the Automobile was indeed stolen, and placed within the Automobile Parking Facilities without the owner's knowledge.

16. OPERATOR shall use its best efforts in every proper manner to maintain, develop, and increase the parking business conducted by it hereunder.

17. OPERATOR shall not divert or cause to be diverted, any business which would result in a reduction of revenues to the Airport.

18. OPERATOR shall permit the inspection at any time upon reasonable notice, by the officers, employees, and representatives of the STATE of any Records of sums collected and of equipment used by the OPERATOR, including but not limited to ticket machines and cash registers, tape readings, and metered readings.

19. OPERATOR shall ensure that all cash registers, ticket machines, and any other parking revenue control equipment or devices used in the OPERATOR's business, are accurate and keep accurate records of fees and charges that will be used to determine gross receipts of the Concession.

20. Persons with Disabilities. The OPERATOR agrees to grant the right to park all Automobiles owned and/or operated by persons with disabilities and identified by authorized Disability Parking Permits issued by the County, in such area(s) of the Automobile Parking Facilities as the STATE may designate.

21. Official Vehicles. The OPERATOR specifically agrees to grant the right to park all Automobiles with DOT-A permits or validation, and other officially marked Automobiles of the STATE, County, and federal governments as may be approved by the Director, without charge, in such area(s) of the Automobile Parking Facilities as the STATE may designate.

22. Emergency Conditions. In the event of emergency conditions or natural storms of significant magnitude and intensity to pose a threat to life or property, the OPERATOR shall, upon direction or concurrence of the STATE, allow all patrons, customers, or users of the Automobile Parking Facilities to exit in their Automobiles without requiring payment for any accrued parking charges or fees. Under such conditions or situations, neither the STATE nor the OPERATOR shall be eligible to recover financial losses resulting from such occurrence as it shall be understood that such arrangement is undertaken in the interest and benefit of public safety.

23. Patron Assistance. OPERATOR shall be responsible to provide prompt (within thirty [30] minutes or less of patron's request), no-cost responses to patrons of the Automobile Parking Facilities in locating where their Automobiles are parked, and in assisting the patron in arranging for towing and other immediate Automobile-related service needs.

B. Maintenance.

1. Except for maintenance operations which are the obligation of the STATE under Article VIII. (Obligations of the STATE) hereof, the OPERATOR shall maintain the Premises, the Automobile Parking Facilities, and the Improvements thereon in clean and attractive condition, in a manner satisfactory to the STATE. The OPERATOR shall provide its proposed inspection, cleaning and maintenance schedules to the STATE for STATE's written approval prior to the commencement of the CONCESSION AGREEMENT and shall submit any proposed changes in the inspection, cleaning and maintenance schedules to the STATE, in writing, for STATE's prior written approval.

2. The OPERATOR's responsibilities for the Premises and Automobile Parking Facilities, and all equipment and materials used by the OPERATOR therein or thereon shall at all times include, but not be limited to: maintaining parking surfaces clean and free of dirt, debris and liquids, other than accumulated water from precipitation; cleaning pedestrian areas using environmentally friendly means; keeping all Automobile Parking Facilities free of accumulated trash and offensive or unclean material; and maintaining and cleaning all fixtures and appurtenances to the Automobile Parking Facilities as required by the Director. OPERATOR shall clean said parking lots and parking stalls and roadway areas in the Automobile Parking Facilities at a minimum of once each eight (8) -hour period, every day of the year, and as often as is otherwise necessary to keep the same in a clean and presentable condition. Cleaning shall include annual scrubbing and wash down with an environmentally friendly cleaner to remove grease, dirt, and accumulated oils on roadways and parking stall areas in the Automobile Parking Facilities.

3. OPERATOR shall provide a complete and proper arrangement for the prompt and adequate sanitary handling and disposal, away from the Airport, of all trash, garbage, and other refuse and waste products caused by or resulting from the operation of the Automobile Parking Facilities and the Premises. OPERATOR shall provide and use suitable covered metal receptacles for all garbage, trash, and other refuse on or in connection with the Automobile Parking Facilities and the Premises. Piling of boxes, cartons, or other similar items, in an unsightly or unsafe manner, within the Automobile Parking Facilities or Premises, is forbidden. Broken glass, bottles, cans, spilled food, batteries, or any material that may create a hazard within the Automobile Parking Facilities shall be removed at once. OPERATOR shall cause the Automobile Parking Facilities to be inspected not less than twice each day.

4. OPERATOR shall, as necessary or required and at its own expense, maintain and repair the PRCS Improvements provided by the OPERATOR, as shown on Attachment 8, and all of the equipment in the Automobile Parking Facilities and the Premises provided by the STATE, except as otherwise Stated in Article VIII. (Obligations of the STATE) hereof.

5. OPERATOR shall be responsible for prompt cleaning of oil drippings and the leak or spill of any other Automobile fluid in the Automobile Parking Facilities, as well as in the entry and exit lanes thereto and therefrom.

6. OPERATOR shall clean the top, sides and front of all fire extinguisher/hose cabinets in the Automobile Parking Facilities weekly. The OPERATOR shall immediately report to the STATE, any damages or conditions that would render the cabinets inoperable. The OPERATOR shall promptly remove all graffiti from the Automobile Parking Facilities and report graffiti and other conditions to the STATE weekly.

7. OPERATOR will furnish and maintain all mechanical vacuum and blower equipment necessary to clean and maintain the Automobile Parking Facilities. The OPERATOR will exercise reasonable care and caution to protect equipment, fixtures, and Automobiles thereon from damage during cleaning operations.

8. All cleaning shall be completed to the satisfaction of the STATE. In the event cleaning is deemed unsuitable or unsatisfactory by the STATE, the OPERATOR shall undertake a subsequent remedial cleaning as directed by the STATE.

9. In the event of failure by the OPERATOR to undertake cleaning following notification by the STATE, which failure necessitates the STATE having to either CONCESSION AGREEMENT for someone else to perform the cleaning, or the STATE having to do the cleaning, then, in addition to any liquidated damages or other additional charges referenced in this CONCESSION AGREEMENT, the OPERATOR shall be assessed all costs associated with or resulting from such cleaning plus a twenty-five percent (25%) administrative overhead fee to the STATE.

10. The handling, disposal, removal, and/or treatment of OPERATOR's used oil and other lubricants or petroleum products, and any other forms or types of Hazardous Substances at, upon, or within the Premises and the Automobile Parking Facilities, or any part or portion thereof, shall be in compliance with: (1) the environmental requirements prescribed and set forth in Article XVI.C. (Environmental Matters) hereof; and (2) all federal, State of Hawai'i, County, and/or local health, environmental, and safety laws, statutes, codes, orders, ordinances, decrees, rules, and/or regulations. This section also applies to any disposal or runoff of wash water from periodic cleanings, and surface/storm water into STATE's storm drainage system or sanitary sewer system at the Airport.

C. ACDBE Participation in Maintenance CONCESSION AGREEMENTs. The OPERATOR agrees to use good faith efforts to provide for meaningful participation by an ACDBE(s) in the performance of this CONCESSION AGREEMENT.

D. Conditions Governing Improvements and Alterations. No Improvements shall be made in, to or upon the Automobile Parking Facilities or the Premises by OPERATOR without the prior written approval of the Director.

E. Restrictions and Regulations. This CONCESSION AGREEMENT, and the operation and maintenance of the Automobile Parking Facilities by the OPERATOR shall be subject to:

1. Any and all applicable rules, regulations, orders, and restrictions which are now in force or which may be hereafter adopted by the STATE with respect to the operation of the Airport.

2. Any and all orders, directions and conditions issued, given, or imposed by the STATE in respect to the use of the roadways, driveways, curbs, sidewalks, parking areas, and public areas adjacent to the Automobile Parking Facilities; and

3. Any and all applicable laws, ordinances, statutes, rules, regulations and orders of any governmental authority, federal, State of Hawai‘i, or County lawfully exercising authority over the Airport or OPERATOR’s business hereunder.

The STATE shall not be liable to the OPERATOR for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority provided for in this section, nor shall OPERATOR be entitled to terminate the whole or any portion of this CONCESSION AGREEMENT by reason thereof unless the exercise of such authority shall so interfere with OPERATOR’s operation of the Automobile Parking Facilities or the exercise of its rights under this CONCESSION AGREEMENT as to constitute a termination in whole or in part of this CONCESSION AGREEMENT by operation of law in accordance with the laws of the State of Hawai‘i.

F. General Excise Taxes. The OPERATOR shall be responsible for payment of general excise taxes based on all of its revenues earned hereunder or as otherwise prescribed by State of Hawai‘i law.

G. AS IS Condition. The OPERATOR agrees to accept the Automobile Parking Facilities and the Premises in “AS IS” condition.

H. Customer Claims and Disputes. The OPERATOR shall within twenty-four (24) hours of any incident at the Airport send to its insurance carrier for adjustment all claims against the OPERATOR for personal injury or property damage.

The OPERATOR will promptly contact the Airport duty manager or a law enforcement officer to report any incidents involving personal injury or property damage occurring at the Automobile Parking Facilities or Premises.

The OPERATOR will promptly notify the Airport duty manager or a law enforcement officer whenever a claim is made for damages done by a customer's Automobile.

All customer claims and disputes will be handled by OPERATOR's Manager or in the Manager's absence, by an equally qualified subordinate.

The OPERATOR will immediately notify the Airport duty manager or a law enforcement officer whenever OPERATOR's personnel observe a customer's Automobile damaging another Automobile parked in the Automobile Parking Facilities.

The OPERATOR will answer all customer correspondence within seventy-two (72) hours of receipt.

The OPERATOR shall regularly and promptly forward copies of all customer letters and OPERATOR's responses to customers to the Director for his/her information.

ARTICLE X. TITLE TO PARKING REVENUE CONTROL SYSTEM (PRCS)
INSTALLED BY OPERATOR

A. Term of OPERATOR. The OPERATOR shall purchase and install new PRCS Improvements at the Airport. Title to any and all of the PRCS Improvements purchased and installed at the Airport by the OPERATOR, at OPERATOR's sole cost and expense, shall remain in OPERATOR during the term of this CONCESSION AGREEMENT. The OPERATOR shall upon completion of installation of the PRCS provide the STATE with a listing of all items included in the installed PRCS.

B. Expiration or Termination of OPERATOR. At the expiration or sooner termination of this CONCESSION AGREEMENT by whatever means, the title to any and all PRCS shall, at the sole option of the STATE, vest in the STATE. The STATE shall notify OPERATOR within thirty (30) days after this CONCESSION AGREEMENT expires or terminates as to the portion of the PRCS (if any) that are to be removed by OPERATOR. OPERATOR shall, at its sole cost and expense, remove such PRCS which the STATE opts not to assume title, in such a manner as to cause no damage to any portion of the Automobile Parking Facilities and the Premises; and in the event of any such damage, OPERATOR shall, at its own cost and expense, repair the same to the STATE's satisfaction. If OPERATOR fails to repair said damage, the STATE may, after thirty (30) days notice, repair the same at the expense of OPERATOR. The OPERATOR shall immediately reimburse the STATE for any and all such repair costs incurred by the STATE upon demand from the STATE, plus a twenty five percent (25%) administrative overhead fee to the STATE. If OPERATOR fails to remove the PRCS (if

any) designated by the STATE for removal by OPERATOR, or any part thereof within thirty (30) days after the notification from the STATE, the STATE may remove the same at the sole cost and expense of OPERATOR, plus a twenty-five percent (25%) administrative overhead fee to the STATE. Except as Stated in Article XXIII. (Withdrawal) hereof, the OPERATOR shall not be entitled to any reimbursement for its PRCS Improvements regardless of whether they are or are not removed.

ARTICLE XI. IMPROVEMENTS

A. Acceptance of Premises.

1. Possession. The OPERATOR has examined and knows of the condition of the Premises and the Automobile Parking Facilities and agrees that the STATE is providing the Premises and the Automobile Parking Facilities to OPERATOR on an “**AS IS WITH ALL FAULTS**” basis, in their existing form, content, and condition. The OPERATOR further agrees that the STATE will not be liable for any latent, patent, or other defects in, on, or under the Premises and the Automobile Parking Facilities, including pre-existing Improvements. The taking of possession of the Premises and the Automobile Parking Facilities and all that may be part thereof by OPERATOR shall be conclusive evidence as against OPERATOR that the Premises and the Automobile Parking Facilities were in good and satisfactory condition when OPERATOR took possession of the same. The OPERATOR agrees that it is not relying on any representations or warranties of any kind whatsoever, express or implied, from the STATE or the STATE’s agents, as to any matters concerning the Premises and the Automobile Parking Facilities, including, without limitation:

a. Physical Condition. The quality, nature, adequacy, and physical condition and aspects of the Premises and the Automobile Parking Facilities, including landscaping and utility systems.

b. Soils. The quality, nature, adequacy and physical condition of soils, geology, and any groundwater.

c. Utilities. The existence, quality, nature, adequacy, and physical condition of utilities serving the Premises and the Automobile Parking Facilities.

d. Development Potential. The development potential of the Premises and the Automobile Parking Facilities’ use, habitability, merchantability, or fitness, suitability, value, or adequacy of the Premises and the Automobile Parking Facilities for any particular purpose.

e. Zoning. The zoning or other legal status of the Premises and the Automobile Parking Facilities or any other public or private restrictions on the use of the Premises and the Automobile Parking Facilities.

f. Compliance. The compliance of the Premises and the Automobile Parking Facilities or its operation with any applicable codes, laws, statutes, rules, regulations, ordinances, covenants, conditions, and restrictions of any governmental or quasi-governmental entity, or of any other person or entity.

g. Hazardous Substances. The presence of Hazardous Substances as set forth in the BEA on, under, or about the Premises and the Automobile Parking Facilities or the adjoining or neighboring Airport properties.

h. Quality of Labor. The quality of labor and materials used in any Improvements on Airport property.

i. Title. The condition of title to the Premises and the Automobile Parking Facilities and the properties comprising the Airport.

j. Other Documents. Any agreements affecting the Premises and the Automobile Parking Facilities, including covenants, conditions, restrictions, and other matters or documents of record or of which OPERATOR has knowledge.

B. STATE Obligations. The STATE shall have no obligations to OPERATOR with respect to the condition of the Premises and the Automobile Parking Facilities.

C. OPERATOR Obligations.

1. Improvement Plans.

a. Improvements at OPERATOR's Cost. The OPERATOR, at its own cost and expense, shall be responsible for any renovation, upgrade, addition to, remodeling, and improvement of the Premises and the Automobile Parking Facilities by constructing, repairing, refurbishing, installing, and otherwise providing: (i) any and all Improvements (including, without limitation, any and all structures, utility, and service lines, and other fixed Improvements); and (ii) OPERATOR's Personal Property, all of which are necessary or desirable for the proper and efficient operation of the Premises, or to adequately service OPERATOR's Concession operation on the Airport and the public demand for the services described in and during the term of this CONCESSION AGREEMENT.

b. OPERATOR's Plans. OPERATOR shall prepare and submit OPERATOR's Plans, as defined in Article I hereof, to the STATE for each and every Improvement it intends to construct or install at the Airport.

c. Properly Licensed. The OPERATOR's Plans must be prepared by a properly licensed architect or engineer. All construction and installation of the Improvements must be performed by properly licensed contractors.

2. Compliance with Development Standards. The OPERATOR shall obtain the STATE's prior written approval for OPERATOR's Plans and Improvements, including any and all initial and subsequent construction, repair, refurbishment, or installation of Improvements on the Premises and the Automobile Parking Facilities, or elsewhere at the Airports as approved by the STATE, and all such Improvements must be of high quality, incorporate quality materials, and be completed with first-class workmanship and must meet applicable County building standards and specifications, and except as otherwise Stated herein, comply with the STATE's Development Standards (Attachment 4), which are incorporated by reference herein.

3. STATE's Approval. The STATE shall not unreasonably withhold approval for OPERATOR's Plans. The STATE may withhold such approval, for reasons, including, but not limited to, if, in the sole discretion of the STATE, such construction or installation would be:

a. Structurally Unsafe. Structurally unsound or unsafe or hazardous for human use or occupancy; or

b. Violation of Agreement. In violation of any requirement of this CONCESSION AGREEMENT; or

c. Building Code Violation. In violation of the building, electrical, plumbing, health, or fire codes of the County or the State of Hawai'i; or

d. Development Standards Violation. In violation of the Development Standards, including the STATE's requirements relating to the development of facilities, which effectively and harmoniously match the external architecture of other similar portions of the Airport at which the facilities are to be constructed or installed; or

e. Violation of Federal Requirements. In violation of any federal laws, statutes, rules, regulations, or orders.

D. Improvements and Personal Property Costs.

1. Cost Accounting.

a. OPERATOR to Furnish In-place Costs. Within sixty (60) days after the construction or installation of any Improvements or Personal Property by OPERATOR on or at the Premises and the Automobile Parking Facilities, or elsewhere at the Airport as approved by the STATE, OPERATOR shall submit to the STATE a certified Statement of the itemized in-place construction and installation costs incurred by OPERATOR, at OPERATOR's sole cost and expense, in completing the construction and installation of any such Improvements and Personal Property. The in-place costs for all Improvements and Personal Property shall be itemized according to the portion of the Premises, the Automobile Parking Facilities, or other

location(s) at the Airport, as approved by the STATE, to which they pertain. The OPERATOR shall submit annually to the STATE an inventory of all of the Personal Property installed by OPERATOR at or upon the Premises, the Automobile Parking Facilities or other location(s) at the Airport as approved by the STATE.

b. In-Place Costs. The in-place costs of the Improvements and OPERATOR's Personal Property shall include, as deemed appropriate by the STATE, all construction and installation costs, and the purchase price and other costs to purchase and acquire the Improvements and Personal Property for OPERATOR's Concession operation. All such in-place costs of the Improvements and OPERATOR's Personal Property submitted by OPERATOR to the STATE shall be subject to the STATE's review and approval. Any amounts spent by OPERATOR for construction, installation, planning, design, engineering, architectural, surveying, environmental, accounting, financial, legal, and other services not directly related to construction and installation of the Improvements and OPERATOR's Personal Property, may not be used or included as part of OPERATOR's in-place costs furnished to the STATE.

c. OPERATOR to Substantiate. The OPERATOR shall substantiate all such in-place costs by furnishing the STATE with evidence of all costs incurred by OPERATOR for construction and installation of said Improvements and Personal Property, satisfactory to the STATE, including, without limitation, if and when required by the STATE, copies of construction CONCESSION AGREEMENTs, detailed receipts, and/or purchase agreements. The OPERATOR shall maintain records of all such in-place costs so incurred by OPERATOR, make such records available for inspection by the STATE, and furnish to the STATE copies of such records as may be requested by the STATE, all at OPERATOR's sole cost and expense.

d. Failure to Provide. Failure to provide to the STATE, within the above-required time, the required evidence of in-place costs incurred by OPERATOR in constructing and installing the particular Improvements and Personal Property shall result in OPERATOR being precluded from contesting the in-place cost figures estimated by the STATE based upon evidence available to the STATE. The STATE may require an audit of OPERATOR's Records, using the STATE's accountant or a licensed independent CPA, at OPERATOR's sole cost and expense, to verify the in-place costs submitted by OPERATOR, or to estimate the in-place costs that should have been submitted by OPERATOR.

2. Minimum Investment Requirement.

a. Required Amount. The OPERATOR's minimum investment requirement in purchasing and properly constructing or installing Concession-related Improvements at, on, or within the Premises, the Automobile Parking Facilities and/or at any other location(s) at the Airport shall be not less than TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00).

b. Soft Costs Excluded. Any amounts spent by OPERATOR for construction, installation, planning, design, engineering, architectural, surveying, environmental, accounting, financial, legal, and other services not directly related to constructing and installing Improvements and Personal Property as Stated in the OPERATOR's plans may not be used or included to satisfy OPERATOR's required minimum investment obligation hereunder.

c. Submittal Deadlines. The OPERATOR shall submit to the STATE OPERATOR's Plans for Improvements and Personal Property required by the STATE hereunder within sixty (60) days of the STATE's request therefor.

3. Failure to Meet Obligations.

a. Shortfall. If OPERATOR fails to fully satisfy its minimum investment obligation during the term of the CONCESSION AGREEMENT, OPERATOR shall pay to the STATE, as additional rent, an amount equal to the shortfall, if any, between the actual amounts invested by OPERATOR in the Improvements and Personal Property and OPERATOR's minimum investment obligation hereunder.

b. Payment. The OPERATOR shall pay the STATE any such shortfall on or before thirty (30) days after the expiration or other termination of this CONCESSION AGREEMENT. The imposition of any such additional rent under this provision shall not preclude the STATE from seeking any other remedy available under this CONCESSION AGREEMENT, including, without limitation, assessing additional charges under Article VI.J. (Additional Charges) hereof and any other charges that may be assessed against OPERATOR under Article XXI. (Termination by the STATE) hereof.

c. Completion Rights. The STATE shall have the right, but not the obligation, to use such additional rent paid by OPERATOR to the STATE, or such other resources available to the STATE, to complete the construction or installation of Improvements to meet or exceed OPERATOR's minimum investment obligation hereunder. The STATE shall notify OPERATOR as to the processes and procedures to be used by the STATE to complete construction or installation of the Improvements and Personal Property. This right to complete is in addition to the rights of the STATE under Article VI.J. (Additional Charges) and Article XXI. (Termination by the STATE), hereof.

d. Construction Time Frame. The OPERATOR shall complete the construction and installation of the Improvements and Personal Property included in the OPERATOR's Plans at or within the Premises, the Automobile Parking Facilities or elsewhere at the Airports as approved by the STATE, within such time frame as is established by the STATE.

e. Failure to Complete. The STATE may, in its sole discretion, approve an extension of the completion date for the construction and installation of the Improvements and Personal Property included in the OPERATOR's Plans for reasonable delays deemed by the STATE to be outside OPERATOR's control. Any such extensions must be

granted in writing. If OPERATOR fails to completely construct and install the Improvements and Personal Property included in the OPERATOR's Plans by the deadlines set forth above, the STATE may, in its sole discretion, send a written notice of default under this CONCESSION AGREEMENT to OPERATOR.

f. STATE's Rights. If OPERATOR fails to cure this default as required under this CONCESSION AGREEMENT, the STATE may terminate this CONCESSION AGREEMENT or assess and collect from OPERATOR any and all charges related to defaults under this CONCESSION AGREEMENT, including the additional charges under Article VI.J. (Additional Charges) hereof, and such other charges as may be assessed under the provisions of Article XXI. (Termination by STATE) hereof, or resort to any other remedy available to the STATE or some combination of all remedies.

4. Delay of Completion. Should significant delays occur which prevent or hinder OPERATOR from completing construction or installation of the Improvements and Personal Property in a timely and reasonable manner, and such delay is not caused in whole or in part by OPERATOR, the STATE, in its discretion, may, in writing, waive or reduce the minimum investment requirement set forth in Article XI.D.2. (Minimum investment requirement) hereof. The STATE shall be the sole judge of whether a delay is caused in whole or in part by OPERATOR.

E. Title to Improvements and Personal Property Other than the PRCS.

1. Term of OPERATOR. Title to any and all of the Improvements and Personal Property constructed or installed by OPERATOR, at OPERATOR's sole cost and expense, shall remain in OPERATOR during the Term of this CONCESSION AGREEMENT.

2. Expiration of OPERATOR. At the expiration or sooner termination of this CONCESSION AGREEMENT, title to all or a portion of the Improvements constructed or installed by OPERATOR shall, at the sole option of STATE, vest in STATE. Title to OPERATOR's Personal Property shall remain with OPERATOR. The STATE shall notify OPERATOR within thirty (30) days after this CONCESSION AGREEMENT expires or terminates as to the portion of the Improvements (if any) that are to be removed by OPERATOR. OPERATOR shall, at its sole cost and expense, remove such Improvements to which the STATE opts not to assume title, in such a manner as to cause no damage to any portion of the Premises, the Automobile Parking Facilities, or elsewhere at the Airport; and in the event of any such damage, OPERATOR shall, at its sole cost and expense, repair the same to the STATE's satisfaction. If OPERATOR fails to repair said damage, the STATE may, after thirty (30) days notice, repair the same at the expense of OPERATOR. The OPERATOR shall immediately reimburse the STATE for any and all repair costs incurred by the STATE upon demand from the STATE, plus a twenty-five percent (25%) administrative overhead fee to the STATE. If OPERATOR fails to remove Personal Property designated by the STATE for removal by OPERATOR, or any part thereof, within thirty (30) days after the notification from the STATE,

the STATE may remove and store the same at the sole cost and expense of OPERATOR, plus a twenty-five percent (25%) administrative overhead fee to the STATE. Except as Stated elsewhere in this CONCESSION AGREEMENT, the OPERATOR shall not be entitled to any reimbursement for Personal Property or Improvements removed, stored, or to be retained by the STATE.

3. Termination of OPERATOR by STATE. If this CONCESSION AGREEMENT is terminated by the STATE as set forth in Article XXI. (Termination by the STATE) hereof, or as set forth in Article XXIII. (Withdrawal) hereof, the title to any and all Improvements constructed or installed by OPERATOR shall, at the sole option of the STATE, vest in the STATE. The STATE shall notify OPERATOR within thirty (30) days after this CONCESSION AGREEMENT has been terminated as to the portion of the Improvements that are to be removed by OPERATOR. If the STATE opts not to take title to all or a portion of such Improvements, OPERATOR shall, at its sole cost and expense, remove such Improvements to which STATE opts not to assume title, in such a manner as to cause no damage to any portion of the Premises, the Automobile Parking Facilities, or elsewhere at the Airport; and in the event of any such damage, OPERATOR shall, at its own cost and expense, repair the same to the STATE's satisfaction. If OPERATOR fails to repair said damage, the STATE may, after thirty (30) days notice, repair the same at the expense of OPERATOR. The OPERATOR shall immediately reimburse the STATE for any and all repair costs incurred by the STATE, plus a twenty-five percent (25%) administrative overhead fee to the STATE, upon demand from the STATE. If OPERATOR fails to remove the Improvements and Personal Property designated by the STATE for removal by OPERATOR within thirty (30) days after such notification, the STATE may remove and store the same at the sole cost and expense of OPERATOR, plus a twenty-five percent (25%) administrative overhead fee to the STATE. Except as otherwise Stated elsewhere in this CONCESSION AGREEMENT, the OPERATOR shall not be entitled to any reimbursement for Personal Property or Improvements, removed, stored, or to be retained by the STATE.

4. Termination of CONCESSION AGREEMENT by OPERATOR. If this CONCESSION AGREEMENT is terminated or partially terminated by OPERATOR prior to its expiration, pursuant to Article XXIV. (Termination by OPERATOR) hereof, the following shall apply:

a. Removal of Property. The title to all or a portion of the Improvements constructed or installed by OPERATOR shall, at the sole option of the STATE, vest in the STATE. Title to OPERATOR's Personal Property shall remain with OPERATOR. The STATE shall notify OPERATOR within thirty (30) days after this CONCESSION AGREEMENT has been terminated as to the portion of the Improvements (if any) that are to be removed by OPERATOR. OPERATOR shall, at its sole cost and expense, remove such Improvements to which the STATE opts not to assume title, in such a manner as to cause no damage to any portion of the Premises, the Automobile Parking Facilities, or elsewhere at the Airport; and in the event of any such damage, OPERATOR shall, at its own cost and expense, repair the same to the STATE's satisfaction. If OPERATOR fails to repair said damage, the

STATE may, after thirty (30) days notice, repair the same at the expense of OPERATOR. The OPERATOR shall immediately reimburse the STATE for any and all repair costs incurred by the STATE, plus a twenty-five percent (25%) administrative overhead fee to the STATE, upon demand from the STATE. If OPERATOR fails to remove the Improvements or other Personal Property designated by the STATE for removal by OPERATOR or any part thereof within thirty (30) days after the notification from the STATE, the STATE may remove and store the same at the sole cost and expense of OPERATOR, plus a twenty-five percent (25%) administrative overhead fee to the STATE. Except as otherwise Stated elsewhere in this CONCESSION AGREEMENT, the OPERATOR shall not be entitled to any reimbursement for Personal Property or Improvements, removed, stored, or to be retained by the STATE.

F. Construction Program.

1. Overall Construction Program. For each Improvement, OPERATOR shall submit the following for the STATE's prior written approval: (a) conceptual design; (b) design development; (c) construction documents; (d) plan check and review and verification of all required approvals; (e) bid; (f) construction start date; and (g) projected date of completion. The OPERATOR shall comply with all of the requirements contained in this Article XI.F. (Construction Program) hereof with respect to the construction and installation of the Improvements on any part of the Premises, the Automobile Parking Facilities, or elsewhere at the Airport, including any additional space that may be made available by the STATE to OPERATOR.

2. Construction Bonds. Prior to commencing the construction and installation of any Improvements, OPERATOR shall furnish to the STATE, at its sole cost and expense, a Payment Bond and a Construction Bond, as approved by the STATE, each in the principal amount equal to OPERATOR's minimum investment obligation for the construction and installation of Improvements.

3. STATE Approval of Improvements. Prior to any work being done, OPERATOR shall obtain the STATE's written approval of OPERATOR's Plans covering the portion of the Premises, the Automobile Parking Facilities, or other location(s) at the Airport, upon which such work is to be done, and shall obtain all governmental or other approvals, licenses, and permits required by law. The OPERATOR's Plans shall employ an optimum quality of materials and equipment, convenience, function, and design, and shall be compatible in such respects with those of the Airport and the Development Standards.

The OPERATOR shall not install any antenna or aerial wires, or radio or television equipment, or any other type of telecommunication or other equipment inside or outside of the Airport Terminals without the prior written approval of the STATE, and upon such terms and conditions as may be specified by the STATE in each and every instance.

4. Plans and Specifications. The OPERATOR shall, at its sole cost and expense, employ competent and properly licensed architects, engineers, and interior designers who will prepare OPERATOR's Plans, including, without limitation, architectural, interior, exterior, and engineering designs, detailed plans, specifications, and cost estimates for all Improvements to be installed. The OPERATOR shall, at its sole cost and expense and prior to the start of construction, obtain all necessary permits and governmental approvals. The OPERATOR shall submit five (5) sets of OPERATOR's Plans for review and approval by the STATE in accordance with the STATE's Tenant Improvement Guidelines (Attachment 2).

All of OPERATOR's Plans shall be first submitted to the STATE for written approval before OPERATOR awards or lets any CONCESSION AGREEMENT for construction of the Improvements in or on the Premises, the Automobile Parking Facilities or elsewhere at the Airport.

5. Adherence to OPERATOR's Plans. No substantial change, addition, or alteration shall be made to the approved OPERATOR's Plans without first obtaining the STATE's approval in writing. No Improvements other than as contemplated herein shall be constructed or installed in or upon the Premises, or elsewhere at the Airport, without the prior written consent of the STATE, and provided that any additional conditions relating thereto imposed by the STATE shall become conditions hereof as if they had been originally stated in this CONCESSION AGREEMENT.

6. Future Work. After installation and completion of the Improvements, as approved by the STATE, OPERATOR shall not make any structural alterations (including, without limitation, ceilings, walls, and floors) to any portion of the Premises, the Automobile Parking Facilities, or elsewhere at the Airport without first obtaining the STATE's written consent.

7. Governmental Approvals. The OPERATOR, at its sole cost and expense, shall also procure all governmental approvals and permits necessary for the installation and construction of Improvements and Personal Property at or upon the Premises, and the Automobile Parking Facilities, or elsewhere at the Airport as approved by the STATE.

8. Submittals Required Upon Completion. Upon completion of the construction and installation of the Improvements, OPERATOR shall, within thirty (30) days thereafter, furnish the STATE, at no cost or expense to the STATE:

a. Architect's Certificate. A certificate from the architect of record identified in OPERATOR's Plans certifying that the Improvements have been constructed and installed in accordance with the approved OPERATOR's Plans and in strict compliance with all laws, rules, ordinances, regulations, and orders;

b. As-Built Drawings. Two complete sets of as-built drawings containing a separate stamp from OPERATOR's licensed architect or engineer after the completion date of construction, or accompanied by an attestation from both OPERATOR and either OPERATOR's architect or engineer that such submitted drawings constitute true and accurate representations of the as-built condition of the Improvements, and one complete set of as-built drawings in computer aided design (CAD) format that complies with the STATE's current CAD standards. These drawings must include any applicable governmental approval or permit numbers for the Improvements constructed or installed by OPERATOR on or in the Premises, the Automobile Parking Facilities, or elsewhere at the Airport, and the location and details of installation of all equipment, utility lines, and heating, ventilating, and air-conditioning ducts and related matters. The OPERATOR shall keep said drawings current by updating the same to reflect thereon any changes or modifications which may be made in or to the Premises, the Automobile Parking Facilities, or elsewhere at the Airport in the order in which such changes or modifications are made; and

c. Field Changes, Updates, and Revisions. A record of the in-place costs, and, if requested by the STATE, copies of receipts, and invoices for all materials, construction, and installation costs incurred by OPERATOR which OPERATOR records as capital expenditures as part of the Improvements in or on the Premises, the Automobile Parking Facilities, or elsewhere at the Airport.

ARTICLE XII. SIGNS

A. STATE's Approval. The OPERATOR shall not erect, construct, or place any signs or displays upon any portion of the Airport unless otherwise first approved in writing by the STATE. The STATE shall use reasonable efforts to review OPERATOR's sign submittals and advise OPERATOR of its comments within thirty (30) days of receipt of such submittals.

1. OPERATOR's Cost. The OPERATOR, at its sole cost and expense, shall have the right to affix, install, or place and maintain at, in, or upon the Premises informational signs: (1) displaying OPERATOR's name and corporate logo; and (2) representing OPERATOR's parking business.

2. Conformity. The signs affixed, installed, or placed by OPERATOR at, in, or upon its Premises shall be substantially uniform in size, type, and placement with those of other businesses and lessees at the Airport. The number, general type, size, design, and placement of such signs shall conform to the STATE's Signage and Graphics Manual and, where applicable, the Land Use Ordinance of the County, and shall further be subject to the prior written approval of the STATE.

3. Submit Drawings. OPERATOR shall submit to the STATE, for the STATE's prior review and approval, colored drawings, sketches, design dimensions, lettering and lighting, if any, showing the type and characters of each proposed sign. Any conditions

(including a requirement that such sign or display be multilingual), restrictions, or limitations imposed by the STATE as part of the STATE's written approval, shall become conditions on the use of such signs and displays as if specifically set forth at length herein.

4. OPERATOR's Name Only. Signs affixed, installed, or placed at, in, or upon the Premises, or signs affixed on OPERATOR's motor vehicles owned or leased by OPERATOR and operating on the Airport may not display the name of any contractor or agent of OPERATOR, or any other parking service, or similar service in concert with or connected to OPERATOR.

B. Removal of Signs. Upon the expiration or the sooner termination of this CONCESSION AGREEMENT, OPERATOR, as required by the STATE, shall: (1) remove, obliterate, or paint-out any and all signs, posters, and similar devices affixed, installed, or placed by OPERATOR at, in, or upon the Premises; and (2) restore all walls, or other surface areas which may have been affected by any previous signage installation, all to the satisfaction of the STATE. In the event of the failure on the part of OPERATOR to so remove, obliterate, or paint-out each and every sign, poster, or similar device in a manner satisfactory to the STATE after being so requested by the STATE, the STATE may perform such work, and OPERATOR shall, upon demand, pay or reimburse the STATE for all costs and expenses for such removal work plus a twenty-five percent (25%) administrative overhead fee.

Nothing contained in this Article XII. (Signs) shall limit nor be construed to limit the effect of the covenants and provisions of Article XV. (Surrender of Premises and Use of the Automobile Parking Facilities) hereof.

ARTICLE XIII. INGRESS AND EGRESS

A. Reasonable Access. The OPERATOR, and OPERATOR's officers, employees, agents, and Guests, in common with others, shall have the nonexclusive right of ingress to and egress from the Premises, the Automobile Parking Facilities, and such other portions of the Airport area to or from which such persons shall reasonably require ingress or egress, in such manner, upon such terms, and at such locations as the STATE may from time to time designate; provided, however, that the aforementioned right of ingress and egress, as it applies to the suppliers of any flammable fuel or other such dangerous products or materials, shall be subject to the prior written permission of the STATE.

B. Subject to Rules. The privilege of ingress and egress at the Airport shall be subject to the rules and regulations of the STATE now in effect or which may hereafter be promulgated, adopted, or amended for the safe and efficient operation of the Airport.

C. Right to Alter Access. The STATE may, at any time, temporarily or permanently, close, consent to close, or request the closing of, any roadway and any other area at the Airport, presently or hereafter used as such, so long as a reasonable alternative means of ingress and egress remains available to OPERATOR.

D. Right to Change Pedestrian Traffic Control.

1. STATE's Control. The STATE may, at any time, temporarily or permanently, close, change, or alter pedestrian traffic routing through any part or parts of the Airport and its terminal building areas. Such adjustments or changes may directly or indirectly affect the amount and flow of potential customer traffic. However, by entering into this CONCESSION AGREEMENT, OPERATOR recognizes the STATE's rights and responsibilities to provide convenient and efficient public access and thoroughfare, and OPERATOR, therefore acknowledges the STATE's right to adjust, amend, alter, or otherwise revise pedestrian traffic patterns in the best interest of the operation of the Airport, as determined by the STATE, in its sole discretion, or as may be required by applicable federal regulations.

2. OPERATOR's Release. The OPERATOR hereby releases and discharges the STATE, and the STATE's successors and assigns, of and from any and all claims, demands, causes of action, liabilities, losses, damages, costs and expenses, which OPERATOR may now, or at any time hereafter, have against the STATE and the STATE's successors and assigns, arising or alleged to arise out of the closing of any street, roadway, sidewalk, walkway, or other access area, whether within or outside of the Airport, or any closure, change, alteration, adjustment, amendment or revision in any pedestrian traffic routing through any part of the Airport.

3. No Relief. If the STATE is required or elects to impose access restrictions against the general public in the interest of establishing or maintaining safety and security, and in so doing significantly decreases the number and amount of potential customers and patrons to the Automobile Parking Facilities, OPERATOR, by virtue of such changed condition, shall not be entitled to any rebate or relief from any or all Concession Fees or other payments to the STATE. The OPERATOR shall have no claim for any rebate or adjustment to the Concession Fees owed to the STATE for any change which may arise as a result of the STATE's revision or adjustments to pedestrian and vehicular routes on the Airport except as specifically provided for in this CONCESSION AGREEMENT.

ARTICLE XIV. LIABILITY AND INDEMNITY

A. Assumption of Liability. The use of the Airport, the Automobile Parking Facilities, and the Premises by the OPERATOR and its officers, employees, agents, servants, contractors, sub-contractors, suppliers, patrons, invitees, and other visitors (hereafter collectively the "OPERATOR's Agents") shall be at the sole risk of the OPERATOR, and the OPERATOR shall be assume full liability for all of the OPERATOR's Agents.

B. Indemnity. The STATE shall not be liable for and the OPERATOR shall, to the extent permitted by law, protect, defend with counsel acceptable to the STATE, indemnify, and keep and hold harmless the STATE, and its directors, officers, elected officials, boards (including the Land Board), and employees, and their respective successors and assigns (hereafter collectively the “Other Indemnities”), from and against any and all claims, demands, suits, actions, causes of action, judgments, liabilities, losses, damages, costs and expenses (including, without limitation, costs of suit and fees directly related thereto and reasonable attorneys' fees), fines or penalties or any other liability, arising from any actual or alleged injury to or death of persons, including but not limited to actual or alleged damage to or destruction of property, including but not limited to property of the OPERATOR’s Premises, operators, products, or completed operations, and the use or occupancy of the Premises or any other portion of the Airport. This provision shall not be construed to be a limitation of any other assumption of liability or indemnification agreement by the OPERATOR which may be contained anywhere else in this or any other document.

C. Contractors and Subcontractors. The OPERATOR shall require that agreements with its Contractors and Subcontractors of any tier incorporate a provision comparable to Article XIV.A. (Assumption of Liability), pursuant to which it’s Contractors and Subcontractors will assume liability and indemnify the OPERATOR, the OPERATOR’s Agents, the STATE, and the Other Indemnities.

ARTICLE XV. SURRENDER OF PREMISES AND USE OF THE AUTOMOBILE PARKING FACILITIES

A. Generally. OPERATOR shall promptly and peaceably surrender to the STATE possession of the Premises and use of the Automobile Parking Facilities, or a portion thereof, and Improvements thereon, as applicable, on the date of cessation of this CONCESSION AGREEMENT, whether such cessation be by termination, expiration, or otherwise, quietly and in good order and condition as that which existed at the Commencement Date of this CONCESSION AGREEMENT, or at the time-of-installation of the Improvements, reasonable wear and tear arising from use of the Premises and the Automobile Parking Facilities, or the applicable portion thereof, and damage resulting from causes over which OPERATOR had no control, excepted.

B. Free of Trash. The Premises and the Automobile Parking Facilities shall be free of trash, rubbish, debris, junk, inoperable equipment, and abandoned Personal Property. All gates, windows, doors and locks shall be properly secured, and all keys of every type to the Premises, the Automobile Parking Facilities, and the Improvements thereon shall be turned in to the STATE upon surrender of the Premises and the Automobile Parking Facilities.

C. Environmental Compliance. The OPERATOR shall observe, comply with, and completely satisfy all of the environmental/Hazardous Substance requirements prescribed and set forth in Article XVI.C. (Environmental Matters) hereof, prior to returning the Premises and the Automobile Parking Facilities to the control and jurisdiction of the STATE, or to a succeeding OPERATOR or other occupant.

D. Transition. In the event that OPERATOR is not the successful recipient of a successor CONCESSION AGREEMENT beyond the term prescribed and set forth by this CONCESSION AGREEMENT, OPERATOR shall assist in the peaceful and smooth transition and occupancy by the succeeding occupant. In order to assist in and accomplish a peaceful and smooth transition to the succeeding occupant, OPERATOR shall, upon receipt of written notice from the STATE, allow entry into and upon the Premises and the Automobile Parking Facilities by the succeeding occupant during all reasonable hours and times prescribed by the STATE. In the event of dispute or disagreement, the STATE shall be deemed the sole arbiter for resolution, and OPERATOR agrees to abide by any decision rendered by the STATE. The OPERATOR shall not remove, destroy, or otherwise render unusable, any item, article, fixture, structure, building, improvement, or portion of the Premises or the Automobile Parking Facilities deemed by this CONCESSION AGREEMENT to be a part of the fixed Improvements. If OPERATOR fails to properly perform its obligations, or any part thereof, as described in this Article XV. (Surrender of Premises and Use of the Automobile Parking Facilities), such failure shall be a violation of the foregoing requirement, and OPERATOR shall be responsible and liable for replacement or remedy, including payment to the STATE, upon demand from the STATE, of all monies deemed necessary by the STATE to correct, remedy, and cure OPERATOR's failure, and/or for repairing or replacing any item, article, fixture, improvement, or portion of the Premises and the Automobile Parking Facilities damaged, removed, or rendered unusable by OPERATOR.

ARTICLE XVI. COMPLIANCE WITH LAWS

A. Generally. The OPERATOR shall at all times during and throughout the term of this CONCESSION AGREEMENT, and with respect to all phases of its performance under this CONCESSION AGREEMENT, fully and completely observe, comply with and satisfy all applicable laws, statutes, codes, ordinances, orders, rules and regulations of all governmental authorities, including, without limitation, the U.S., the State of Hawai'i and the County, and any political subdivision, or agency, authority, or commission thereof, which may have jurisdiction to pass laws, statutes, codes, or ordinances, or make and enforce orders, rules, and regulations with respect to: (1) the Premises, the Automobile Parking Facilities and the Airport; (2) all phases of OPERATOR's conduct of its operations; (3) OPERATOR's maintenance and repair of the Premises and the Automobile Parking Facilities; and (4) OPERATOR's performance under this CONCESSION AGREEMENT.

The OPERATOR shall also: (1) obtain and keep current all licenses and permits required by any governmental authority (whether federal, State of Hawai‘i, municipal, or County) for the conduct of OPERATOR’s operations on the Premises, the Automobile Parking Facilities, and the Airport; and (2) promptly pay, when due, any and all required Concession Fees, and other fees and charges.

Notwithstanding the foregoing covenants, provisions, and requirements, OPERATOR shall have the right, in its own name, to contest, in good faith, the validity or applicability of any law, statute, code, ordinance, order, decree, rule, or regulation of any governmental body or agency pertaining to the Premises, the Automobile Parking Facilities, and OPERATOR’s conduct of its operations thereon. The fact that OPERATOR may, in connection with such contest, refrain from complying with such law, statute, code, ordinance, order, decree, rule, or regulation shall not affect in any way OPERATOR’s obligation to: (1) refrain from subjecting any part or portion of the Automobile Parking Facilities or the Premises to forfeiture or loss; and (2) pay the required Concession Fee and other fees and charges prescribed and set forth in Article VI. (Payment and Reporting Requirements) hereof.

B. Compliance with Americans with Disabilities Act.

1. OPERATOR’s Warranty. The OPERATOR agrees that it shall conduct its operations, and occupy or use the Premises and the Automobile Parking Facilities in accordance with: (a) the ADA, including, without limitation, modifying OPERATOR’s policies, practices, and procedures, and providing auxiliary aids and services to disabled persons; and (b) the ADAAG.

2. Accessible Services. The OPERATOR acknowledges that, pursuant to the ADA, programs, services, and other activities provided by a public entity, whether directly or through a contractor, must be accessible to the disabled public. The OPERATOR shall provide the services and conduct its operations as specified in this CONCESSION AGREEMENT in a manner that complies with the ADA, and any and all other applicable federal, State of Hawai‘i, and local disability rights legislation. The OPERATOR agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this CONCESSION AGREEMENT, and OPERATOR further agrees that any violation of this prohibition on the part of OPERATOR, and OPERATOR’s officers, employees, agents, Guests, successors, and/or assigns shall constitute a material breach of this CONCESSION AGREEMENT.

3. ADA Audit. The OPERATOR shall conduct and complete, at OPERATOR’s sole cost and expense, an audit as required under the ADA, identifying and describing the architectural barriers to disabled access at the Premises and the Automobile Parking Facilities, which must or should be removed, which audit shall be subject to the STATE’s review and approval. The OPERATOR agrees to remove, at OPERATOR’s sole cost and expense, all such barriers identified and described in the audit approved by the STATE.

4. OPERATOR's Alterations. Within ninety (90) days of the Commencement Date, OPERATOR shall have the responsibility to sign, paint, and maintain a parking stall outside of their office area(s), and to provide an accessible ramp(s) and communication system, to facilitate use by the disabled. With respect to all work required to be performed by OPERATOR in preparing the Premises and the Automobile Parking Facilities for OPERATOR's occupancy and use, including, without limitation, the construction, installation, renovation, and/or refurbishment of any and all Improvements at, in, on, over, or under the Premises and the Automobile Parking Facilities, OPERATOR agrees to complete such work in full compliance with the ADA and ADAAG. Upon the STATE's request, OPERATOR shall provide the STATE with evidence reasonably satisfactory to the STATE that all such work by OPERATOR was completed in compliance with the ADA and ADAAG. The OPERATOR further agrees that any and all future alterations, renovations, and/or Improvements made by OPERATOR to the Premises and the Automobile Parking Facilities shall comply with the ADA and ADAAG.

5. Notice. The STATE and OPERATOR agree to promptly (not to exceed three [3] consecutive calendar days) give written notice to the other of any and all notices which the STATE or OPERATOR receives alleging ADA violations.

6. OPERATOR's Indemnification. The OPERATOR shall, to the extent permitted by law, protect, defend with counsel acceptable to the STATE, indemnify and keep and hold harmless STATE and the other Indemnities from and against any and all claims, demands, suits, actions, causes of action, judgments, liabilities, losses, damages, costs and expenses, (including without limitation, cost of suits and fees related thereto and reasonable attorney's fees), fines or penalties, or any other liability, arising from the OPERATOR's obligations with respect to the ADA. This provision shall not be construed to be a limitation of any other assumption of liability or indemnification OPERATOR which may be contained anywhere else in this or any other document.

C. Environmental Matters.

1. Baseline and Concluding Environmental Assessments.

a. Baseline Environmental Assessment. The parties acknowledge that no BEA was performed for the Premises or the Automobile Parking Facilities prior to OPERATOR's use or occupancy of such areas under this CONCESSION AGREEMENT. Prior to such use or occupancy of the Premises (unless otherwise agreed in advance in writing by the STATE), OPERATOR shall conduct a BEA (including subsurface investigation) to determine the environmental condition and STATE of compliance with Environmental Laws of the Premises, the Automobile Parking Facilities, and all pre-existing Improvements thereon. The scope of the BEA will be determined in advance by the STATE, and must meet or exceed the requirements established by the STATE at the time the BEA is to be performed. The BEA shall be conducted at OPERATOR's expense according to procedures and by a qualified person or entity approved by STATE.

b. Concluding Environmental Assessment. Prior to the expiration or earlier termination of this CONCESSION AGREEMENT and before it vacates the use and occupancy of the Premises and the Automobile Parking Facilities (unless otherwise agreed in advance in writing by the STATE), OPERATOR shall conduct a CEA to determine the environmental condition and STATE of compliance with Environmental Laws of the Premises, the Automobile Parking Facilities, and all Improvements thereon. The scope of the CEA will be determined in advance by the STATE and must meet or exceed the requirements established by the STATE at the time the CEA is to be performed. The CEA shall be conducted at OPERATOR's expense according to procedures, and by a qualified person or entity, approved by the STATE. The STATE, at its option, may elect to conduct or participate in the CEA, either directly or through designated representatives or consultants. Unless otherwise agreed by the parties in writing at the time the scope of the CEA is decided, if the STATE, instead of OPERATOR conducts the CEA, the audit will be at OPERATOR's expense, which sum shall promptly be paid to the STATE; provided that if the STATE conducts a separate CEA in addition to OPERATOR's CEA, the STATE will bear the cost of its own audit.

If a BEA or any environmental or regulatory compliance audit or testing was performed for any portion of the Premises and the Automobile Parking Facilities prior to OPERATOR's occupancy or use thereof during the term of this CONCESSION AGREEMENT, the scope of the CEA shall include, at a minimum, testing for all substances tested for during any such BEA, audit(s), and prior testing, unless a different scope is mutually agreed to by the parties at the time the CEA protocol for the Premises and the Automobile Parking Facilities is determined. The final results of the CEA (including any reports, documents, or test results) shall be simultaneously provided to the STATE and OPERATOR. In addition, the STATE shall have access, upon reasonable notice and at reasonable times, to all information, raw data, opinions, and test results generated by the CEA, excluding legally privileged information or opinions.

As part of the CEA, OPERATOR shall provide to the STATE documentation, prepared by a STATE-approved person or entity, that: (1) the Premises and the Automobile Parking Facilities are: (a) free of Hazardous Substances, solid waste, and other contamination or, alternatively, that any such remaining materials or substances do not exceed minimum allowable levels established by Environmental Laws, and meet applicable standards approved or recommended by regulatory agencies with authority over any material aspect of the work or the substances in question; and (b) OPERATOR is in compliance with applicable Environmental Laws; and (2) the removal or remediation of any Hazardous Substances, solid waste, and/or contamination has been done in accordance with all applicable Environmental Laws and regulatory requirements. Documentation regarding remaining Hazardous Substances, solid waste, and other contamination shall specify, at a minimum, the name, level/amount, and extent of all such materials or substances located at, on, or under the Premises and the Automobile Parking Facilities at the time the CEA is conducted, and shall explain why such substances have not been removed. If (as is determined by the STATE or any governmental agency) any such substances or materials do or may pollute or contaminate the environment,

and/or may adversely affect the health, welfare, or safety of persons, whether located on the Premises, the Automobile Parking Facilities, or elsewhere, or may materially impair or interfere with the condition, use or enjoyment of the Premises, the Automobile Parking Facilities, or any other Airport property, then the STATE, at its sole discretion, may require that such documentation include an immediate remediation plan and/or long-term monitoring and surveillance plan approved by the DOH for any contamination identified, and an acknowledgement of responsibility and indemnification for any and all claims and damages associated with such contamination, including potential future claims and damages. Any such plan or response action shall meet or exceed the compliance action requirements of Article XVI.C. (Environmental Matters) hereof, and shall be submitted for review and approval by the STATE prior to implementation.

If the CEA confirms the presence (surface or subsurface) of substances in excess of the baseline quantities or levels established by any applicable BEA, and in excess of allowable levels established by Environmental Laws, or if other environmental compliance audits, studies, or investigations reveal contamination by Hazardous Substances, solid waste, or other substances, or demonstrates that remedial action is necessary or required (as determined by the STATE or any governmental agency) to protect the public health and safety, and/or the environment from actual or potential harm, or to bring any portion of the Premises and the Automobile Parking Facilities into compliance with then applicable Environmental Laws or any applicable federal, State of Hawai'i, or local law, regulation, code, standard, or order, or to restore any material impairment of the value of any portion of the Premises, the Automobile Parking Facilities, or other affected property, then OPERATOR agrees to immediately undertake and to promptly complete to the satisfaction of the STATE and the DOH, in accordance with all applicable laws and the provisions of Article XVI.C. (Environmental Matters) hereof, and at OPERATOR's sole expense, any necessary or required clean-up, removal, or remedial action. For purposes of Article XVI.C.1.b. (Concluding Environmental Assessment) hereof, it shall be presumed that any condition requiring remedial action resulted from the operations of OPERATOR, its agents, employees, sublessees, contractors, or other third parties acting under OPERATOR's direction or control.

2. OPERATOR's Activities and Duties.

a. Compliance with Environmental Laws. The OPERATOR agrees, at its sole cost and expense, to comply with all Environmental Laws applicable to its occupancy, activities, operations, and use of the Automobile Parking Facilities and the Premises. This duty shall survive the expiration or termination of this CONCESSION AGREEMENT, which means that OPERATOR's duty to comply with Environmental Laws shall include all Environmental Laws that may apply, or be determined to apply, to the occupancy and activities of OPERATOR on the Automobile Parking Facilities and the Premises both during and after the expiration or termination of this CONCESSION AGREEMENT. Failure of OPERATOR to comply with any and all Environmental Laws shall constitute a breach of this CONCESSION AGREEMENT for which the STATE may, in its sole discretion, terminate this CONCESSION AGREEMENT, exercise its remedies under this CONCESSION AGREEMENT, including the remediation of

any condition on behalf of OPERATOR, at OPERATOR's sole cost and expense, under Article XVI.C.2.e. (Environmental Investigations and Assessments) hereof, and Article XVI.C.2.g. (Restoration and Surrender of Automobile Parking Facilities and the Premises) hereof, and take any other action at law or in equity it deems appropriate.

b. Hazardous Substances. The OPERATOR shall not use, store, treat, dispose, discharge, release, generate, create, or otherwise handle any Hazardous Substance, or allow the same by any employee, agent, Guest, contractor, or any third person, on the Automobile Parking Facilities or the Premises without first obtaining the prior written consent of the STATE, which consent may be withheld by the STATE in its absolute discretion, and OPERATOR complying with all Environmental Laws, including giving all required notices, reporting to, and obtaining permits from all appropriate authorities, and complying with all provisions of this CONCESSION AGREEMENT.

c. Notice to STATE. The OPERATOR shall keep the STATE fully informed at all times regarding all matters related to any Environmental Laws affecting OPERATOR, the Automobile Parking Facilities or the Premises. This duty shall include, but not be limited to, providing the STATE with a current and complete list and accounting of all Hazardous Substances of every kind which are present on or about the Automobile Parking Facilities and the Premises, together with evidence that OPERATOR has in effect all required and appropriate permits, licenses, registrations, approvals, and other consents that may be required by any federal, State of Hawai'i, or County authority or Environmental Laws. The OPERATOR shall provide said list and accounting at the commencement of this CONCESSION AGREEMENT, and shall update said list and accounting whenever any Hazardous Substance not accounted for by OPERATOR is present on or about the Automobile Parking Facilities or the Premises by any means. The OPERATOR shall also provide immediate written notice of any investigation, enforcement action, compliance order, or order of any type, or any other legal action, initiated, issued, or any indication of an intent to do so, communicated in any way to OPERATOR by any federal, State of Hawai'i, or County authority or individual that relates in any way to any Environmental Law or any Hazardous Substance. This written notice to the STATE shall include copies of all written communications from any federal, State of Hawai'i or County agency or authority, including copies of all correspondence, claims, complaints, warnings, reports, technical data, and any other documents received or obtained by OPERATOR. At least thirty (30) days prior to termination of this CONCESSION AGREEMENT, or termination of the use or possession of the Automobile Parking Facilities and the Premises by OPERATOR, whichever occurs first, OPERATOR shall provide the STATE with written evidence satisfactory to the STATE that OPERATOR has fully complied with all Environmental Laws, including any orders issued by any governmental authority that relate to the Automobile Parking Facilities or the Premises, and the results of all assessments and investigations that may be ordered by the STATE pursuant to Article XVI.C.2.e. (Environmental Investigations and Assessments) hereof, or by any governmental agency responsible for enforcement of the Environmental Laws.

d. Disposal/Removal. Except for the possession and handling of Hazardous Substances for which OPERATOR is exempt, and those certain Hazardous Substances for which OPERATOR has obtained all currently required permits to store or use Hazardous Substances on or about the Automobile Parking Facilities or the Premises, including written permission from the STATE, OPERATOR shall cause any Hazardous Substances to be removed and transported from the Automobile Parking Facilities and the Premises for disposal solely by duly licensed Hazardous Substances transporters, to duly licensed facilities for final disposal, as required by any applicable Environmental Laws. The OPERATOR shall provide the STATE with copies of documentary proof, including manifests, receipts, or bills of lading, which reflect that, said Hazardous Substances have been properly removed and disposed of in accordance with all Environmental Laws.

e. Environmental Investigations and Assessments. The OPERATOR, at its sole cost and expense, shall cause to be conducted such investigations and assessments of the Premises and the Automobile Parking Facilities to determine the presence of any Hazardous Substance at, in, on, under, or about the Premises and the Automobile Parking Facilities as may be directed from time to time by the STATE, in its sole discretion, or by any federal, State of Hawai'i, or County agency or authority. The extent and number of any environmental investigations and assessments, including testing and analyses incident thereto, shall be determined by the STATE or the federal, State of Hawai'i, or County agency or authority directing said investigations and assessments to be conducted. The OPERATOR shall retain a competent, certified, and qualified person or entity that is satisfactory to the STATE to conduct said investigations, assessments, testing, and analyses. The OPERATOR shall cause said person or entity conducting those assessments, investigations, tests, and analyses to provide the STATE and other governmental authorities with the written results of all assessments, investigations, tests, and analyses. Pursuant to this CONCESSION AGREEMENT, OPERATOR may be required to have environmental assessments conducted as aforesaid prior to, or at the time of OPERATOR taking possession of the Premises and the Automobile Parking Facilities under this CONCESSION AGREEMENT, and prior to, or at the time of the termination of this CONCESSION AGREEMENT in order to determine the condition of the Premises and the Automobile Parking Facilities.

f. Remediation. In the event that any Hazardous Substance is used, stored, treated, disposed on the Automobile Parking Facilities or the Premises, handled, discharged, released, or determined to be present on or about the Automobile Parking Facilities or the Premises as a result of OPERATOR's activities or operations, OPERATOR shall, at its sole expense and cost, remediate the Automobile Parking Facilities and the Premises of any such Hazardous Substance, and dispose of/remove said Hazardous Substance in accordance with Article XVI.C.2.d. (Disposal/Removal). This duty to remediate includes strict compliance with all Environmental Laws, as well as any directives by the STATE to OPERATOR to remediate Hazardous Substances. This duty to remediate shall include replacement of any materials, such as soils, so removed with material that is satisfactory to the STATE and other governmental authorities, as the case may be.

If OPERATOR has conducted a BEA of the Premises and the Automobile Parking Facilities, which includes soil and ground water analyses for Hazardous Substances, at the Commencement Date of this CONCESSION AGREEMENT or OPERATOR's use and occupancy of the Premises and the Automobile Parking Facilities, whichever shall have first occurred, and the STATE reviewed and approved said BEA, OPERATOR shall be responsible for remediation and restoration of the Premises and the Automobile Parking Facilities to the extent it is necessary to remediate and restore the Premises and the Automobile Parking Facilities to the condition of the Premises and the Automobile Parking Facilities and levels of any contamination or Hazardous Substances that existed on the Premises and the Automobile Parking Facilities at the commencement of OPERATOR's occupancy or term of this CONCESSION AGREEMENT, whichever shall have first occurred, as shown by said BEA.

g. Restoration and Surrender of Automobile Parking Facilities and Premises. The OPERATOR hereby agrees to timely surrender of the Automobile Parking Facilities and the Premises upon termination of this CONCESSION AGREEMENT and, prior thereto, shall restore the Premises and the Automobile Parking Facilities, including the soil, water, ground water, and structures at, in, on, under, or about the Premises and the Automobile Parking Facilities to the same condition as the Premises and the Automobile Parking Facilities existed at the commencement of this CONCESSION AGREEMENT, as determined by the STATE, reasonable wear and tear excepted. Said surrender and restoration shall be at the sole cost and expense of OPERATOR. This duty to restore the Premises and the Automobile Parking Facilities includes remediation as described in Article XVI.C.2.f. (Remediation) hereof. This duty also includes, but is not limited to, the removal of all pipes, pipelines, tanks, and containers of any kind that OPERATOR has installed or erected on the Automobile Parking Facilities and the Premises. In the event OPERATOR does not timely restore the Premises and the Automobile Parking Facilities to a satisfactory condition, as determined by the STATE, OPERATOR understands and agrees that the STATE may exercise its rights under Article XVI.C.2.i. (STATE's Right to Act) hereof, and until such time as the restoration is complete to the satisfaction of the STATE, OPERATOR shall be liable for the Concession Fee and other payments as Stated in Article VI (Payment and Reporting Requirements) hereof in the same manner and amount as if this CONCESSION AGREEMENT had continued in effect during the period of restoration, as well as any other damages and costs that the STATE may have incurred, including penalties, fines, and assessments related to the Premises and the Automobile Parking Facilities which may be imposed on the STATE or OPERATOR by any governmental authority.

h. Tanks, Pipelines Inspections and Repairs. Unless the STATE specifically agrees in writing prior to their installation, all pipes, pipelines, tanks, containers, or conduits of any kind (hereinafter referred to as a "Facility"), that may at any time have contained, or may have been intended to contain, Hazardous Substances of any type that OPERATOR intends to install on the Automobile Parking Facilities or the Premises must be installed above ground level in such manner that allows for periodic inspection and maintenance of the Facility for purposes of determining the existence of leaks and discharges from, and deterioration of any kind to, and that allows repair of the Facility. The OPERATOR shall provide the STATE with

prior notice of OPERATOR's intent to install a Facility to allow the STATE ample time, as determined by the STATE, to inspect the plans for installation of such a Facility. Said Facility shall not be installed unless and until the Facility, and its manner of installation, is approved by the STATE and is in full compliance with the SPCC rules. Within ninety (90) calendar days of the Commencement Date of this CONCESSION AGREEMENT, or commencement of possession of the Premises and the Automobile Parking Facilities by OPERATOR, whichever first occurs, OPERATOR shall submit a SPCC Plan to control and remedy any spill, discharge, or leak from any Facility on the Automobile Parking Facilities or the Premises during the term of this CONCESSION AGREEMENT, which plan shall include the cleanup of all Hazardous Substances that may be spilled, discharged, or leaked, to the satisfaction of the STATE. The OPERATOR shall also submit to the STATE a plan for OPERATOR to conduct, or cause to be conducted, regular inspections of all Facilities on or about the Automobile Parking Facilities and the Premises for the purpose of preventing any leak, discharge, or spill from said Facilities. Said contingency plan and inspection plan are subject to the approval of the STATE. The OPERATOR shall timely obtain and maintain in effect all required permits, licenses, and approvals for such Facilities from all applicable governmental authorities. Failure to submit said plans, to comply with said plans, or obtain and maintain any required permits, licenses, or approvals constitutes a breach of this CONCESSION AGREEMENT, giving the STATE the right to immediately terminate this CONCESSION AGREEMENT, take possession of the Premises and the Automobile Parking Facilities, and pursue any other remedy available to the STATE.

i. STATE's Right to Act. In the event OPERATOR fails, for any reason, to comply with any of its duties under this CONCESSION AGREEMENT or under any Environmental Laws within the time set for doing so, or within a reasonable time as determined by the STATE, the STATE shall have the right, but not the obligation, in its sole discretion, to perform those duties, or cause them to be performed. The OPERATOR hereby grants access to the Automobile Parking Facilities and the Premises at all hours to the STATE, its agents, and anyone designated by the STATE to perform said acts and duties. Any cost, expense, or liability of any type that may be incurred by the STATE in performing said acts or duties shall be the sole responsibility of OPERATOR, and OPERATOR hereby agrees to pay those costs and expenses plus a fifteen percent (15%) administrative overhead fee to the STATE, and indemnify the STATE, its officers, employees, agents, and representatives from any liability incurred. This obligation shall extend to any costs and expenses incident to enforcement of the STATE's right to act, including litigation costs, attorneys' fees, and the costs and fees for collection of said cost, expense, or liability.

j. Release and Indemnity. The OPERATOR hereby agrees to release and, to the extent permitted by law, protect, defend with counsel acceptable to STATE, indemnify, and keep and hold harmless STATE and the Other Indemnities, from liability of any kind, including, but not limited to, all claims, demands, suits, actions, causes of action, judgments or assessments, losses, damages, costs and expenses (including, without limitation, costs of suits and fees related thereto and reasonable attorney's fees), fines or penalties, or any other liability that may be imposed or obtained by any person, agency, or governmental

authority, by reason of any Hazardous Substance, that may be present by whatever means at, in, on, under, or emanating from the Automobile Parking Facilities or the Premises, or that arises out of or in connection with, or by reason of, any actual or alleged occurrence involving any Hazardous Substance that may be connected to, or related in any way with, the Automobile Parking Facilities, the Premises, the STATE's ownership of the Premises, or this CONCESSION AGREEMENT. The STATE and OPERATOR understand and agree that the intent of this Release and Indemnity includes, but is not limited by those agreements authorized by 42 U.S.C. Section 9607 – LIABILITY, as amended, and any successor section thereof. This provision shall not be construed to be a limitation of any other assumption of liability or indemnification agreement OPERATOR which may be contained anywhere else in this or any other document.

k. Surety/Performance Bond for Cleanup/Restoration. At its sole cost and expense, OPERATOR shall provide the STATE with a Surety/Performance Bond, or other security satisfactory to the STATE, in the amount of TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) to assure removal of any structures, including pipelines, tanks, conduits, and any Hazardous Substance installed, caused or permitted by the OPERATOR. Said Bond or security shall also provide for payment of the costs of remediation and restoration of the Automobile Parking Facilities and the Premises during the term of, or at the conclusion of, this CONCESSION AGREEMENT to the satisfaction of the STATE, and for compliance with all Environmental Laws. The OPERATOR shall provide the STATE with a copy of said Bond or security. Said Bond or other security shall not be revocable or subject to alteration without sixty (60) days' prior written notice to the STATE.

D. Spill Prevention, Control and Countermeasure. Pursuant to: (1) the Federal Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. Section 1251, et seq.; and (2) 40 CFR Part 112, often referred to as the SPCC Rules, OPERATOR shall:

1. OPERATOR's Compliance with SPCC Rules. Throughout the entire term of this CONCESSION AGREEMENT, comply with and completely satisfy the EPA's SPCC Rules now or hereafter adopted, amended, published, and/or promulgated pursuant thereto.

2. OPERATOR's Responsibility to Prepare and Implement SPCC Plan. Prior to the Commencement Date of this CONCESSION AGREEMENT and throughout the entire term of this CONCESSION AGREEMENT, prepare and implement, and amend, if necessary, OPERATOR's SPCC Plan.

3. Storage of Oil and Other Petroleum Products. Notwithstanding the applicability of the SPCC Rules, if OPERATOR stores oil, and/or other petroleum products, and/or by-products in any quantity of less than one-thousand three-hundred and twenty (1,320) gallons, but has in or on the Premises or the Automobile Parking Facilities at least one (1) or more storage container(s) and/or tank(s) equal to or larger than fifty-five (55)-gallon capacity, then OPERATOR is required under this CONCESSION AGREEMENT to prepare and implement a written plan which conforms to the SPCC Plan requirements under the SPCC Rules and to comply with and completely satisfy at least the portion of the SPCC Rules dealing with

periodic testing of oil storage containers, providing secondary containment, training of oil handling personnel to prevent the discharge of oil, providing security around oil storage facilities, and all record keeping pertaining thereto.

E. National Pollutant Discharge Elimination System (NPDES). Pursuant to: (1) the Federal Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. Section 1251, et seq.; and (2) the requirements contained in the NPDES regulations found in HAR §11-55 and the appendices thereto, as amended, and enforced by the EPA and the DOH, OPERATOR shall, throughout the entire term of this CONCESSION AGREEMENT, comply with and completely satisfy all of the NPDES regulations governing general permits and consolidated permits, if applicable, now or hereafter adopted, amended, published, and/or promulgated pursuant thereto.

F. Airport Security. The OPERATOR shall comply with, and completely satisfy all of the security requirements for the Airport, and any and all applicable security access procedures, rules, and/or regulations prescribed by the STATE and/or the TSA.

1. Security Agreements. The OPERATOR shall enter into security agreements with the STATE that may be required by the TSA for Airport security purposes, and said agreements shall become part of this CONCESSION AGREEMENT, as well as the agreements, covenants, promises, provisions, requirements, terms, and conditions contained herein, although executed separately.

2. OPERATOR to Maintain Security. The OPERATOR shall also maintain security in such a manner that unauthorized persons shall not have access to any secure or restricted AOA through any part(s) or portion(s) of the Automobile Parking Facilities or the Premises. Agents, Guests, or any other party acting with the permission or consent of OPERATOR shall be under the control, supervision, or guidance of OPERATOR when entering any secure or restricted AOA. The OPERATOR shall enter into any separate supplemental agreement required by the STATE or the TSA that covers Airport security requirements to ensure the protection of the Airport.

3. Failure to Prevent Violations. The OPERATOR accepts liability and responsibility for: (a) OPERATOR's failure to observe, comply with, and/or completely satisfy any and all Airport security requirements and applicable security access procedures, rules, or regulations prescribed by the STATE and/or the TSA; (b) OPERATOR's failure to prohibit unauthorized persons and vehicles from entering the restricted AOA through any part(s) or portion(s) of the Automobile Parking Facilities or the Premises; and (c) any and all reimbursements to the STATE when the STATE has made direct payments to any citing authority of any fines or penalties for any and all Airport security violations by OPERATOR and OPERATOR's officers, employees, agents, and/or Guests. Failure on the part of OPERATOR to

observe, comply with, and completely satisfy this security requirement shall give the STATE cause to assess a penalty, and/or terminate this CONCESSION AGREEMENT pursuant to Article VI.J. (Additional Charges) and Article XXI. (Termination by the STATE), respectively, hereof.

G. Airport Fire. The OPERATOR shall observe, comply with, and completely satisfy all County, State of Hawai‘i, and federal fire codes, and shall be solely responsible for, and shall pay any fines or penalties levied for any and all fire code violations. The OPERATOR shall also, at its sole cost and expense, provide and install connections and hook-ups to the Airport alarm system, when the STATE establishes such a system. The STATE’s alarm system shall serve as a secondary fire alarm monitoring and indication system. The OPERATOR, and OPERATOR’s officers, employees, agents, representatives, and sublessees, are solely responsible for the primary notification and alarm to the appropriate Fire Department Station in case of fire on the Premises or the Automobile Parking Facilities.

ARTICLE XVII. RIGHTS-OF-ENTRY RESERVED

A. Inspection. The STATE, and the STATE’s officers, employees, agents, and any other person or persons permitted on the Premises and the Automobile Parking Facilities with the express permission or consent of the STATE, shall have the right, at all reasonable times, to enter upon the Premises, the Automobile Parking Facilities, or any part or portion thereof: (1) for the purpose of inspecting the same; (2) for observing the performance or nonperformance of OPERATOR in its obligations under this CONCESSION AGREEMENT; (3) to serve or post, or keep posted thereon, notices provided by any law or statute of the State of Hawai‘i, or any rule or regulation of the STATE, which the STATE deems necessary for the protection of the STATE, the Airport, and/or the Premises and the Automobile Parking Facilities; and/or (4) for the doing of any act or thing which the STATE may be obligated or have the right to do under this CONCESSION AGREEMENT or otherwise.

B. Maintain Systems. Without limiting the generality of the foregoing, the STATE, and the STATE’s officers, employees, agents, and any other person or persons permitted on the Premises and the Automobile Parking Facilities with the express permission or consent of the STATE, shall have the right, for their sole benefit, for the benefit of OPERATOR, and/or for the benefit of persons other than OPERATOR at the Airport, to: (1) maintain existing and future utility, mechanical, electrical, and other systems; (2) enter upon said Premises, the Automobile Parking Facilities, or any part or portion thereof, at all reasonable times, to make such repairs, replacements, additions, or alterations as may, in the opinion of the STATE, be necessary or desirable, and, from time to time, to construct or install at, upon, within, over, or under the Premises, the Automobile Parking Facilities, or any part or portion thereof, new systems or parts thereof; and/or (3) use the Premises, the Automobile Parking Facilities, or any part or portion thereof, for access to other parts of the Airport not otherwise conveniently accessible. In no event shall any such construction or installation work unreasonably disrupt or interfere with the operations of OPERATOR, and the STATE shall return the Premises and the Automobile

Parking Facilities to the same or similar condition as existed prior to the STATE's entry upon said Premises or the Automobile Parking Facilities.

C. No Obligation to Construct or Repair. Nothing in this Article XVII. (Rights-of-Entry Reserved) shall impose or shall be construed to impose upon the STATE any obligation to construct or maintain, or to make repairs, replacements, additions, or alterations to the Premises or the Automobile Parking Facilities, nor shall the STATE's entry upon the Premises, the Automobile Parking Facilities, or any part or portion thereof, create any liability for any failure to do so. The OPERATOR is and shall be in exclusive possession of the Premises and the Automobile Parking Facilities. The STATE, and the STATE's officers, employees, and agents shall not, in any event, be liable for: (1) any damage to the Premises, the Automobile Parking Facilities, or to the property of OPERATOR located thereupon; and/or (2) any injury or death to any person at, on, or within the Premises or the Automobile Parking Facilities, except as a result of or caused by the negligence of the STATE.

D. Showing the Premises. At any time, and from time to time, during ordinary business hours, the STATE, and the STATE's officers, employees, agents, and/or Guests, whether or not accompanied by prospective lessees, or by prospective occupiers or users of the Premises and the Automobile Parking Facilities, shall have the right to enter upon the Premises, the Automobile Parking Facilities, or any part or portion thereof, for the purpose of exhibiting and viewing all parts of the same, and OPERATOR shall grant and allow such inspection and viewing without undue conditions; provided, however, that the STATE, and the STATE's officers, employees, agents, and/or Guests do not unreasonably interfere with the conduct or operation of OPERATOR's Concession operations.

E. No Abatement. No abatement of the required rent or other fees payable to the STATE shall be claimed by or allowed to OPERATOR by reason of the exercise by the STATE of any or all rights contained in this Article XVII. (Rights-of-Entry Reserved); provided, however, that other than for emergency purposes, nothing contained in this Article XVII. (Rights-of-Entry Reserved) shall permit nor shall be construed to permit the STATE to exercise any right of access or entry for any of the purposes denoted in this Article XVII. (Rights-of-Entry Reserved), except at reasonable times and in such a manner as to not unreasonably interfere with, or hinder the occupancy, use, and enjoyment of, the Premises and the Automobile Parking Facilities by OPERATOR.

ARTICLE XVIII. UTILITIES

A. Utility Services.

1. Connection. The STATE shall, at its sole cost and expense, provide to the Premises and the Automobile Parking Facilities, the Premises, certain public utility services such as electricity, water, sewage, and telephone.

2. Submeters. In the event the STATE desires the installation of electric submeters for the Premises, the OPERATOR shall be responsible for the purchase and installation expense thereof.

3. Utility Costs. During and throughout the term of this CONCESSION AGREEMENT, OPERATOR shall be solely responsible for the payment of all costs related to providing electricity, potable water, sanitary sewage disposal, telephone, and other public utility services to the Premises, which utility service costs shall include, but not be limited to meter and utility service deposits, and any and all utility service fees and charges, regardless of whether or not such utility services are provided by the STATE or by utility service companies.

4. Service Points. If OPERATOR desires any changes to any utility point of supply provided by the STATE, the expense of making such changes or alterations shall be at OPERATOR's sole cost. When OPERATOR makes connections or reconnections to the service points or lines provided by the STATE, or makes service disconnections to cease service, OPERATOR shall provide the required advance request and notice to the STATE, and OPERATOR shall coordinate all of said action with the STATE.

B. Non-Liability for Interruption. No failure, delay or interruption in any utility service or services, whether such are supplied by the STATE or others, shall relieve or be construed to relieve the OPERATOR of any of its obligations hereunder, or shall be construed to be an eviction of the OPERATOR, or shall constitute grounds for any diminution or abatement of the fees and charges provided for herein, or grounds for any claim by the OPERATOR against the STATE for damages, consequential or otherwise, unless first approved, in writing, by the STATE. However, the STATE shall proceed as soon as possible to correct the cause of any such failure or interruption.

C. Damages by OPERATOR. In any event, where damages to any electricity, water, sewer, or telephone service line, or any other utility service line or utility service connection is caused by OPERATOR, and/or OPERATOR's officers, employees, agents, or Guests, OPERATOR shall, at its sole cost and expense, be responsible for the repair, restoration, and/or replacement of such utility service line or utility service connection. Nothing herein shall preclude OPERATOR from seeking recovery of the expenses it incurs under this provision from any Guest that caused the damage.

D. Waiver of Damages. The OPERATOR hereby expressly waives any and all claims for damages arising or resulting from any failure, delay, or interruption in any utility service or services (including, without limitation, electricity, gas, potable and non-potable water, plumbing, sanitary sewage disposal, telephone, telecommunications, heat, ventilation and air conditioning), or for the failure or interruption of any public or passenger conveniences. The OPERATOR's waiver herein shall extend to any failure, delay, or interruption to electric service caused by power spikes or surges, severe climatic or weather conditions, including, but not limited to, high winds, rainstorms, hurricanes, and other climatic or weather phenomena, and/or

other acts of nature, such as earthquakes and seismic waves (tsunami) affecting the Premises or the Automobile Parking Facilities.

E. Telecommunications Equipment.

1. STATE's Prior Approval. The OPERATOR and its telecommunications service provider(s) shall not, without the STATE's prior written approval, install telecommunication facilities (i.e., conduit, equipment, cabling) or make service connections in any areas not within the Automobile Parking Facilities or the Premises (such as common areas and other respective unoccupied areas of the Airport), or in currently designated or future primary or secondary minimum-points-of-entry. The OPERATOR shall be responsible for paying the STATE the cost for the use of such facilities, space, and/or areas at the Airport.

2. Telecommunication Services. Telecommunication services include the installation, operation and provisioning of telecommunications conduit, cabling, antennas, equipment, and service. Telecommunication service providers include cable and equipment installation contractors, system contractors, and any entity that provides telecommunication services, such as Hawaiian Telecom, AT&T, government entities, or other Airport tenants.

3. Plans. The OPERATOR shall submit to the STATE for the STATE's review and approval, plans, including documentation (i.e., plans, drawings, specifications, schedules, and cost estimates) of each telecommunication circuit, infrastructure, equipment, line, facility, or appurtenance proposed to be used, prior to construction, installation, and/or service provision. This documentation shall include, but not be limited to, specific routing detail, conduit types and sizes, access junction boxes, cable descriptions (type, quantity, size) per route segment, telecommunication rooms and closets used, termination block labeling, and cable pair assignments for each cable segment.

4. As-Builts. The OPERATOR shall submit to the STATE within thirty (30) days of the completion of construction or installation, as-built documentation of all systems, circuits, and infrastructure constructed or installed containing a separate stamp of OPERATOR's licensed contractor who completed the systems, circuits, and infrastructure work, accompanied by OPERATOR's attestation that said as-built documentation is true and accurate.

5. No Sale. The OPERATOR shall not allow the use of, and shall not sell, purchase, lease, sublet, or trade for telecommunication facilities or services to or from other Airport entities or tenants without the STATE's prior written approval.

6. No Interference. Telecommunication facilities and services established and used by OPERATOR shall not interfere with the STATE's telecommunication facilities and services. All such facilities and services shall comply with all applicable municipal, STATE, County and federal rules and regulations, including without limitation, the Federal Communications Commission licensing regulations and the STATE Public Utilities Commission.

7. STATE's Corrective Actions. The OPERATOR shall be responsible for any and all costs and expenses (including, without limitation, attorneys' fees and court costs) incurred by the STATE in taking corrective or enforcement action with respect to OPERATOR's noncompliance with this Article XVIII. (Utilities).

ARTICLE XIX. INSURANCE

A. Generally.

1. OPERATOR's Cost. The OPERATOR shall procure, at its sole cost and expense, maintain and keep in effect at all times during the term of this CONCESSION AGREEMENT, the types and minimum amounts of insurance coverage specified herein.

2. No Limitation. OPERATOR's procurement and maintenance of insurance, or the delivery of Certificate Copies of policies, or the delivery of Certificates of Insurance or other written evidence of insurance in form and substance acceptable to STATE, shall not be construed as a limitation of any kind on OPERATOR's obligations to indemnify, defend, insure, and hold harmless, as may be found anywhere in this or any other document.

3. Form of Policies.

a. Form and Substance. All insurance required to be furnished by the OPERATOR shall be pursuant to policies in form and substance satisfactory to the STATE, issued by companies in good standing with the Insurance Division of the Department of Commerce and Consumer Affairs, licensed and authorized to transact insurance business in the State of Hawai'i, on an admitted or non-admitted basis, and with an A.M. Best Financial Strength Rating of "A-" or better, and an A.M. Best Financial Strength Rating of "VII" or higher.

b. Required Provision. All insurance shall:

(1) Additional Insured. Name the STATE, and the Other Indemnities as Additional Insured, except with respect to Workers' Compensation and Employers' Liability.

(2) Severability of Interest. Apply separately to each insured against whom claim is made or suit is brought, except with respect to the Limits of Insurance.

(3) Waiver of Subrogation. Contain a waiver of subrogation in favor of the STATE and the Other Indemnities.

(4) Notification. Provide that STATE shall be notified, in writing, at least sixty (60) calendar days prior to any reduction in scope of coverage or limits of liability, cancellation, or non-renewal of any such insurance policy.

c. All Insurance. The following shall be applicable to all required Insurance:

(1) Primary. All insurance shall be primary, not in excess of or pro rata with, and noncontributing, as to and with any other insurance held or maintained by the STATE.

(2) No Premiums. No insurance shall require the STATE to pay any premiums or deductibles.

(3) No Partnership. The inclusion of STATE and the Other Indemnities, as Additional Insured, is not intended to and shall not make any of them, a partner or joint venture with the OPERATOR.

(4) Deductibles. Any insurance required hereunder may provide for deductibles or self-insured retentions which are reasonable and prudent in relation to the soundness of the OPERATOR's financial condition, at the sole discretion of STATE. Any deductibles or self-insured retention in excess of \$25,000 shall be disclosed to STATE.

(5) Failure to Obtain and Maintain. Any lapse in, or failure by the OPERATOR to procure, maintain, and keep in full force and effect such insurance as is required herein, shall be a material breach of this CONCESSION AGREEMENT, and should the STATE or any of its insurers expend any funds which would have been or should have been covered by insurance as is required under this CONCESSION AGREEMENT, the OPERATOR shall assume the liability for such funds and indemnify the STATE and its insurers.

i. Waiver of Subrogation. All insurance policies shall contain a waiver of subrogation in favor of the STATE and the Other Indemnities.

ii. Proof of Insurance. The OPERATOR shall provide proof of all required insurance and related requirements to the STATE, by delivering certificates of insurance in form and substance acceptable to the STATE, or by other written evidence of insurance acceptable to the STATE. Each policy, certificate of insurance, or other written evidence of insurance shall contain the applicable policy number(s), the inclusive dates of policy coverage, the insurer's name, and bear the original signature of an authorized representative of the insurer. The STATE reserves the right to have submitted to it, upon request, a certified copy of each insurance policy, and pertinent information about any agent, broker, or insurer providing such insurance.

iii. Interim Review. The types and minimum amounts of insurance specified herein may be reviewed for adequacy from time to time throughout the term of this Concession Agreement by the STATE, who may, thereafter, and upon thirty (30) days written notice, require the OPERATOR to modify the types and/or minimum amounts of insurance as the STATE deems to be adequate for their protection.

A. Types and Minimum Amounts of Insurance.

1. General Liability (“Occurrence Form”): Minimum limits of \$1,000,000.00 each occurrence (bodily injury and property damage combined) and \$2,000,000.00 general aggregate (if applicable), covering bodily injury, property damage, and person/advertising injury (subject to a personal/advertising injury aggregate of at least \$1,000,000.00) arising out of the OPERATOR’s premises, operations, products, and completed operations. The general liability insurance shall include contractual liability for bodily injury and property damage obligations assumed in the CONCESSION AGREEMENT, and fire damage legal liability (damage to rented premises) of not less than \$1,000,000.00 each occurrence.

2. Automobile Liability. If operating all automobiles exclusively outside of the AOA, at all times, automobile liability insurance covering all owned, hired, or non-owned automobiles operated by or on behalf of the OPERATOR, with minimum limits of \$1,000,000.00 per person and \$2,000,000.00 per accident for bodily injury, and \$500,000.00 per occurrence for property damage, or a combined single limit not less than \$2,000.00 each accident (bodily injury and property damage combined). If operating any automobile within the AOA, at any time, automobile liability insurance covering all owned, hired, or non-owned automobiles operated by or on behalf of the OPERATOR, with minimum limits of \$5,000,000.00 per person and \$5,000,000.00 per accident for bodily injury, and \$5,000,000.00 per occurrence for property damage, or a combined single limit not less than \$5,000,000.00 each accident (bodily injury and property damage combined).

3. Workers’ Compensation and Employers’ Liability. Workers’ Compensation coverage meeting the statutory requirements of the State of Hawai‘i, and any other State in which employees are hired or work is performed, and including Employers’ Liability coverage with minimum limits of \$1,000,000.00 for Each Accident, Disease-Each Employee, and Disease Policy Limit, or as otherwise required by applicable federal and State of Hawai‘i laws.

4. Pollution Liability: Minimum limits of \$1,000,000.00 covering bodily injury, property damage (including damage from natural resources), legal expenses, and OPERATOR’s obligations to clean-up and/or remediate first- and third-party environmental liabilities or claims resulting from any pollution condition or conditions associated with or arising out of the OPERATOR’s premises or operations. If the policy provides coverage on a “Claims-Made and Reported”, “First Discovered and Reported”, or similar form (i.e., other than an “Occurrence Form”), the Retroactive Date shall not be advanced beyond the initial Inception

Date, and the OPERATOR shall maintain the policy, and if necessary purchase an Extended Reporting Period, assuring coverage for any claims first made and reported at least twelve (12) months beyond the term of this Concession Agreement, or any extension, or any holdover.

5. Buildings and Business Personal Property. The OPERATOR shall insure all Improvements, stock, supplies, mobile equipment, and any other Improvements or personal property, including personal property of others in the OPERATOR's care, custody, or control, protecting against Causes of Loss Special Form (or equivalent) or Causes of Loss – Broad Form (or equivalent), including but not limited to the perils of fire, lightning, explosion, windstorm (including hurricane), smoke, aircraft or vehicles, riot or civil commotion, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, falling objects, and accidental water damage, on a replacement cost basis. STATE shall be included as a Loss Payee, as their interest may appear. Coverage shall also apply to debris removal, and demolition occasioned by enforcement of any applicable building codes or similar legal requirements.

6. Builder's Risk Insurance. Before commencing constructing of any initial or subsequent work on Improvements on, in, or at the Premises, or any portion thereof, the OPERATOR shall, in addition to other customary insurance or bonds, and at its sole cost and expense, procure, maintain and keep in full force and effect during and throughout the entire period of construction and installation, property insurance designed to cover property in the course of construction and installation, on a special perils, open perils, or similar risk of direct physical loss policy form, including insurance against perils such as fire, lightning, explosion, smoke, windstorm (including hurricane), hail, riot, civil commotion, aircraft, vehicles, theft, vandalism, malicious mischief, sprinkler leakage, collapse, earthquake, volcanic action, falling objects, accidental water damage, flood, and breakage of building glass (such as windows), false work, and testing and startup. Coverage shall also apply to temporary building (if any) and debris removal, and demolition occasioned by enforcement of any applicable building codes or similar legal requirements. The amount of insurance shall be no less than the initial CONCESSION AGREEMENT sum, plus the value of subsequent CONCESSION AGREEMENT modifications and the replacement cost of materials supplied or installed by others, comprising the total value of the Improvements on a replacement cost basis, including reasonable compensation for architect's, engineer's, and similar consultant's services and expenses. Such property insurance shall be maintained until the Improvements are completed. This insurance shall include the insurable interests of the STATE, the OPERATOR, and all contractors and subcontractors, as their interest may appear. The OPERATOR shall pay all deductibles, co-insurance, or other costs arising out of any deductible or co-insurance provisions.

B. Contractors and Subcontractors Insurance. The OPERATOR shall require that agreements with its Contractors and Subcontractors of any tier incorporate provision comparable to Article XIX. (Insurance), pursuant to which it's Contractors and Subcontractors, will protect the insurable interest of the OPERATOR, the OPERATOR's Agents, the STATE, and the Other Indemnities.

ARTICLE XX. DAMAGE OR DESTRUCTION

A. Partial Damage. If all or a portion of the Premises or the Automobile Parking Facilities are partially damaged by fire, explosion, acts of God, the elements, severe climatic or weather conditions or phenomena (such as high winds, rainstorms, hurricanes, floods, earthquakes and seismic waves [tsunami]), acts of the public enemy, sabotage, riots, rebellion and other civil commotion or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by the STATE, subject to budgetary approvals and the limitations as hereafter provided, except that if said damage is caused by the negligence or omission to act of the OPERATOR or the OPERATOR's officers, employees, agents or Guests, the OPERATOR shall be solely responsible for the full costs of all such repairs, and shall directly and fully reimburse the STATE for the costs and expenses incurred by the STATE in completing such repair, upon demand and as directed by the STATE.

B. Extensive Damage. If the damages are so extensive as to render the Automobile Parking Facilities, the Premises or a portion thereof uninhabitable, but are capable of being repaired within thirty (30) days, the same shall be repaired with due diligence by the STATE, subject to budgetary approvals and the limitations as hereafter provided, and an appropriate portion of the MAG and Premises rent, if any, payable herein shall abate from the time of the damage until such time as the damaged Automobile Parking Facilities, Premises or portion thereof are fully restored and certified by the STATE as, again, ready for use; provided, however, that if such damage is caused by the negligence or omission to act, by the OPERATOR, or the OPERATOR's officers, employees, agents, or Guests, said MAG, Premises rent and other charges will not abate, and the OPERATOR shall be solely responsible for the full costs of all such repairs, and shall fully reimburse the STATE for the costs and expenses incurred by the STATE in completing such repair upon demand and as directed by the STATE.

C. Complete Destruction. If all or a substantial portion of the Automobile Parking Facilities or the Premises are completely destroyed by fire, explosion, acts of God, the elements, severe climatic and weather conditions or phenomena (such as high winds, rainstorms, hurricanes, floods, earthquakes and seismic waves [tsunami]), acts of the public enemy, sabotage, riots, rebellion or other civil commotion or other casualty, or are so damaged that they are uninhabitable and cannot be repaired or replaced within thirty (30) days, the STATE shall be under no obligation to repair, replace, or reconstruct the Automobile Parking Facilities or the Premises, and an appropriate portion of the MAG and the Premises rent, if any, payable hereunder shall abate as of the time of such damage or destruction, and shall henceforth cease until such time as the damaged Automobile Parking Facilities and Premises are fully restored. The STATE shall notify the OPERATOR of the STATE's intentions within sixty (60) days of the destruction or damage. If within twelve (12) months after the time of such damage or destruction, the damaged Automobile Parking Facilities have not been repaired or reconstructed, the OPERATOR may terminate this CONCESSION AGREEMENT in its entirety upon seven (7) days written notice to the STATE, such termination to be effective as of the date of such damage or destruction, subject to the survival of the OPERATOR's obligations as set forth in this CONCESSION AGREEMENT, particularly in Article XLVI. (Survival of Obligations) herein.

Notwithstanding the foregoing, if the Automobile Parking Facilities, the Premises, or a substantial portion thereof, are completely destroyed as a result of the negligence or omission to act by the OPERATOR, or the OPERATOR's officers, employees, agents, or Guests, said MAG and Premises rent shall not abate, and the STATE may, in its discretion, require the OPERATOR to repair and reconstruct the damaged Automobile Parking Facilities and Premises within twelve (12) months of such destruction, and pay all of the cost therefor, or the STATE may repair and reconstruct the same within twelve (12) months of such destruction and the OPERATOR shall reimburse the STATE for the costs and expenses incurred by the STATE in completing such repair, upon demand and as directed by the STATE.

D. Limits of STATE's Obligations Defined. It is understood that, in the application of the foregoing provisions, the STATE's obligations shall be limited to repair or reconstruction of the Automobile Parking Facilities and the Premises to the same extent and of equal quality as obtained by the OPERATOR at the commencement of its Concession operations hereunder. Redecoration and replacement of supplies and Personal Property shall be the responsibility of the OPERATOR, and any such redecoration, refurbishing, and reequipping shall be equivalent to or better in quality than that originally installed. Replacements or repairs of Improvements by the OPERATOR shall be equivalent to or better in quality than the Improvements so destroyed or damaged, as of the date of the original installation and construction of new Improvements, and as of the Commencement Date of this CONCESSION AGREEMENT for any pre-existing Improvements thereof.

E. Restrictions on Abatement. The foregoing provisions for abatement of the obligation to pay the MAG and Premises rent required under this CONCESSION AGREEMENT, and for cancellation of this CONCESSION AGREEMENT shall not apply if the OPERATOR, its officers, employees, agents, or guests have caused or are responsible in any way for the Automobile Parking Facilities or the Premises becoming damaged, destroyed, untenable or uninhabitable.

ARTICLE XXI. TERMINATION BY THE STATE

A. Events of Breach or Violation. The OPERATOR shall be in breach or violation of this CONCESSION AGREEMENT, and the STATE will have the right to terminate this CONCESSION AGREEMENT, if any one or more of the following events occur:

1. Transfer of Interest. When, without the prior written approval or consent of the STATE, any interest of the OPERATOR under this CONCESSION AGREEMENT is transferred or assigned, whether voluntarily or involuntarily, by reason of assignment, sublease of the Premises or otherwise, stock transfer, operation of law, or death, to any other individual, limited or general partnership, joint venture, firm, company, corporation, limited liability company, or any other entity; or

2. Ownership Change. When the ownership of the OPERATOR, without the prior written approval or consent of the STATE, is changed by inter vivos stock transfer to one or more individuals or entities who were not stockholders at the inception of this CONCESSION AGREEMENT, or if the OPERATOR is a partnership, whether limited or general, by the introduction of a new partner or partners, whether limited or general, who was not a partner or who were not partners at the inception of this CONCESSION AGREEMENT; or

3. Partnership Dissolution. If the OPERATOR is a partnership of any type, and the partnership is dissolved as a result of any act or omission of its partners, or any one of them, or by operation of law, or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or

4. Receivership. When, by or pursuant to, or under authority of any legislative act, resolution, or rule, or any order or decree of any court or governmental board, agency, or officer having jurisdiction, a receiver, trustee, or liquidator takes possession of all or substantially all of the property of the OPERATOR, and such possession or control continues in effect for a period of at least fifteen (15) days without being contested by the OPERATOR, in good faith, by proper legal proceedings within said 15-day period; or

5. Abandonment. When the OPERATOR voluntarily abandons, deserts or vacates the Premises or a significant portion of the Premises, or discontinues its operation of this Concession on or at the Automobile Parking Facilities or the Premises; or

6. Prevented from Use. After exhausting or abandoning any right of further appeal, the OPERATOR is prevented, for a period of at least ninety (90) days, by the action of any governmental agency from using the Automobile Parking Facilities or the Premises, regardless of the fault of the OPERATOR; or

7. Suspension. The happening of any act which results in the suspension or revocation of the rights, powers, licenses, permits or authorities necessary for the conduct and operation of the Concession authorized herein for a period of more than thirty (30) days; or

8. Successor Corporation. The OPERATOR becomes, without the prior written approval of the STATE, a successor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

9. Attachment. When any attachment, judgment, lien, or encumbrance is filed against the OPERATOR's interest in the Premises, or the Automobile Parking Facilities, because of any act or omission of the OPERATOR, and said attachment, judgment, lien, or encumbrance is not discharged or contested by the OPERATOR in good faith, by proper legal proceedings, within thirty (30) days; or

10. Failure to Pay Fees. When the OPERATOR fails to duly and punctually pay the fees and charges required under this CONCESSION AGREEMENT, including any interest, service charges, or late fees, or to make any other payment required under this CONCESSION AGREEMENT when due to the STATE, upon the lapse of five (5) business days after the OPERATOR's receipt of a written notice from the STATE demanding such payment or payments; or

11. Failure to Pay Taxes. When the OPERATOR fails to duly and punctually make payments due to any agency of the State of Hawai'i or any political subdivision ("County") of the State of Hawai'i, including, but not limited to, payments for any permit, license, or CONCESSION AGREEMENT, general excise taxes, workers' compensation payments, unemployment taxes, real property taxes, etc., and such payments are not made within thirty (30) days of their due dates; or

12. Poor Quality Control. When the OPERATOR fails to provide, maintain, and upgrade, as necessary, the quality of its Concession equipment or services to the satisfaction of the STATE, as required by Article IX. (Obligations of the OPERATOR) hereof, within fifteen (15) days from and after receipt of written notice from the STATE to correct or cure the condition objected to; or

13. Failure to Perform. When the OPERATOR fails to keep, perform, and observe each and every other CONCESSION AGREEMENT, promise, covenant, term, and condition set forth in this CONCESSION AGREEMENT, on its part to be kept, performed or observed, and such failure shall continue for a period of more than thirty (30) days after the OPERATOR's receipt of a written notice from the STATE of such breach or violation, by personal service, registered mail or certified mail to the OPERATOR, except where fulfillment of the OPERATOR's obligation requires activity over a period of time, and the OPERATOR begins to perform whatever may be required for fulfillment within ten (10) days after receipt of said written notice, and continues such performance, showing improvement or correction, without interruption except for causes beyond the OPERATOR's control; or

14. General Assignment. The OPERATOR makes a general assignment for the benefit of creditors, or files a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under any law or statute of the U.S., or of any State of Hawai'i law, or consents to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property or its property located within the Automobile Parking Facilities or the Premises; or

15. Lien. Any lien is filed against or affecting the Automobile Parking Facilities, the Premises, or any portion thereof, because of any act or omission of the OPERATOR, and such lien is not removed or enjoined, or a bond for satisfaction of such lien is not posted within thirty (30) days; or

16. Other Contract. When the OPERATOR fails to cure or remedy any breach or violation of any promise, covenant, term, and condition in any other permit, agreement, lease, or any other contracts entered into with STATE by OPERATOR during the term of this CONCESSION AGREEMENT.

B. Default and Termination. In the event of any breach or violation due to the occurrence of any of the events enumerated in Article XXI.A. (Events of Breach or Violation) hereof, the STATE may, after the giving of a written Notice of Default in accordance with Section 171-20, HRS, pursue any available remedy, legal or equitable, it may have against the OPERATOR.

1. Failure to Correct Violation. If the OPERATOR fails to correct the violation(s) contained in the Notice of Default to the satisfaction of the STATE, the STATE may, without prejudice to any other remedy, elect to:

a. Additional Charge. Assess a charge of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) per day as prescribed and set forth in Article VI.J. (Additional Charges) hereof; and

b. Liquidated Damages. Assess liquidated damages as prescribed and set forth in Article VI.K. (Liquidated Damages) hereof; and

c. Termination Letter. Concurrent with or subsequent to the assessment of such additional charge and fines, subject to Section 171-21, HRS, proceed to terminate this CONCESSION AGREEMENT by providing a written Letter of Termination and Notice to Vacate to the OPERATOR.

In the event that this CONCESSION AGREEMENT is terminated by the STATE because of a breach or violation as set forth in this Article XXI. (Termination by the STATE), the OPERATOR will not be allowed to bid on or enter into any other concession or offered by the State of Hawai'i, for a period of five (5) years following the date of termination, as prescribed and set forth under Section 171-13, HRS.

C. Right of Re-Entry. The STATE shall have, as an additional remedy upon the giving of a written Letter of Termination and Notice to Vacate, as provided in Article XXI.B. (Default and Termination) hereof, the right to re-enter the Premises and the Automobile Parking Facilities, upon the effective date of termination, without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter, or diminish any of the obligations of the OPERATOR under this CONCESSION AGREEMENT, and shall in no event constitute an acceptance of surrender.

D. OPERATOR's Rights Cease. Upon such termination by the STATE, all rights, powers, and privileges of the OPERATOR granted hereunder shall cease. Unless otherwise stated herein, the OPERATOR shall immediately vacate the Premises and the Automobile Parking Facilities, and the OPERATOR shall have no claim of any kind whatsoever against the STATE, by reason of such termination, or by reason of any act by the STATE incidental or related thereto. In the event of the exercise by the STATE of such option to terminate, OPERATOR shall have no right to or claim upon any Improvement, including the PRCS or the value thereof, which may have been constructed, installed, erected, or placed by OPERATOR on, in, or at the Automobile Parking Facilities, the Premises, or elsewhere at the Airport. The STATE may also remove or store any of OPERATOR's Personal Property located thereon or therein, at the sole cost and expense of OPERATOR, without the STATE being liable to OPERATOR for damage or loss thereby sustained by OPERATOR.

E. Waiver of Redemption and Damage. The OPERATOR waives, releases, and discharges any claims it may now or hereafter have relating to the STATE's exercise of the STATE's rights under this CONCESSION AGREEMENT to re-enter and regain and resume possession of the Premises and the Automobile Parking Facilities, and to remove OPERATOR, the Improvements, and OPERATOR's Personal Property from the Automobile Parking Facilities and the Premises, and to store or dispose of any of OPERATOR's property at the Airport, including OPERATOR's Personal Property.

The OPERATOR hereby waives any and all rights of redemption granted by or under any present or future law or statute in the event OPERATOR is dispossessed for any cause, or in the event STATE obtains or retains possession of the Premises and the Automobile Parking Facilities, in any lawful manner. The OPERATOR further agrees that in the event the manner or method employed by the STATE in reentering or regaining possession of the Premises and the Automobile Parking Facilities gives rise to a cause of action in OPERATOR for forcible entry and detainer under the laws of the State of Hawai'i, the total amount of damages to which OPERATOR shall be entitled in any such action shall be the sum of ONE AND NO/100 DOLLAR (\$1.00), and OPERATOR agrees that this provision may be filed in any such action as its stipulation fixing the amount of damages to which it is entitled.

F. Survival of OPERATOR's Obligations.

1. OPERATOR's Obligations Remain. In the event that this CONCESSION AGREEMENT is terminated by the STATE, or in the event the STATE reenters, regains or resumes possession of the Premises, and the Automobile Parking Facilities, all of the obligations of the OPERATOR hereunder shall survive and shall remain in full force and effect for the full term of this CONCESSION AGREEMENT as if there had been no termination, reentry, regaining or resumption of possession.

2. Concession Fee, Rent, and Other Charges Remain Due. Subject to the STATE's obligation to mitigate damages, the amount of the fees and charges hereunder shall become due and payable to the STATE to the same extent, at the same time, and in the same

manner as if no termination had taken place. The STATE may maintain separate actions to recover any monies then due, or at its option and at any time, may sue to recover the full deficiency.

3. Fee Amount Subsequent to Termination. The amount of damages due to the STATE by the OPERATOR for the period of time subsequent to termination, reentry, regaining or resumption of possession shall be subject to an offset for any fees and charges received by the STATE during the remaining term of this CONCESSION AGREEMENT (as if no termination, reentry, regaining or resumption had taken place) from a succeeding OPERATOR of this Concession, and shall be determined as follows:

a. Utility Payments. With respect to the OPERATOR's utility payment obligation, the utility payment due the STATE shall be the same amount that would have been due to the STATE by the OPERATOR during the balance of the term of this CONCESSION AGREEMENT as if there had been no termination, reentry or regaining or resumption of possession. For the purpose of computation hereunder, the amount of utility payments shall be derived by dividing the OPERATOR's total utility payments due during the twelve (12) months immediately preceding termination, by three hundred sixty-five (365) days, and then multiplying the result by the number of days in the balance of the term hereof.

b. Minimum Annual Guarantee and Premises Rent. The cumulative total of the OPERATOR's MAG and Premises rent obligation, (using the MAG and Premises rent in effect at the date of termination to compute the total for the remainder of the term) less the amount paid prior to the effective date of termination.

c. Percentage Fees. With respect to the OPERATOR's Percentage Fees, the amount of such Percentage Fees that would have been due to the STATE by the OPERATOR during the balance of the term of this CONCESSION AGREEMENT as if there had been no termination, reentry or regaining or resumption of possession. For the purpose of computation hereunder, the amount of gross receipts shall be derived by dividing OPERATOR's total gross receipts from the Concession during the twelve (12) months immediately preceding termination, by three hundred sixty-five (365) days, and then multiplying the result by the number of days in the balance of the term hereof.

d. No Effect on STATE's Rights. The STATE and the OPERATOR agree that the damages specified above shall not affect or be construed to affect the STATE's right to such damages even if the OPERATOR has not received any actual gross receipts under this CONCESSION AGREEMENT.

G. Additional Rights of the STATE. The STATE, upon termination of this CONCESSION AGREEMENT, may occupy the Premises and the Automobile Parking Facilities, and will have the right to permit any person, firm, corporation or entity to enter upon the Premises and the Automobile Parking Facilities, and use the same. Such occupation by others may be of only a part of the Premises, the Automobile Parking Facilities, or the whole

thereof, together with other space, and for a period of time the same as or different from the balance of the term remaining hereunder, as if no termination, reentry, regaining or resumption of possession had taken place, and on terms and conditions the same as or different from those set forth in this CONCESSION AGREEMENT. The STATE will also have the right to repair or to make such structural or other changes in the Premises and the Automobile Parking Facilities, as are necessary in its judgment to maintain the suitability thereof for any uses and users including uses and purposes similar to those granted under this CONCESSION AGREEMENT, without affecting, altering or diminishing the obligations of the OPERATOR hereunder.

H. Termination before Commencement. If any of the events enumerated in Article XXI.A. (Events of Breach or Violation) hereof occur prior to the commencement of the term of this CONCESSION AGREEMENT, the OPERATOR shall not be entitled to enter into possession of the Premises, the Automobile Parking Facilities, or any portion thereof, and the STATE, upon the occurrence of any such event, or at any time thereafter during the continuance thereof, with twenty-four (24) hours' notice to the OPERATOR, may cancel or terminate the interest of the OPERATOR under this CONCESSION AGREEMENT, such cancellation or termination to be effective upon the date specified in such notice.

ARTICLE XXII. WAIVER

A. STATE's Waiver. No acceptance by the STATE of fees, charges, or other payments, in whole or in part, for any period or periods after a default of any of the covenants, provisions, requirements, stipulations, terms, or conditions hereof to be performed, kept, or observed by the OPERATOR will be deemed a waiver of any right on the part of the STATE to terminate this CONCESSION AGREEMENT for any like or other or succeeding breach or default.

B. No Implied Waiver. No failure by either party to insist upon the strict performance by the other party under this CONCESSION AGREEMENT or to exercise any right, power, or remedy consequent upon a breach hereof will constitute a waiver of any such breach, or of such term, covenant, or condition. A waiver or assent by the STATE, express or implied, of or to any breach or default of the OPERATOR, in the performance of any of the covenants, provisions, requirements, stipulations, terms, or conditions of this CONCESSION AGREEMENT will not be deemed or considered to be a waiver of any other or succeeding breach or default. No express written waiver of any default, or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance, or the period of time specified in such express waiver.

C. Cumulative Remedies. The rights, powers, privileges, options, and remedies of the STATE contained in this CONCESSION AGREEMENT shall be construed to be cumulative, and no one of them shall be deemed to be exclusive of the other, or exclusive of any right, power, privilege, option, or remedy provided by law.

ARTICLE XXIII. WITHDRAWAL

A. STATE's Right. The STATE reserves and shall have the right, at any time during and throughout the term of this CONCESSION AGREEMENT, in its sole discretion, and regardless of whether or not OPERATOR has breached this CONCESSION AGREEMENT or has been or then is in default: (1) to withdraw all or a portion of the Automobile Parking Facilities and/or the Premises from this CONCESSION AGREEMENT, terminate and cancel this CONCESSION AGREEMENT with respect to the portion of the Automobile Parking Facilities and Premises so withdrawn, and to reoccupy said portion of the Automobile Parking Facilities and Premises thereunder in the public interest; or (2) to recapture any portion of the Automobile Parking Facilities and the Premises not utilized by OPERATOR for the purposes identified or prescribed by this CONCESSION AGREEMENT.

B. Notice. The STATE shall give OPERATOR written notice of any such withdrawal or recapture, and STATE's intent to cancel or terminate this CONCESSION AGREEMENT as to the portion of the Automobile Parking Facilities and/or Premises so withdrawn or recaptured, not less than sixty (60) days prior to the effective date of such cancellation or termination.

C. Improvements. The STATE shall pay to OPERATOR the then-unamortized value of the PCRS referenced in Article X. (Title to Parking Revenue Control System [PRCS] Installed by OPERATOR) of this CONCESSION AGREEMENT, and those other Improvements purchased and installed by OPERATOR at OPERATOR's sole cost and expense, during the term of this CONCESSION AGREEMENT in, at, or upon the portion of the Automobile Parking Facilities and the Premises being withdrawn or recaptured. The unamortized value of the withdrawn PCRS shall be determined based on straight line depreciation over a five (5) year period commencing on the Commencement Date of this CONCESSION AGREEMENT, regardless if such depreciation method is used by OPERATOR. The unamortized value of the withdrawn Improvements shall be determined based on straight line depreciation from the Date of Substantial Completion to the end of the five (5) -year term of this CONCESSION AGREEMENT. The unamortized value of the other withdrawn Improvements purchased and installed by OPERATOR during the term of this CONCESSION AGREEMENT, if any, shall be determined to be the balance after the depreciation taken on the most accelerated basis allowed for the category of Improvement under the Internal Revenue Code, regardless if such accelerated method is used by OPERATOR.

D. No Claim against the STATE. The OPERATOR shall peaceably surrender the portion of the Automobile Parking Facilities and Premises that the STATE desires to withdraw or recapture, and OPERATOR shall remove all of its Improvements including but not limited to the PCRS, and OPERATOR's Personal Property in accordance with Article XV. (Surrender of Premises and Use of the Automobile Parking Facilities) and Article X. (Title to Parking Revenue Control System [PRCS] Installed by OPERATOR) hereof, if required by STATE, all at no cost to STATE except as Stated herein. The OPERATOR shall not, by reason of its surrender, be

entitled to any claim against STATE for any reduction in rent or the Concession Fee, or for any of OPERATOR's cost of removal. If an alternate location at the Airport is made available by STATE, in its sole discretion, STATE may permit OPERATOR, without rent or Concession Fee adjustment, and by appropriate amendment to this CONCESSION AGREEMENT, to relocate the portion of its Concession operation affected by the withdrawal or recapture to the alternate location, provided by the STATE, all at no cost to STATE. The OPERATOR shall not be entitled to any other payment (except as provided herein) for STATE's withdrawal or recapture of the requested portion of the Automobile Parking Facilities or the Premises. If OPERATOR is in breach of any provision of this CONCESSION AGREEMENT or has been or then is in default of this CONCESSION AGREEMENT, STATE need not compensate OPERATOR for the unamortized value of the PRCS and other Improvements, if any. In such an event, OPERATOR shall be deemed to have waived its rights to the PRCS and Improvements, and any compensation that might be payable therefor.

E. Surrender of Entire Automobile Parking Facilities and Premises. If the surrender of the portion of the Automobile Parking Facilities or the Premises requested by the STATE renders the remainder of the Automobile Parking Facilities or the Premises unsuitable for the purposes of OPERATOR under this CONCESSION AGREEMENT, and STATE does not provide an alternate location, OPERATOR may surrender the remainder of the Automobile Parking Facilities and/or the Premises, and be relieved of any further obligation hereunder except with respect to such other obligations of OPERATOR which are intended to survive the termination of this CONCESSION AGREEMENT, including, without limitation, those obligations set forth in Article XLVI. (Survival of Obligations) hereof.

ARTICLE XXIV. TERMINATION BY OPERATOR

If any one of the following events shall occur, the OPERATOR may terminate this CONCESSION AGREEMENT, in its entirety, either prior to or subsequent to the commencement of the term of this CONCESSION AGREEMENT, to wit:

A. Abandonment. The permanent abandonment of the Airport as a terminal for the transport by air of persons, property, cargo, or mail.

B. Assumption. The lawful assumption by the U.S. Government, or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial part or parts thereof, in such a manner as to substantially restrict the OPERATOR from operating this Concession thereon for a period of at least sixty (60) consecutive days.

C. Injunction. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport for the purposes authorized under this CONCESSION AGREEMENT, and the injunction remaining in force for a period of at least sixty (60) consecutive days.

D. Breach. The breach by the STATE of, or its failure to perform, any of the covenants or agreements contained in this CONCESSION AGREEMENT, and either the failure of the STATE to remedy such breach for a period of sixty (60) days after receipt of a written notice of the existence of such breach from the OPERATOR, or, if fulfillment of the STATE's obligations requires activity over a period of time, the failure of the STATE within said sixty (60)-day period in good faith to commence the required activity and to continue the same thereafter except for causes beyond the STATE's control.

E. Damage. The damage or destruction of the Automobile Parking Facilities or the Premises of the nature described in Article XX. (Damage or Destruction) herein.

ARTICLE XXV. SUSPENSION OR ABATEMENT

Upon the occurrence or maturity of any of the termination events contained in Article XXIV. (Termination by the OPERATOR) hereof, the OPERATOR may, in lieu of termination and upon prompt written notice to the STATE, either suspend this CONCESSION AGREEMENT, or in the alternative, request a just abatement of such portion of the MAG and/or Premises rent obligations of the OPERATOR hereunder, as may be mutually agreed upon, in writing, by and between the STATE and the OPERATOR, such suspension or abatement to be effective from the time of the receipt of such written notice until there is a cessation of the occurrence or activity giving rise to the initial right to terminate this CONCESSION AGREEMENT. Nothing in this Article XXV. (Suspension or Abatement) shall be construed as prohibiting the STATE from exercising its rights under Article XXIII. (Withdrawal) hereof to withdraw or recapture all or any portion of the Premises and the Automobile Parking Facilities.

ARTICLE XXVI. SUBORDINATION

A. Joint Use. This CONCESSION AGREEMENT shall be subordinate in all respects to the provisions of any existing or future agreements between the STATE and the U.S. Government, or any agency thereof, relative to the aircraft operating areas of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. In the event of any such inconsistency between such agreements(s) and this Concession, this CONCESSION AGREEMENT, or the particular terms and conditions affected hereby, shall be suspended or terminated without the STATE being liable for any damages.

This CONCESSION AGREEMENT shall also be subordinate in all respects to the provisions of any existing or future Joint-Use Agreement between the STATE and the U.S. Navy, the U.S. Army, or the U.S. Air Force. In the event of any such inconsistency described in the preceding paragraph between this CONCESSION AGREEMENT and any existing or future Joint-Use Agreement, this CONCESSION AGREEMENT, or the particular terms and conditions

affected hereby, shall be suspended or terminated without the STATE being liable for any damages.

B. National Emergency. During times of war, whether declared by Congress or not, or national emergency, the STATE will have the right to enter into any agreement with the U.S. Government for any military use of part or all of the landing area, the publicly owned air navigation facilities, and all other areas and facilities of the Airport. In the event any such contact is executed, the provisions of this CONCESSION AGREEMENT, insofar as they are inconsistent with the provisions of the CONCESSION AGREEMENT with the U.S. Government, shall be suspended without the STATE being liable for any damages.

C. Rights of OPERATOR. Nothing in Article XXVI. (Subordination) hereof shall detract from or limit, nor be construed to detract from or limit, the rights of the OPERATOR set forth in Articles XXIV. (Termination by OPERATOR) and XXV. (Suspension or Abatement) hereof, to seek damages or compensation from other than the STATE in the event of the execution of any such CONCESSION AGREEMENT described above, the terms of which are or may be inconsistent with the rights of the OPERATOR under this CONCESSION AGREEMENT.

ARTICLE XXVII. CONDEMNATION

A. Definitions. For purposes of this Article XXVII. (Condemnation), the following capitalized terms shall have the following meanings:

1. “Award” means all compensation, sums, or value paid, awarded, or received for a “taking,” whether pursuant to judgment, agreement, settlement, or otherwise.
2. “Date of Taking” means the earlier of: (a) the date upon which title to the portion of the Premises or the Automobile Parking Facilities taken passes to and vests in the condemnor; and (b) the date on which the condemnor takes possession of all or a portion of the Premises and/or the Automobile Parking Facilities.
3. “Taking” means a taking or damaging, including severance damage, by eminent domain, inverse condemnation, or for any public or quasi-public use under applicable laws. A Taking may occur pursuant to the recording of a final order of condemnation, by voluntary sale or conveyance in lieu of condemnation, or in settlement of a condemnation action.

B. General. If, during the CONCESSION AGREEMENT term, any Taking of all or any part of the Premises, the Automobile Parking Facilities, or any interest in this CONCESSION AGREEMENT occurs, the rights and obligations of the parties hereunder shall be determined pursuant to this Article XXVII. (Condemnation). The STATE and OPERATOR intend that the provisions hereof govern fully in the event of a Taking.

C. Total Taking; Automatic Termination. If a total Taking of the Premises and the Automobile Parking Facilities occurs (all of the Premises and the Automobile Parking Facilities are included in the Taking), then this CONCESSION AGREEMENT shall terminate as of the Date of Taking.

D. Partial Taking; Election to Terminate.

1. Entire Termination. If a Taking of any portion (but less than all) of the Premises or the Automobile Parking Facilities occurs, then this CONCESSION AGREEMENT shall terminate in its entirety if all of the following exist: (a) the partial Taking renders the remaining portion of the Premises or the Automobile Parking Facilities untenable or unsuitable for continued use by OPERATOR for the uses allowed herein; (b) the condition rendering the Premises or the Automobile Parking Facilities untenable or unsuitable either is not curable, or is curable, but the STATE is unwilling or unable to cure such condition; and (c) the STATE elects to terminate.

2. Material Portion Taken. If a partial Taking of a material portion of the Premises, the Automobile Parking Facilities, or the Airport area within which a portion of the Premises or the Automobile Parking Facilities is located occurs, the STATE shall have the right to terminate this CONCESSION AGREEMENT in its entirety.

3. Notice of Election. The STATE's election to terminate this CONCESSION AGREEMENT pursuant to this Article XXVII. (Condemnation) shall be exercised by the STATE by giving notice to OPERATOR on or before the date that is one hundred and twenty (120) days after the Date of Taking, and thereafter this CONCESSION AGREEMENT shall terminate on the thirtieth (30th) day after such notice is given.

E. Award. Upon termination of this CONCESSION AGREEMENT pursuant to a Total Taking under Article XXVII.C. (Total Taking; Automatic Termination) or an election under Article XXVII.D. (Partial Taking; Election to Terminate) hereof, then with regard to the:

1. OPERATOR.

a. Rent. The OPERATOR's obligation to pay all rents, fees, and charges required under this CONCESSION AGREEMENT shall continue up until the date of termination, and thereafter shall cease.

b. Surviving Obligations. The OPERATOR shall continue to be obligated to perform and comply with all obligations that are intended to survive the termination of this CONCESSION AGREEMENT, including, without limitation, those obligations set forth in Article XLVI. (Survival of Obligations) hereof.

c. Improvements. The OPERATOR shall be entitled to recover the unamortized value of the Improvements constructed and installed on the Premises and the Automobile Parking Facilities by OPERATOR during the term of this CONCESSION AGREEMENT (hereinafter collectively referred to as “New Improvements”) in the ratio that: the unexpired term of this CONCESSION AGREEMENT on the Date of Taking bears to the unexpired term of the CONCESSION AGREEMENT on the Substantial Completion Date of the installation of the New Improvements.

d. No Claim against the STATE. The OPERATOR shall have no claim against the STATE or others for: (i) compensation or indemnity for OPERATOR’s concession interest; and (ii) compensation and damages payable for or on account of land (including access rights) or Improvements thereon (except as provided in Article XXVII.E.1.c. [Improvements] hereof).

e. Separate Claim against Condemning Authority. The OPERATOR may make a separate claim for compensation from the condemning authority for OPERATOR’s relocation expenses, or the interruption of or damage to OPERATOR’s business, or damage to OPERATOR’s Personal Property. If the condemning authority or a court of competent jurisdiction concurs that said claim exists and is justified, OPERATOR may receive any Award made specifically to OPERATOR for such claim.

2. STATE. The STATE shall be entitled to the entire Award in connection with the Taking (including any portion of the Award made for the value of the estate created by this CONCESSION AGREEMENT), except for the unamortized value of the New Improvements as set forth in Article XXVII.E.1.c. (Improvements) hereof.

F. Partial Taking; Continuation of CONCESSION AGREEMENT. If a partial Taking of the Premises or the Automobile Parking Facilities occurs, and this CONCESSION AGREEMENT is not terminated in its entirety under Article XXVII.D. (Partial Taking; Election to Terminate) hereof, then this CONCESSION AGREEMENT shall terminate as to the portion of the Premises or the Automobile Parking Facilities so taken, but shall remain in full force and effect as to the portion of the Premises or the Automobile Parking Facilities not taken, and the rights and obligations of the STATE and OPERATOR shall be modified as follows:

1. Potential Concession Fee reduction. If the Taking causes any portion of the Premises or the Automobile Parking Facilities to become unusable for the operation of the Concession, as authorized under this CONCESSION AGREEMENT, the Concession Fee paid by OPERATOR will be reduced as follows:

a. Premises. For the portion of the Premises that is part of the Taking, the Concession Fee paid by the OPERATOR will be reduced by a factor consisting of the total of each square foot of space comprising the Taking multiplied by the applicable rate established by STATE for the applicable category of space under this CONCESSION AGREEMENT.

b. Automobile Parking Facilities. For the portion of the Automobile Parking Facilities that are part of the Taking, the Concession Fee paid by the OPERATOR will be reduced by multiplying the ratio of the square footage of the Parking Facilities that are part of the Taking to the total square footage of the Parking Facilities, by the average monthly gross receipts for the twelve (12) months immediately preceding the Date of Taking.

2. Improvements. The OPERATOR shall be entitled to recover the unamortized value of the New Improvements constructed and installed on the Premises and the Automobile Parking Facilities by OPERATOR in the ratio that the unexpired term of this CONCESSION AGREEMENT on the Date of Taking bears to the unexpired term of this CONCESSION AGREEMENT on the Substantial Completion Date of the New Improvements.

3. No Claim against the STATE. The OPERATOR shall have no claim against the STATE or others for: (i) compensation or indemnity for OPERATOR's concession interest, and (ii) compensation and damages payable for or on account of land (including access rights) or Improvements thereon (except as provided in Article XXVII.F.2. (Improvements) hereof.

4. Separate Claim against Condemning Authority. The OPERATOR may make a separate claim for compensation from the condemning authority for the interruption of or damage to OPERATOR's business, or damage to OPERATOR's Personal Property. If the condemning authority or a court of competent jurisdiction concurs that said claim exists and is justified, OPERATOR may receive any Award made specifically to OPERATOR for such claim.

5. STATE's Award. The STATE shall be entitled to the entire Award in connection with the Taking (including any portion of the Award made for the value of the concession estate created by this CONCESSION AGREEMENT), except for the unamortized value of the New Improvements as set forth in Article XXVII.F.2. (Improvements) hereof.

6. Prompt Use. Any portion of the Award received by OPERATOR shall be used promptly by OPERATOR to the extent necessary to restore or replace the New Improvements on the remaining Premises or the Automobile Parking Facilities, in accordance with plans, specifications, drawings, cost estimates, and schedules first approved in writing by the STATE.

7. Continuing Obligation. Nothing herein shall be construed to excuse OPERATOR from OPERATOR's full performance of all covenants, obligations, terms, and conditions under this CONCESSION AGREEMENT as to the part of the Premises or the Automobile Parking Facilities not part of the Taking, and OPERATOR shall remain responsible for paying to the STATE the Concession Fee and all rents and other charges required under this CONCESSION AGREEMENT.

G. Temporary Takings. Notwithstanding anything to the contrary in this Article XXVII. (Condemnation), if a Taking occurs with respect to all or any part of the Premises or the Automobile Parking Facilities, for a limited period of time not in excess of one hundred and eighty (180) consecutive days, this CONCESSION AGREEMENT shall remain unaffected thereby, and OPERATOR shall continue to pay the Concession Fee, rents, and other charges required under this CONCESSION AGREEMENT, and to perform all of the terms, conditions, and covenants of this CONCESSION AGREEMENT. In the event of such temporary Taking, the STATE shall be entitled to the entire Award.

ARTICLE XXVIII. CONCESSION BOND

A. Requirements. Prior to the Commencement Date of the term of this CONCESSION AGREEMENT, throughout the term of this CONCESSION AGREEMENT, and continuing through not less than ninety (90) days after the expiration or sooner termination of this CONCESSION AGREEMENT, the OPERATOR shall deliver to the STATE, and keep and maintain in force and effect at all times, a Concession Bond, or other security, acceptable to the STATE in accordance with the terms specified in this Article XXVIII. (Concession Bond), in an amount equal to four (4) months of the MAG for the appropriate CONCESSION AGREEMENT year of this CONCESSION AGREEMENT (hereinafter, the “Concession Bond”). The Concession Bond must:

1. Authorized Surety. Be executed by a surety company licensed and authorized to do business under the laws of the State of Hawai‘i (hereinafter, the “Surety”);
2. STATE Approval. Meet with the written approval of the STATE, including, without limitation, meeting the requirement that the Surety, to the STATE’s sole satisfaction, has the financial capability to fully perform and complete the Surety’s obligations under the Concession Bond;
3. STATE Attorney’s Approval. Be in a form approved by an authorized representative of the Department of the Attorney General of the State of Hawai‘i;
4. Guarantee Full Performance. Require the Surety to guarantee to the STATE that the OPERATOR shall fully and completely perform all of the promises, duties, responsibilities, obligations, covenants, provisions, requirements, restrictions, stipulations, terms, and conditions set forth in this CONCESSION AGREEMENT that the OPERATOR is required to perform;
5. OPERATOR’s Cost. Be maintained by the OPERATOR, at the OPERATOR’s sole cost and expense; and

6. Cover the Entire Concession. Cover all of the OPERATOR's Concession operations at the Airport during and throughout the term of this CONCESSION AGREEMENT, provided that law suits or actions thereon by the STATE, or any other entity entitled to do so, may be commenced within the applicable period of limitation for CONCESSION AGREEMENT claims, unless otherwise specifically provided.

B. Surety. If the STATE, in its sole discretion, permits the OPERATOR to use for the Concession Bond, sureties other than a surety company licensed and authorized to do business under the laws of the State of Hawai'i, such sureties must meet the requirements of all applicable State of Hawai'i laws, statutes, rules and regulations, particularly Section 102-12, HRS.

C. Beyond Termination Date. If the Concession Bond is for a period less than the full term of this CONCESSION AGREEMENT plus ninety (90) days, the OPERATOR, at least sixty (60) days prior to the expiration date of the then-active Concession Bond, shall submit to the STATE another Concession Bond providing the coverage required herein beyond the expiration date of the then-active Concession Bond.

D. Replacement Bond. If the STATE should receive a notice that the Concession Bond has been or will be cancelled, the OPERATOR shall provide the STATE with a replacement Concession Bond providing the coverage required herein from the effective date and time of the cancellation of the Concession Bond in order that there is no period of time wherein an adequate Concession Bond does not cover this CONCESSION AGREEMENT, as provided for herein. Such a replacement Concession Bond must meet all of the requirements set forth in Article XXVIII. (Concession Bond) hereof, and shall be forwarded to and received by the STATE at least twenty (20) days prior to the effective date and time that the present Concession Bond will be cancelled.

E. OPERATOR Default. In the event that a replacement Concession Bond or another Concession Bond in the required amount and meeting the required terms is not received by the STATE prior to the effective date and time of the bond cancellation or expiration, as Stated, the OPERATOR shall be deemed in default of this CONCESSION AGREEMENT, regardless of whether or not a notice of breach or default, or time to correct breach or default has been provided to the OPERATOR by the STATE, and the full value shown on the face of the Concession Bond, together with an additional charge of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) per day for each day that no Concession Bond coverage is in effect, shall be immediately payable by the OPERATOR to the STATE as liquidated damages.

F. Any Lapse. Any lapse in keeping the Concession Bond in full force and effect, in the required sum, or in accordance with the terms required herein, shall be a default of this CONCESSION AGREEMENT, and shall give the STATE the right to assess the additional charge and/or terminate this CONCESSION AGREEMENT pursuant to Article VI.J. (Additional Charges) and Article XXI. (Termination by the STATE) respectively, hereof.

ARTICLE XXIX. LITIGATION

A. OPERATOR Responsible. If the STATE shall, without any fault, be made a party to any litigation initiated by or against the OPERATOR arising out of the OPERATOR's operation of the Concession, the OPERATOR shall indemnify, defend, keep and hold harmless, and if appropriate, insure the STATE and the STATE's officers, employees, and agents, from and against any all claims, demands, actions, suits, causes of action, judgments, injunctions, decisions, orders, liabilities, losses, damages, costs and expenses arising out of or related to any such litigation, including, without limitation, paying any and all costs, charges, and reasonable attorneys' fees incurred or imposed on the STATE in connection with such litigation. In any action by the STATE for recovery of any sum due under this CONCESSION AGREEMENT, or to enforce any of the terms, covenants, or conditions contained in this CONCESSION AGREEMENT, the STATE shall be entitled to recover all costs, fees, charges and attorneys' fees incurred or imposed on the STATE in connection with such actions.

B. Attorneys' Fees. For purposes of this CONCESSION AGREEMENT, reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys who practice in the County in law firms with experience in the subject matter and area of law for which the STATE's attorneys' services were rendered.

C. Prompt Notice. Each party shall give prompt written notice to the other party of any claim or suit instituted against it that may affect the other party.

D. Waiver of Claims. The OPERATOR hereby waives any claim against the STATE and the STATE's agents for loss of revenue, loss of opportunity, and loss of anticipated profits caused by any suit or proceedings, directly or indirectly attacking the validity of this CONCESSION AGREEMENT or any part hereof, or by any judgment or award in any suit or proceedings declaring this CONCESSION AGREEMENT null, void, or voidable, or delaying the same, or any part hereof, from being carried out.

ARTICLE XXX. LIENS

A. STATE's Lien. The STATE shall have a lien upon all the OPERATOR's Personal Property upon the Premises and the Automobile Parking Facilities, to the extent permitted by law, for the purpose of securing to the STATE the payment of all sums, including the Concession Fee and other charges, which may be due from the OPERATOR under this CONCESSION AGREEMENT. In the event that past due rents, Concession Fees, or other charges are not paid by the OPERATOR within five (5) days after a notice of default is given by the STATE to the OPERATOR, the STATE may take possession of and sell such portion of the OPERATOR's Personal Property as may be sufficient to pay the delinquent rents, Concession Fees, and other charges owed by the OPERATOR to the STATE. A sale of the OPERATOR's

Personal Property pursuant to this Article XXX. (Liens) may be made either publicly or privately, upon the notice given to the OPERATOR as herein provided.

B. Other Liens Prohibited. The OPERATOR shall not commit or suffer any act or neglect whereby the Premises, the Automobile Parking Facilities, or any portion thereof, including any portion of the Airport or the Improvements thereupon or therein, or the estate or interest of the OPERATOR in the same, at any time during the term of this CONCESSION AGREEMENT shall become subject to any attachment, lien, charge, or encumbrance whatsoever. The OPERATOR shall indemnify, defend, save and hold the STATE harmless, and if appropriate, insure the STATE, and the STATE's officers, employees, and agents from and against any and all attachments, liens, charges, and encumbrances, and any and all actions, suits, judgments, and orders relating thereto, and any and all costs, fees, charges, expenses and attorneys' fees resulting therefrom, it being expressly understood that the OPERATOR shall have no authority, express or implied, to create any attachment, lien, charge, or encumbrance upon or affecting the Premises and the Automobile Parking Facilities, or any portion thereof, except as otherwise authorized in writing by the STATE under this CONCESSION AGREEMENT.

ARTICLE XXXI. ASSIGNMENT AND SUBLETTING

A. Assignment or Other Transfers.

1. Assignment. The OPERATOR shall not assign, sublet, encumber or otherwise transfer, whether voluntary, involuntary, or by operation of law, the Premises or the Automobile Parking Facilities, or any part thereof or any interest herein, or permit any other person to occupy or use the Premises or the Automobile Parking Facilities, except by way of devise, bequest, or intestate succession, without the STATE's prior written consent, which consent may be granted or denied in the STATE's sole discretion. Any such transfer or assignment made without the STATE's consent shall constitute a default under this CONCESSION AGREEMENT, and shall be void at the STATE's election. With prior written approval of the STATE, and the prior approval of the Land Board, such assignment and transfer of this CONCESSION AGREEMENT, or any interest therein, may be made in accordance with current industry standards, as determined by the Land Board, pursuant to Section 171-36, HRS; provided that prior to the written approval of the STATE of any assignment of this CONCESSION AGREEMENT, the STATE shall have the right to review and approve, in writing, the consideration paid by the assignee, and may condition the STATE's consent to the assignment of this CONCESSION AGREEMENT on payment by the OPERATOR to the STATE of a premium of up to fifty percent (50%) of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of all Improvements and trade fixtures constructed or installed upon the Premises, the Automobile Parking Facilities, and elsewhere at the Airport by the OPERATOR during the term of this CONCESSION AGREEMENT, and being transferred to the assignee, as explained in the Department of Transportation Assignment of Lease and Premium Evaluation Policy, attached

hereto as Attachment 5 (hereafter the "Assignment Policy"), and incorporated herein by reference, which is subject to revision from time to time without formal amendment hereto . The OPERATOR shall pay the assignment premium to the STATE, as calculated by the STATE, based on the Assignment Policy. The premium on subsequent assignments shall be based on the difference in the selling price and purchase price, plus the straight-line depreciated cost of all Improvements, approved by the STATE, constructed or installed upon the Premises, the Automobile Parking facilities, and elsewhere at the Airport by the then assignor.

2. Changes in OPERATOR.

a. Controlling Interest. The merger of the OPERATOR with any other entity, or the transfer of any controlling ownership interest in the OPERATOR, or the assignment or transfer of a substantial portion of the assets of the OPERATOR, whether or not located on the Premises, or the Automobile Parking Facilities, shall constitute an assignment. Without limiting the generality of the foregoing, if the OPERATOR is a partnership, a withdrawal or change, voluntary, involuntary, or by operation of law, of the partner or partners owning fifty-one percent (51%) or more of the partnership, or the dissolution of the partnership, or the sale or transfer of at least fifty-one percent (51%) of the value of the assets of the OPERATOR, shall be deemed an assignment. If the OPERATOR is a corporation or limited liability company, any dissolution, merger, consolidation, or other reorganization of the OPERATOR, or the sale or other transfer of a controlling percentage of the capital stock or membership interests of the OPERATOR, or the sale or transfer of at least fifty-one percent (51%) of the value of the assets of the OPERATOR, shall be deemed an assignment. The phrase "controlling percentage" means the ownership of, and the right to vote, stock or interests possessing at least twenty percent (20%) (or a percentage less than twenty percent (20%) if such percentage represents a controlling interest in the OPERATOR) of the total combined voting power of all classes of the OPERATOR's capital stock or interests issued, outstanding, and entitled to vote for the election of directors.

b. Sale of Assets. The sale of all or substantially all of the assets of the OPERATOR, or the transfer of OPERATOR's Concession business, shall be deemed to constitute an "assignment" for purposes of this CONCESSION AGREEMENT, which requires the prior written approval of the STATE in accordance with this Article XXXI. (Assignment and Subletting).

3. The STATE shall Approve each Assignment. The consent of the STATE to any one (1) assignment shall not constitute a waiver of the STATE's right to approve subsequent assignments, nor shall consent of the STATE to any one (1) assignment relieve or release any party previously liable as the OPERATOR from any obligation under this CONCESSION AGREEMENT. The acceptance by the STATE of the payment of the Concession Fee, rent, or any other fees following an assignment shall not constitute consent to that assignment, or any other assignment, and the STATE's consent shall be evidenced only in writing.

4. No Release. In no event shall the STATE's consent to an assignment or transfer be deemed to be a release of the OPERATOR as the primary obligor hereunder. Nor shall the acceptance of the Concession Fee, rent, or any other fees by the STATE constitute a release or waiver of the STATE's rights against the OPERATOR, or as consent to any assignment or transfer, nor shall any other act of the STATE in relation to said assignee be so construed.

5. Void if not Properly Approved. Any transfer or assignment made in violation of the foregoing provision shall be void. Any attempted assignment, or any subleasing of the whole or any part of the Premises, or the Automobile Parking Facilities, or any other transaction which violates Articles XXXI.A. (Assignments or Other Transfers) or XXXI.B. (Subletting) shall be void and shall confer no right, title, or interest in or to this CONCESSION AGREEMENT, or right of occupancy of the whole or any portion of the Premises, or the Automobile Parking Facilities, upon any such purported assignee, subtenant, successor, or purchaser. The STATE shall further have the right to terminate this CONCESSION AGREEMENT, and to enforce such other remedies as are provided in this CONCESSION AGREEMENT.

B. Subletting.

1. STATE's Approval. The OPERATOR shall not rent or sublet the whole or any portion of the Premises without the prior written approval of the STATE. Unless authorized by law, the STATE shall deny consent to any uses not specified as allowable under this CONCESSION AGREEMENT. The STATE may review and approve the rent to be charged to the proposed suboperator, subtenant, or sublessee, and revise the rent and rent structure charged to the proposed suboperator, subtenant, or sublessee by the OPERATOR (the STATE may also include such other terms and conditions as the STATE may deem appropriate, prior to the STATE's approval of the proposed subconcession, or subtenant agreement, or sublease); provided, that the Concession Fee payable by the OPERATOR to the STATE may not be revised downward.

a. Percentage of Gross. In the case where the OPERATOR is required to pay a Concession Fee based on a percentage of its gross receipts, the gross receipts of the suboperator, subtenant, or sublessee or any subsequent suboperators, subtenants, or sublessees shall be included as part of the OPERATOR's gross receipts, and the STATE shall have the right to revise the Concession Fee based upon the rent and rent structure charged to the suboperator, subtenant or sublessee, including the Percentage Fees, if applicable; provided, that the Concession Fee may not be revised downward.

b. Combination Sublease/Assignment. If the proposed suboperator, subtenant, or sublessee pays the OPERATOR any consideration other than said rent, whether by cash, credit, or otherwise, or the term of the proposed subconcession, subtenant, or sublease agreement is for substantially the same term as this CONCESSION AGREEMENT, or if it otherwise appears to the STATE that the proposed subconcession, subtenant agreement, or

sublease agreement is actually an assignment, the STATE may treat the proposed subconcession, subtenant, or sublease agreement as an assignment under Article XXXI.A. (Assignment or Other Transfers) herein. The STATE's Sublease Evaluation Policy, attached hereto as Attachment 6 and incorporated herein by reference, shall be applicable to this Article XXXI.B. (Subletting), in evaluating any proposed subconcession, subtenant, or sublease agreement. If it appears to the STATE that the proposed subconcession, subtenant, or sublease agreement is actually a combination of an assignment and a subconcession, subtenant, or sublease agreement, then the STATE may treat the proposed subconcession, subtenant or sublease agreement as both an assignment and a subconcession, subtenant, or sublease agreement and apply the applicable portions of Articles XXXI.A. (Assignment or Other Transfers) and XXXI.B. (Subletting), respectively. The gross receipts of all suboperators, subtenants, and sublessees shall be included as part of the OPERATOR's gross receipts.

2. OPERATOR Proposal. Prior to negotiating a subconcession, subtenant, or sublease agreement, the OPERATOR must submit to the STATE a subconcession, subtenant, or sublease proposal for the STATE's approval, which approval may be granted or withheld in the STATE's sole discretion.

3. Sublease Form. Promptly after the STATE has approved a subconcession, subtenant, or sublease proposal, the OPERATOR must use diligent, good faith efforts to negotiate a subconcession, subtenant, or sublease agreement with the proposed suboperator, subtenant, or sublessee. The OPERATOR shall ensure that all of the terms contained in the subconcession, subtenant, or sublease agreement between the OPERATOR and the OPERATOR's suboperator, subtenant, or sublessee conform to and are consistent with the terms contained in the subconcession, subtenant, or sublease proposal (submitted to the STATE pursuant to Article XXXI.B.2. [OPERATOR proposal] herein) approved by the STATE. If the OPERATOR wishes to vary from the business terms set forth in the subconcession, subtenant, or sublease proposal approved by the STATE, then the OPERATOR must submit a new subconcession, subtenant, or sublease proposal for the STATE's approval.

4. Sublease OPERATOR. Promptly after the OPERATOR and the proposed suboperator, subtenant, or sublessee have agreed on a form of the subconcession, subtenant agreement, or sublease agreement that incorporates the business terms set forth in the subconcession, subtenant, or sublease proposal approved by the STATE, the OPERATOR must submit the subconcession, subtenant, or sublease agreement to the STATE for approval. If the proposed subconcession, subtenant, or sublease agreement: (a) accurately incorporates the business terms approved by the STATE; (b) conforms to and is consistent in all respects to the terms of the subconcession, subtenant, or sublease proposal approved by the STATE; and (c) is made expressly subject to the terms of the STATE's consent, then the STATE agrees that it will not unreasonably withhold its approval of the proposed subconcession, subtenant, or sublease agreement. Otherwise, the STATE may withhold its approval in the STATE's sole discretion.

5. STATE's Consent. If the STATE approves a subconcession, subtenant, or sublease agreement, the STATE's consent shall include, without limitation, the following conditions:

a. No Other Transfer. Other than the subconcession, subtenant, or sublease agreement, being approved, no other transfer is being permitted.

b. No Change. The subconcession, subtenant, or sublease agreement shall not change, modify, waive, or amend any of the terms and conditions of the CONCESSION AGREEMENT.

c. Conflict. If there is a conflict between this CONCESSION AGREEMENT and the subconcession, subtenant, or sublease agreement, this CONCESSION AGREEMENT shall control.

d. No Waiver. STATE's consent shall not be construed to be a waiver of any of the STATE's rights under the CONCESSION AGREEMENT.

e. STATE Reservation. The STATE reserves all of its rights under the CONCESSION AGREEMENT, and does not incur any additional liability by consenting to the subconcession, subtenant, or sublease agreement.

f. No Release. The STATE's consent to the subconcession, subtenant, or sublease agreement shall not release the OPERATOR from any of the OPERATOR's responsibilities, obligations, liabilities, and claims arising under or out of the CONCESSION AGREEMENT.

g. Priority of CONCESSION AGREEMENT. The CONCESSION AGREEMENT shall have priority over the subconcession, subtenant, or sublease agreement, which shall be subordinate in all respects to the CONCESSION AGREEMENT.

h. Compliance with Conditions. The OPERATOR and the suboperator, subtenant, or sublessee shall represent and warrant that each shall comply with all conditions that may be imposed by the Land Board or the STATE in connection with the STATE's consent to the subconcession, subtenant, or sublease agreement.

i. Other Conditions. The OPERATOR and the suboperator, subtenant, or sublessee shall comply with such other conditions as may be imposed by the STATE pursuant to the STATE's consent to the subconcession, subtenant, or sublease agreement, including, without limitation, conditions relating to governing law (Hawai'i), resident appointment, rights of holders of security interest, notice to the STATE, extension notices, recordation, use restrictions, the STATE's prior approval, compliance with laws, STATE remedies (including payment of the Concession Fee, rents (if any), and other charges directly to

the STATE in the event of the OPERATOR's default), and any changes to the STATE's assignment and/or sublease evaluation policies.

6. Delivery to STATE. If the STATE approves a subconcession, subtenant, or sublease agreement, the OPERATOR and the proposed suboperator, subtenant, or sublessee must deliver an original, fully-executed, original subconcession, subtenant, or sublease agreement to the STATE in the form approved by the STATE within fourteen (14) business days of receipt of the STATE's written approval. If an original, fully-executed counterpart subconcession, subtenant, or sublease agreement in the form approved by the STATE is not delivered to the STATE within that fourteen (14) business day time frame, then the OPERATOR must re-submit the proposed subconcession, subtenant, or sublease agreement again for the STATE's approval. If, upon resubmission, the STATE rejects a proposed subconcession, subtenant, or sublease agreement, then the OPERATOR may not enter into the subconcession, subtenant, or sublease agreement.

7. No Impairment. Each and every covenant, condition, or obligation imposed upon the OPERATOR by this CONCESSION AGREEMENT, and each and every right, remedy, or benefit afforded the STATE by this CONCESSION AGREEMENT will not be impaired or diminished as a result of any subconcession, subtenant, or sublease agreement.

8. Excessive Sublease Rent. No suboperator, subtenant, or sublessee shall be obligated to pay to the OPERATOR, and the OPERATOR shall not be permitted to charge any rent, percentage rent, bonus rent, key money, administrative fee or the like, which exceeds, in the aggregate, the total sums that the OPERATOR pays to the STATE under this CONCESSION AGREEMENT for the portion of the Premises or the Automobile Parking Facilities, used by the suboperator, subtenant, or sublessee under its subconcession, subtenant, or sublease agreement (the "Sandwich Profit"). If, notwithstanding the foregoing prohibition, the OPERATOR receives any Sandwich Profit, the OPERATOR shall pay all or a portion, as determined by the STATE, of such Sandwich Profit to the STATE in accordance with the STATE's Sublease Evaluation Policy.

9. Rents Assigned. The OPERATOR shall assign to the STATE all rent and other payments due from all suboperators, subtenants, and sublessees under any subconcession, subtenant, and sublease agreements; provided however, that the OPERATOR is hereby granted a license to collect rents and other payments due from the suboperators, subtenants, and sublessees under their subconcession, subtenant, or sublease agreements until the occurrence of an Event of Default, regardless of whether a notice of that default has been given to the OPERATOR. At any time, the STATE may notify a suboperator, subtenant, or sublessee of this assignment, and upon such notice, the suboperator, subtenant, or sublessee will pay its rent and other payments directly to the STATE. The STATE will credit the OPERATOR with any rent and other payments received by the STATE under such assignment, but the acceptance of any payment on account of rent and other payments from any suboperators, subtenants, or sublessees as a result of an Event of Default will in no manner whatsoever serve to release the OPERATOR from any liability under this CONCESSION AGREEMENT. No payment of rent or any other payment by

a suboperator, subtenant, or sublessee directly to the STATE, or other acceptance of such payments by the STATE, regardless of the circumstances or reasons therefor, will in any manner whatsoever be deemed an attornment by the suboperators, subtenants, or sublessees to the STATE in the absence of a specific written agreement signed by the STATE to such an effect.

10. Reports. If required by the STATE, the OPERATOR must, at the OPERATOR's sole cost and expense, prepare and submit the following reports and Statements, the forms of which will be subject to the approval of the STATE:

a. Monthly Report. On or before the tenth (10th) day of each calendar month, a detailed report with supporting evidence as may be requested by the STATE, summarizing the following activities for the preceding calendar month: (1) the rents, fees, charges, and all other sums received by the OPERATOR from each suboperator, subtenant, and sublessee during that month; (2) suboperator, subtenant, and sublease agreements executed; and (3) current and projected vacancies, and indicating all rights respecting such space pursuant to existing suboperator, subtenant, and sublease agreements, including, without limitation, rights or options to extend the term or expand, or rights of first negotiation or first refusal.

b. Annual Report. On or before the thirtieth (30th) day after the end of each CONCESSION AGREEMENT year, an annual report summarizing the suboperator, subtenant, and sublessee activities for the said agreement year, and the total rents, fees, charges, and all other sums received by the OPERATOR from each suboperator, subtenant, and sublessee during that agreement year.

c. Other Reports. Such other reports and such other information concerning the use of the Premises and the Automobile Parking Facilities by the suboperators, subtenants, and sublessees, and the operation of the Concession thereon or therefrom, as the STATE may from time to time reasonably request.

C. Violation.

1. Lease Termination. Except for meeting the ACDBE requirements (if any) of this CONCESSION AGREEMENT by subconcession, subtenant, or sublease agreement, any attempt by the OPERATOR to assign, transfer, hypothecate, mortgage, or encumber the OPERATOR's interest or rights under this CONCESSION AGREEMENT, or any attempt by the OPERATOR to permit a portion of the Premises or the Automobile Parking Facilities, to be used by a suboperator, subtenant, or sublessee, without first obtaining the STATE's written consent, shall be deemed a violation of this Article XXXI. (Assignment and Subletting). Any such attempted action or transaction on the part of the OPERATOR shall be declared null and void, and shall not confer any right, title, or interest in or to this CONCESSION AGREEMENT, or right of occupancy of the whole or any portion of the Premises, or the Automobile Parking Facilities, upon any such purported assignee, mortgagee, encumbrancer, pledgee, suboperator, subtenant, sublessee, successor, or purchaser. The STATE shall further have the right to terminate this CONCESSION AGREEMENT and enforce such other remedies as are provided in

Article XXI. (Termination by the STATE) and Article VI.J. (Additional Charges), respectively, herein.

2. Assignor or Transferor. If the OPERATOR defaults in the performance of any of the terms of this CONCESSION AGREEMENT, the STATE may proceed directly against the transferee or each transferee if there has been more than one assignment, subletting, encumbrance, or transfer (hereafter collectively "Transfer") without the necessity of exhausting remedies against the OPERATOR. The STATE may consent to subsequent Transfers or amendments or modifications to this CONCESSION AGREEMENT with transferees, without notifying the OPERATOR/transferor (or if there has been more than one Transfer, then each transferor), and without obtaining its or their consent thereto, and such action shall not relieve the OPERATOR or any transferor of liability under this CONCESSION AGREEMENT, as amended.

D. Procedure and Conditions.

1. Procedure. The OPERATOR must provide the STATE in writing:

a. the name and address of a proposed suboperator, subtenant, sublessee, assignee, or transferee;

b. the nature of the proposed business to be operated by a suboperator, subtenant, sublessee, assignee, or transferee on the Automobile Parking Facilities and the Premises;

c. the terms of the proposed subconcession, subtenant, sublease, assignment, or transfer agreement; and

d. reasonable financial information in order that the STATE can properly evaluate the proposed suboperator, subtenant, sublessee, assignee, or transferee under this Article XXXI. (Assignment and Subletting).

2. Conditions. Transfers by the OPERATOR are also subject to the following:

a. the terms of this CONCESSION AGREEMENT;

b. the term of any subconcession, subtenant, sublease, assignment, or other Transfer agreement shall not extend beyond the term of this CONCESSION AGREEMENT;

c. the OPERATOR shall remain liable for all CONCESSION AGREEMENT obligations;

- d. consent to one Transfer does not waive the consent requirement for any future Transfers;
- e. payment to the STATE of all premiums, Sandwich Profits, or other amounts which the OPERATOR may be required to pay under this Article XXXI. (Assignment and Subletting); and
- f. any other conditions that may be imposed by the STATE.

ARTICLE XXXII. SUCCESSORS AND ASSIGNS

Each and all of the expressions, phrases, terms, conditions, provisions, stipulations, promises, covenants, CONCESSION AGREEMENTs, requirements and obligations of this CONCESSION AGREEMENT shall, whenever applicable, extend to and bind and inure to the benefit of the STATE and the OPERATOR, and the legal representatives, successors, and permitted assigns of either or both of them.

ARTICLE XXXIII. NOTICES

Except as otherwise specifically provided in this CONCESSION AGREEMENT, any notice, consent, request, demand, or other correspondence given under this CONCESSION AGREEMENT shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or overnight courier, return receipt requested, with postage prepaid; to: (a) the OPERATOR at the address set forth on Page 1 of this CONCESSION AGREEMENT; (b) the STATE at the following address: Department of Transportation, Airports Division, Honolulu International Airport, 400 Rodgers Boulevard., Suite 700, Honolulu, Hawai'i 96819-1880; or (c) such other address as either the OPERATOR or the STATE may designate in writing as its new address for such purpose by notice given to the other in accordance with this Article XXXIII. (Notices) hereof. Any notice hereunder shall be deemed to have been given and received and effective: (a) three (3) business days after the date when it is mailed, if sent by first-class, certified mail; or (b) two (2) business days after the date when it is mailed if sent by overnight courier; or (c) upon the date personal delivery is made.

ARTICLE XXXIV. INTERPRETATION OF CONCESSION AGREEMENT

A. Headings. The headings and captions preceding the articles and sections of this CONCESSION AGREEMENT and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this CONCESSION AGREEMENT.

B. Not Against Drafter. This CONCESSION AGREEMENT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein, and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this CONCESSION AGREEMENT. The language hereof, and in all parts of this CONCESSION AGREEMENT, shall, in all cases, be construed simply according to its fair meaning, and not strictly for or against either the STATE or the OPERATOR.

C. Fair Meaning. Unless otherwise specifically stipulated, references in this CONCESSION AGREEMENT relating to the number of days shall mean calendar days. The word "including" shall mean "including, without limitation". References to statutes, sections, ordinances, or regulations are to be construed as including all statutes, ordinances, or regulatory provisions consolidating, amending, replacing, succeeding, or supplementing a statute, section, ordinance, or regulation.

D. Gender and Number. Whenever the singular number is used in this CONCESSION AGREEMENT and when required by the context, the same includes the plural, the plural includes the singular, and the masculine gender includes the feminine and neuter genders, and the meaning of the word "person" shall include corporations, partnerships, firms, limited liability companies, and associations.

ARTICLE XXXV. NO PARTNERSHIP

It is expressly understood and agreed by and between the STATE and the OPERATOR that the STATE shall in no way be, nor for any purpose become, nor be construed to become, a partner of the OPERATOR in the conduct of its Concession business, or otherwise, or a joint venturer or a member of a joint enterprise with the OPERATOR, and the STATE does not assume responsibility for the OPERATOR's conduct or performance under this CONCESSION AGREEMENT. The provisions of Article VI. (Payment and Reporting Requirements) hereof, relating to the Concession Fee payable hereunder to the STATE by the OPERATOR, are included herein solely for the purpose of providing a method whereby the Concession Fee is to be measured and ascertained. The STATE and the OPERATOR acknowledge and agree that there are no third-party beneficiaries to this CONCESSION AGREEMENT.

ARTICLE XXXVI. FORCE MAJEURE

A. STATE's Obligations. The STATE shall not be liable for any failure, delay or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including (but without limitation thereto) by war, acts of terrorism or any matter or thing resulting therefrom, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion or sabotage, or by any other cause or causes beyond the control of the STATE, or by labor disputes, strikes, boycotts,

picketing, slow-downs, work stoppages or labor troubles of any other type, whether affecting the STATE, its contractors, or subcontractors.

The STATE shall not be obligated to supply any service or services, if and to the extent, and during any period, that the supplying of any such service or services, or the use of any component necessary therefor, shall be prohibited by any federal, State of Hawai‘i, County, or municipal law, rule, regulation, requirement, order, or direction; provided, however, that even if such prohibition does not expressly apply to the STATE, the STATE may choose to comply with such prohibition, in whole or in part, and in so choosing, the STATE shall not be obligated to supply any such service or services.

B. Fees Remain Payable. Unless and only to the extent otherwise specified in this CONCESSION AGREEMENT, no abatement, diminution, or reduction of the Concession Fee, rents, or other charges payable by the OPERATOR shall be claimed by or allowed to the OPERATOR for any inconvenience, interruption, cessation or loss of business, or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances, or regulations of the U.S., or of the State of Hawai‘i, or any County or municipal governments, or of any other county, municipal, governmental, or lawful authority whatsoever, or by priorities, rationing, curtailment or shortage of labor or materials, or by war, acts of terrorism or any matter or thing resulting therefrom, or by strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion or sabotage, or by any other cause or causes beyond the control of the STATE, nor shall this CONCESSION AGREEMENT be affected by any such causes.

C. Non-Economic Relief. Upon the occurrence of a force majeure event, as determined by the Director, in the Director’s sole discretion, the Director may, but is not obligated to, grant non-economic relief to the OPERATOR, the amount, extent, and duration of which shall be determined by the Director, in the Director’s sole discretion. Examples of force majeure events include acts of God, federal or State of Hawai‘i laws, governmental regulations, orders, or restrictions, acts of superior government authority, war, war-like conditions, hostilities, acts of terrorism, acts of the public enemy, sabotage, rebellion, riots, looting, military mobilization, blockades, embargoes, or other transportation delay, strikes, lockouts, or other labor disputes, shortages of labor, inability to secure fuel, materials, supplies, or power due to shortages thereof, epidemic, fire or flood.

D. OPERATOR Enforcement. Nothing in this Article XXXVI. (Force Majeure) shall preclude nor be construed to preclude the enforcement by the OPERATOR of any of its rights contained in Article XXIV. (Termination by the OPERATOR) and Article XXV. (Suspension or Abatement) hereof.

ARTICLE XXXVII. ENTIRE AGREEMENT

The parties hereto intend that this CONCESSION AGREEMENT (including all of the exhibits and attachments that are made a part of this CONCESSION AGREEMENT) shall be the final expression of their entire CONCESSION AGREEMENT with respect to the subject matter hereof, and may not be contradicted by evidence of any prior or contemporaneous written or oral CONCESSION AGREEMENTs or understandings. The CONCESSION AGREEMENT constitutes the complete and exclusive Statement of CONCESSION AGREEMENT terms, and no extrinsic evidence whatsoever (including prior drafts hereof and changes thereto) may be introduced in any judicial, administrative, or other legal proceeding involving this CONCESSION AGREEMENT.

ARTICLE XXXVIII. AMENDMENTS

Neither this CONCESSION AGREEMENT nor any terms and conditions contained herein may be varied, changed, modified, or revised by any oral CONCESSION AGREEMENT or representation, or otherwise, except by an instrument, in writing, of subsequent date hereto, executed by the respective officer(s) of both parties, or other duly authorized person(s).

ARTICLE XXXIX. INVALID PROVISION-SEVERABILITY

If any provision of this CONCESSION AGREEMENT or the application thereof to any person, entity, or circumstance shall, to any extent, be deemed invalid or unenforceable by a court of competent jurisdiction, the remainder of this CONCESSION AGREEMENT, or the application of such provision to persons, entities, or circumstances other than those that were deemed to be invalid or unenforceable, shall not be affected thereby, and each other provision of this CONCESSION AGREEMENT shall be valid and enforceable to the full extent permitted by law.

ARTICLE XL. NON-LIABILITY OF INDIVIDUALS

Neither the STATE, the Director, nor any governmental agency of the State of Hawai'i (including any as may succeed to the duties, powers, or functions of the DOT-A), nor any agency, officer or employee thereof, shall be charged personally by the OPERATOR with any liability, or be held liable to the OPERATOR under any term, condition, covenant, or provision of this CONCESSION AGREEMENT, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, hereof.

ARTICLE XLI. NONDISCRIMINATION

A. Operation. The Operator, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby further covenant and agree:

1. That no person on the grounds of race, creed, color, national origin, sex, age, or a physical disability, as defined in the ADA, shall be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities and services;

2. That in the construction of any Improvements at, in, on, over, or under the Premises, and the furnishing of services thereon, no person on the grounds of race, creed, color, national origin, sex, age, or a disability, as defined in the ADA, shall be denied the benefits of, or otherwise be subjected to discrimination;

3. This CONCESSION AGREEMENT is subject to the requirements of the U. S. Department of Transportation's regulations, Title 49, CFR Parts 23 and 26;

4. That OPERATOR shall not discriminate against any business owner because of race, creed, color, national origin, sex, age, or disability, as defined in the ADA, in connection with operating and maintaining this Concession at the Airport or in connection with the award and performance of any agreement covered by Title 49, CFR Parts 23 and 26;

5. That the OPERATOR shall operate and maintain the automobile Parking Facilities and Premises, thereon at the Airport in compliance with all other requirements imposed by or pursuant to Title 49, CFR, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said federal regulations may be amended; and,

6. That the OPERATOR will include the foregoing statements in any subsequent CONCESSION AGREEMENT or other contracts it enters and cause those businesses to similarly include the statements in further agreements.

B. Breach. In the event of a breach of any of the foregoing nondiscrimination covenants, the STATE may terminate this CONCESSION AGREEMENT and re-enter and repossess the Automobile Parking Facilities and Premises, and hold the same as if this CONCESSION AGREEMENT had never been made or issued.

ARTICLE XLII. CIVIL RIGHTS PROVISION

The OPERATOR assures that it will undertake an affirmative action program as required by Title 14, CFR Part 152, Subpart E, and as said regulation may be administered at the Airport

by the FAA, to ensure that no person shall, on the grounds of race, creed, color, age, national origin, or sex, be excluded from participating in any employment activities covered by Title 14, CFR Part 152, Subpart E. The OPERATOR assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The OPERATOR further assures that it will require that its covered contractors, agents, and sub-organizations provide assurances to the STATE that they will similarly undertake affirmative action programs, and that they will require assurances from their contractors, agents, and sub-organizations, as required by Title 14, CFR Part 152, Subpart E, to the same effect.

ARTICLE XLIII. DISPUTES

A. All Disputes. All controversies and disputes between the STATE and the OPERATOR which arise under, or by virtue of, this CONCESSION AGREEMENT, and which are not resolved by mutual agreement, shall be decided by the Director, in writing, within one hundred and twenty (120) calendar days after receiving a written request by the OPERATOR for a final decision concerning the controversy; provided that, if the Director does not issue a written decision within one hundred and twenty (120) calendar days after receiving a written request for a final decision, or within such longer period as may be agreed upon by the parties, the OPERATOR may proceed as if an adverse decision had been received.

B. Notice of Decision. The Director shall furnish a copy of the decision to the OPERATOR, pursuant to Article XXXIII. (Notices) herein.

C. Final and Conclusive. Any such decision by the Director shall be final and conclusive.

ARTICLE XLIV. BROKERS

The OPERATOR warrants and represents to the STATE that the OPERATOR has not had any contact or dealings, or any communication through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with this CONCESSION AGREEMENT. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings, or communication, the OPERATOR shall be responsible for such commission or fee, and shall indemnify, defend, and hold harmless the STATE from any and all claims, demands, actions, suits, causes of action, judgments, liabilities, losses, damages, costs, and expenses arising from the OPERATOR's dealings and interactions with any broker, finder, or person who could claim a right to a commission or finder's fee. The provisions of Article XLIV. (Brokers) hereof shall survive any termination or expiration of this CONCESSION AGREEMENT.

ARTICLE XLV. STATE RESERVATIONS

The STATE may: (a) at any time, upon reasonable advance written or oral notice, enter the Premises and the Automobile Parking Facilities, to show the Premises and the Automobile Parking Facilities, to interested parties, to post notices of non-responsibility, to re-measure the Premises and the Automobile Parking Facilities, to repair any part of the Premises, the Automobile Parking Facilities, or adjoining areas, to install equipment for adjoining areas, to conduct a financial audit, or for any other lawful purpose; and (b) without advance notice, enter the Premises and the Automobile Parking Facilities to conduct an environmental audit, operational audit, or general inspection or in an emergency. The STATE shall use reasonable efforts to minimize disruption to the OPERATOR's operation. Such entry shall not constitute a forcible or unlawful entry into or a detainer of the Premises, or the Automobile Parking Facilities, or an eviction, actual or constructive, of the OPERATOR from the Premises or the Automobile Parking Facilities. The STATE reserves the exclusive right to use all areas of the Airport not comprising the Premises and the Automobile Parking Facilities, and the exterior walls and roofs of the Premises and the Automobile Parking Facilities. The STATE reserves the exclusive right to use such areas, together with the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires, columns, equipment, appurtenances, and structural elements serving other parts of the Airport in and through the Premises and the Automobile Parking Facilities. This reservation in no way affects the OPERATOR's maintenance obligations contained in this CONCESSION AGREEMENT.

ARTICLE XLVI. SURVIVAL OF OBLIGATIONS

A. STATE's Right to Enforce. Termination of this CONCESSION AGREEMENT, whether by expiration or sooner termination, shall not affect the right of the STATE to enforce any or all indemnities, representations, and warranties given or made by the OPERATOR to the STATE under this CONCESSION AGREEMENT, nor shall it affect any provision of this CONCESSION AGREEMENT that expressly States it shall survive termination hereof. The OPERATOR specifically acknowledges and agrees that, with respect to each of the OPERATOR's indemnities contained in this CONCESSION AGREEMENT, the OPERATOR has an immediate and independent obligation to defend the STATE from any claim which actually or potentially falls within the indemnity provisions, even if such allegation is or may be groundless, fraudulent, or false, which obligation to indemnify arises at the time such claim is tendered to the OPERATOR by the STATE.

B. Accrued Obligations. The OPERATOR's obligation to make payments to the STATE in respect of accrued charges (including those that have not yet been billed), which are accrued at the expiration or earlier termination of this CONCESSION AGREEMENT, shall survive the expiration or earlier termination of this CONCESSION AGREEMENT.

ARTICLE XLVII. QUIET ENJOYMENT

The OPERATOR, upon paying the Concession Fee, rent (if any), and other charges required under this CONCESSION AGREEMENT, and performing the covenants hereof, shall peaceably and quietly have, hold, and enjoy the Premises, the Automobile Parking Facilities, and all appurtenances during the full term of this CONCESSION AGREEMENT as against all persons or entities claiming by and through the STATE. The OPERATOR expressly acknowledges that the OPERATOR's right to quiet possession of the Premises and the Automobile Parking Facilities, does not preclude the STATE's right to make changes and additions to the Airport, including the Premises and the Automobile Parking Facilities, and to do work on the Premises and the Automobile Parking Facilities, as permitted by this CONCESSION AGREEMENT, including, without limitation, the STATE's right to relocate the OPERATOR as described in this CONCESSION AGREEMENT.

ARTICLE XLVIII. ACCORD AND SATISFACTION

A. OPERATOR's Instructions Void. Payment by the OPERATOR or receipt by the STATE of a lesser amount than the payments required as stipulated in this CONCESSION AGREEMENT may be, at the STATE's sole option, deemed to be on account of the earliest due of: 1) any interest, service charges, and late fees; and 2) any stipulated Concession Fee and other charges (beginning with earliest owing Concession Fee and other charges), notwithstanding any instruction by or on behalf of the OPERATOR to the contrary, which instructions shall be null and void, and no endorsement or Statement on any check or any letter accompanying any such check or payment will be deemed an accord and satisfaction, and the STATE may accept such check or payment without prejudice to the STATE's right to recover the balance of such Concession Fee, rent or other charges due hereunder, or pursue any other remedy available in this CONCESSION AGREEMENT or by law.

B. Acceptance does not Invalidate Notice. The STATE may accept any partial payment from the OPERATOR without invalidation of any contractual notice required to be given herein (to the extent such contractual notice is required) and without invalidation of any notice given or required to be given pursuant to applicable law.

ARTICLE XLIX. JOINT AND SEVERAL LIABILITY

The obligations, covenants, promises, liabilities, warranties, and representations of the OPERATOR under this CONCESSION AGREEMENT shall be joint and several, by and among any and all entities and persons comprising the OPERATOR.

ARTICLE L. ESTOPPEL STATEMENTS

A. OPERATOR Must Deliver. Within ten (10) days after request therefor by the STATE, the OPERATOR shall deliver, in recordable form, an estoppel Statement certifying that this CONCESSION AGREEMENT is in full force and effect, the date of the OPERATOR's most recent payment to the STATE for providing Concession services at the Airport, and that the OPERATOR has no defenses or offsets outstanding, or stating those defenses or offsets being claimed, and any other information reasonably requested by the STATE.

B. Failure to Deliver. If the OPERATOR fails to deliver the requested estoppel Statement to the STATE within the specified period, the following shall be deemed conclusive: (1) this CONCESSION AGREEMENT is in full force and effect, without modification, except as may be represented by the STATE; (2) there are no uncured defaults in the STATE's performance, and the OPERATOR has no right of offset, counterclaim, or deduction against Concession Fees, rents (if any), or other charges payable under this CONCESSION AGREEMENT; and (3) no more than one (1) month's Concession Fee and other charges have been paid in advance. Such conclusions shall be binding upon the OPERATOR. Notwithstanding these conclusions, the OPERATOR's failure to deliver the requested estoppel Statement shall also constitute a breach of this CONCESSION AGREEMENT.

ARTICLE LI. AUTHORITY

If the OPERATOR signs as a corporation, a limited liability company, or a partnership, each of the persons executing this CONCESSION AGREEMENT on behalf of the OPERATOR does hereby covenant and warrant that the OPERATOR is a duly authorized and existing entity, that the OPERATOR has and is duly qualified to do business in the State of Hawai'i, that the OPERATOR has full right and authority to enter into this CONCESSION AGREEMENT, and that each and all of the persons signing on behalf of the OPERATOR are authorized to do so. Upon the STATE's request, the OPERATOR shall provide the STATE with evidence reasonably satisfactory to the STATE confirming the foregoing representations and warranties.

ARTICLE LII. CONSENTS

If the STATE is required to be reasonable in granting or withholding consent or approval, but fails to do so, the OPERATOR's sole and exclusive legal remedy is to seek specific performance, and in no event will the STATE be liable for any monetary damages. All consents and approvals by the STATE shall be in writing.

ARTICLE LIII. COUNTERPARTS

This CONCESSION AGREEMENT may be executed in counterparts, each of which shall be deemed an original CONCESSION AGREEMENT. Said counterparts shall together constitute one and the same document, binding all of the parties hereto notwithstanding that all of the parties are not signatory to the original or the same counterpart. For all purposes, including, without limitation, recordation, filing, and delivery of this CONCESSION AGREEMENT, duplicate unexecuted pages of the counterparts may be discarded, and the remaining pages assembled as one document.

ARTICLE LIV. GOVERNING LAW

This CONCESSION AGREEMENT shall be governed by, interpreted, and construed in accordance with the laws of the State of Hawai'i.

(Remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties have duly executed this CONCESSION AGREEMENT on the day and year first above written.

APPROVED AS TO FORM:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

GLENN KIMURA
Deputy Attorney General

By _____
FORD N. FUCHIGAMI
Its Director

STATE

[OPERATOR]

By _____
Its

OPERATOR

APPROVED:

BOARD OF LAND AND
NATURAL RESOURCES

Approved by the Board
at its meeting held on

By _____
SUZANNE D. CASE
Chairperson and Member

2/28/2014, Item M-1

STATE OF _____)
) SS
COUNTY OF _____)

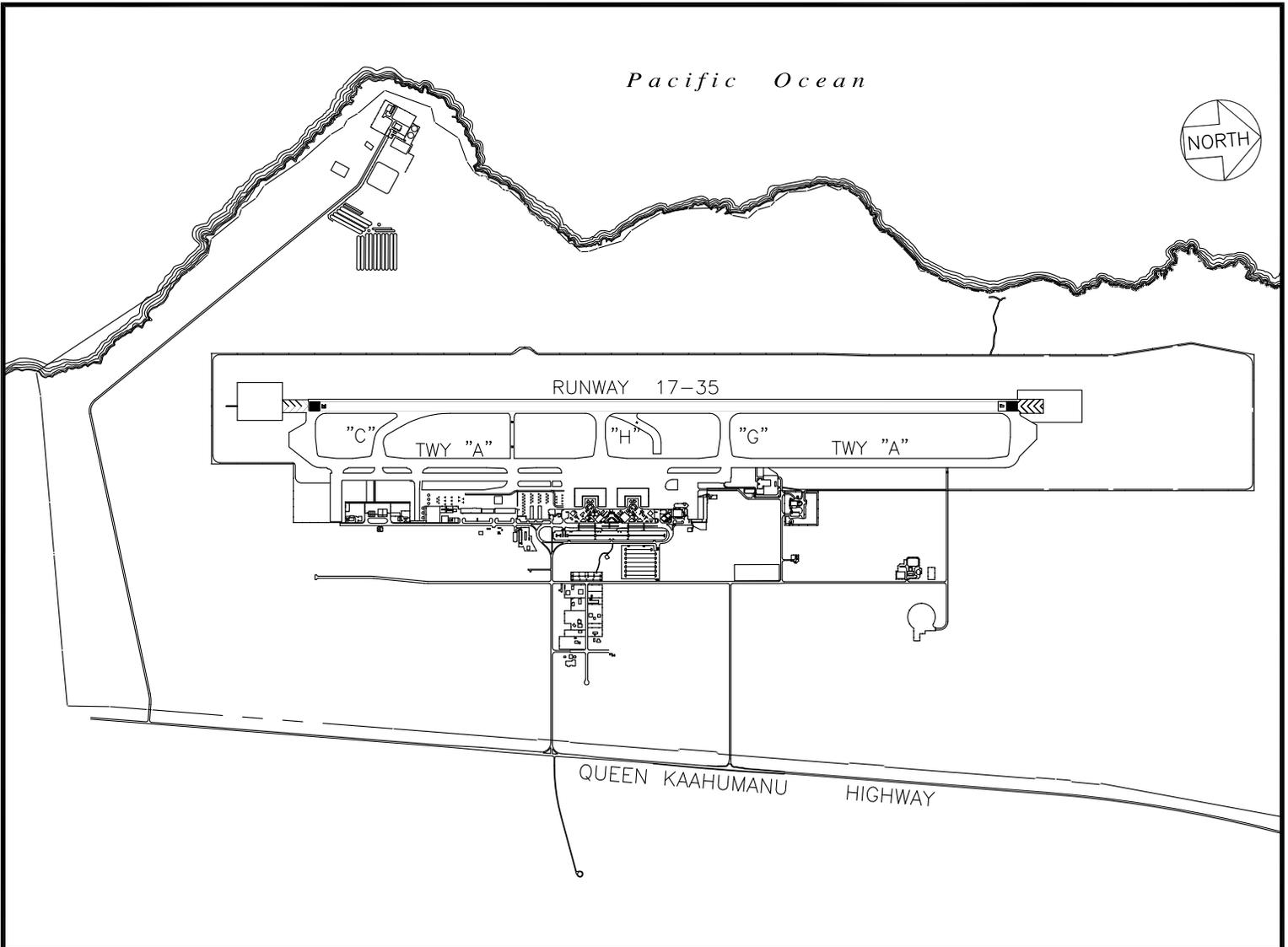
On this _____ day of _____, 20____, before me
appeared _____ to me personally known, who
being by me duly sworn, did say that _____ is (are) the
of _____
and that said instrument was signed and sealed in behalf of said corporation by authority of its
Board of Directors, and the said _____
acknowledged said instrument to be the free act and deed of said corporation.

Print Name:
Notary Public, _____ Judicial Circuit
State of _____

Doc. Description: _____
No. of Pages: _____

Notary signature
My Commission Expires: _____

ATTACHMENT 1 – EXHIBITS A THROUGH E



<u>LOT</u>	<u>DESCRIPTION</u>	<u>EXHIBIT NO.</u>	<u>STALLS</u>
	AIRPORT	A	
A	PUBLIC PARKING	B1, B2 & B3	693 *
B	EMPLOYEE PARKING	B4 & B5	786
C	PUBLIC (METERED) PARKING	B6	19 **
D	EMPLOYEE PARKING (EXIT GATE PLAZA/OFFICE)	B7 C	165

* INCLUDES 34 HANDICAP STALLS
 ** INCLUDES 1 HANDICAP STALL

SCALE: 1" = 2500'

DATE : JANUARY 2016

EXHIBIT: **A**

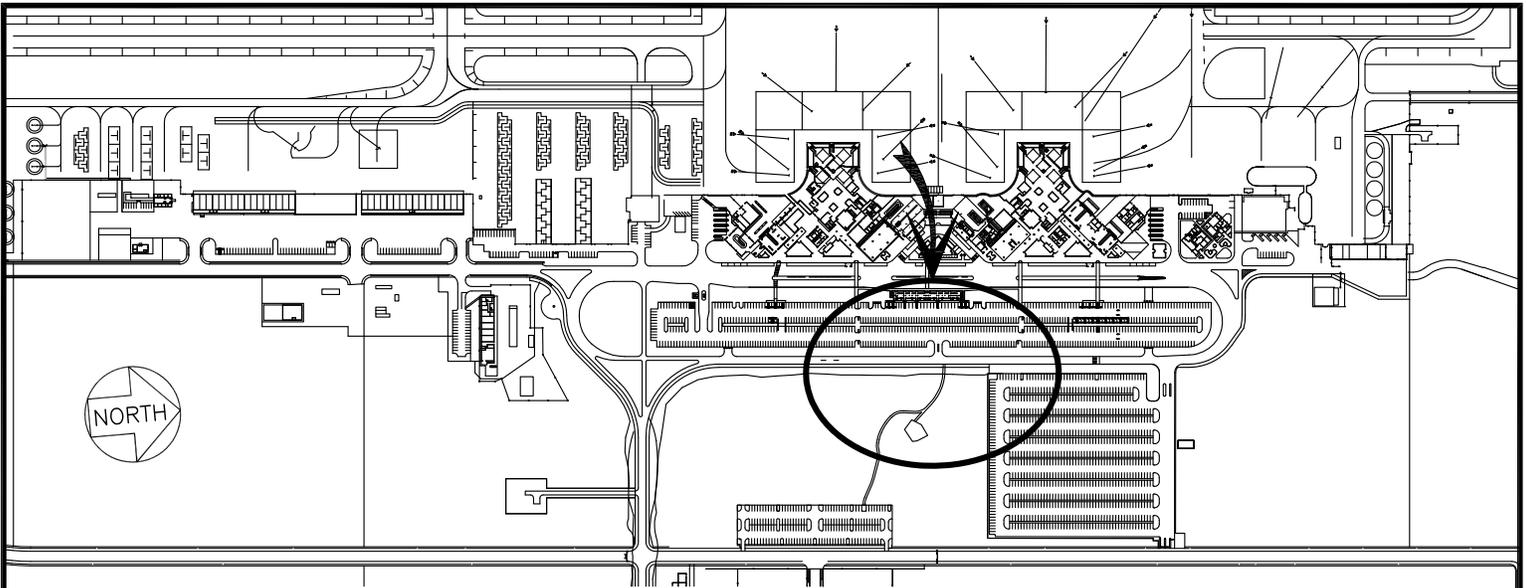


Airports Division

AUTOMOBILE PARKING FACILITIES

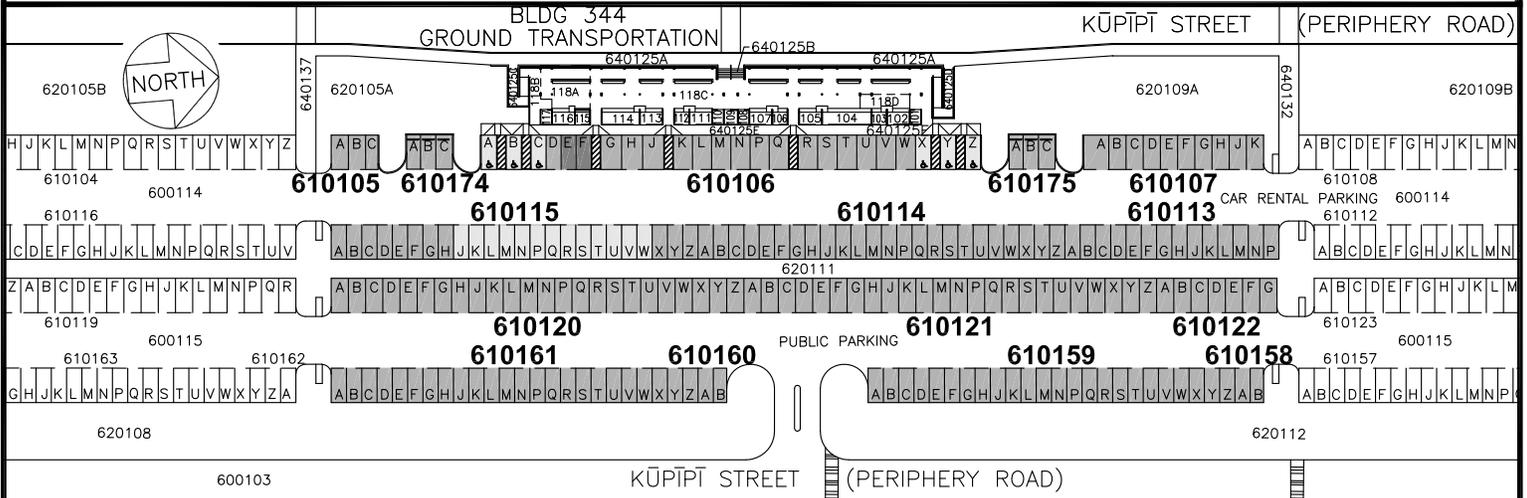
"AIRPORT"

PLAT 01



LOCATION PLAN

600:1



AREA/SPACE	STALLS	<input type="checkbox"/> HANDICAP	#	<input type="checkbox"/> EV STATIONS	#	<input type="checkbox"/> EV STALLS	#
610 105A-C	3						
610 106A-Z	24	<input checked="" type="checkbox"/>	A-C, X-Z (6)	<input checked="" type="checkbox"/>	E-F (2)		
610 107A-K	10						
610 113A-P	14						
610 114A-Z	24						
610 115A-Z	24					<input checked="" type="checkbox"/>	J-N, P-W (13)
610 120A-Z	24						
610 121A-Z	24						
610 122A-G	7						
610 158A-B	2						
610 159A-Z	24						
610 160A-B	2						
610 161A-Z	24						
610 174A-C	3						
610 175A-C	3						
TOTAL:	212		(6)		(2)		(13)

SCALE: 1" = 100'

DATE : JANUARY 2016

EXHIBIT: **B2**

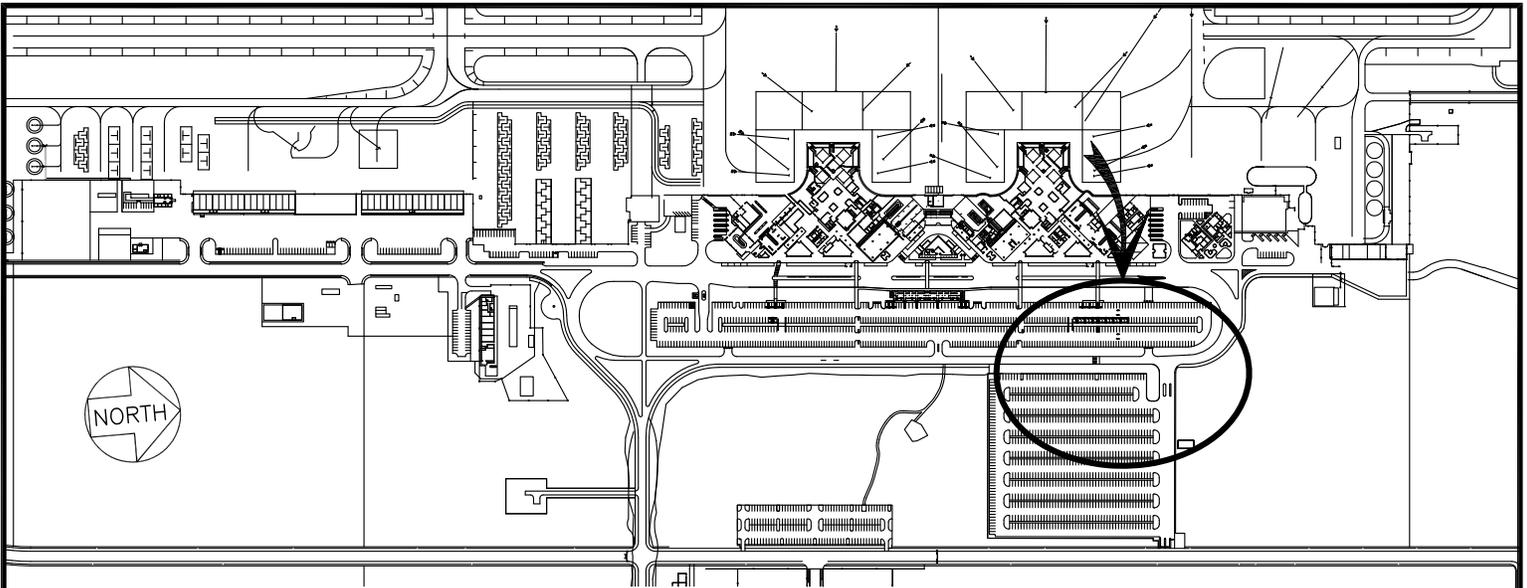


AUTOMOBILE PARKING FACILITIES

LOT A

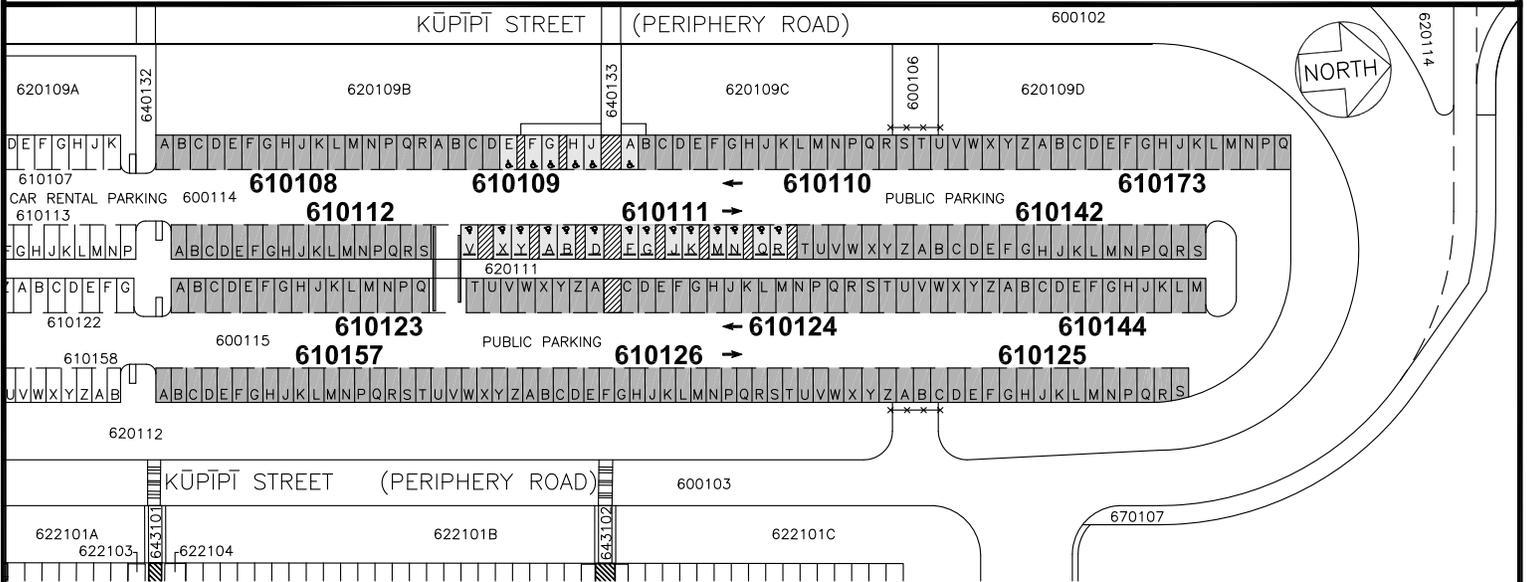
PLATS E1, 58

N:\AIRPORTS\KOA_Kona\CAD\PM\2014 automobile parking facilities\KOA 2014 Automobile Parking Facilities-0003_B2.dwg



LOCATION PLAN

600:1



AREA/SPACE	STALLS	HANDICAP	#
610 108A-R	16		
610 109A-J	9	E-H, J	(5)
610 110A-Z	24	A	(1)
610 111A-Z	18	A-B, D, F-G, J-K, M-N, Q-R	(11)
610 112A-Y	20	V-Y	(3)
610 123A-Z	22		
610 124A-Z	23		
610 125A-S	17		
610 126A-Z	24		
610 142A-S	17		
610 144A-M	12		
610 157A-Z	24		
610 173A-Q	15		
TOTAL:	241		(20)

SCALE: 1" = 100'

DATE : JANUARY 2016

EXHIBIT: **B3**

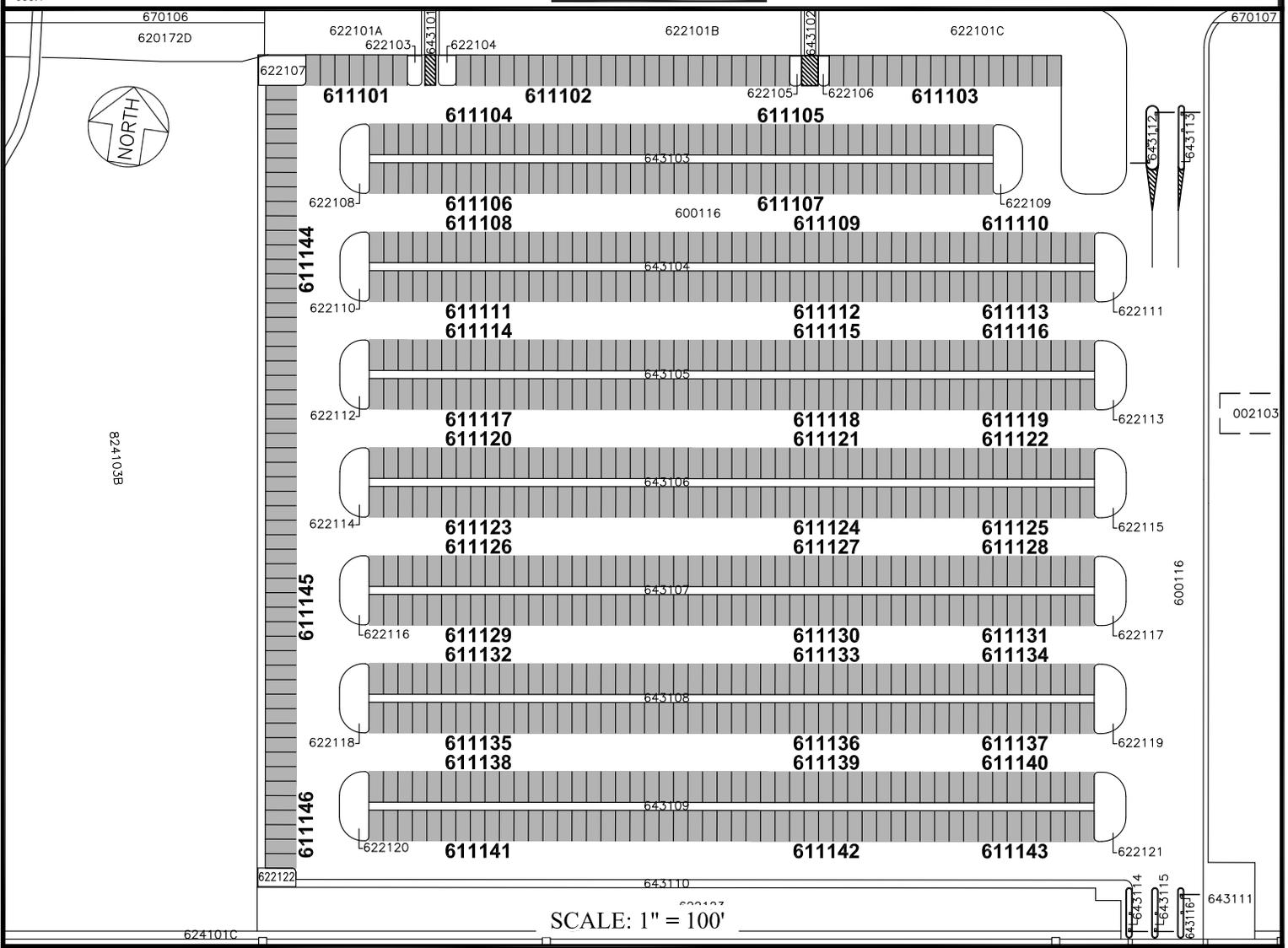
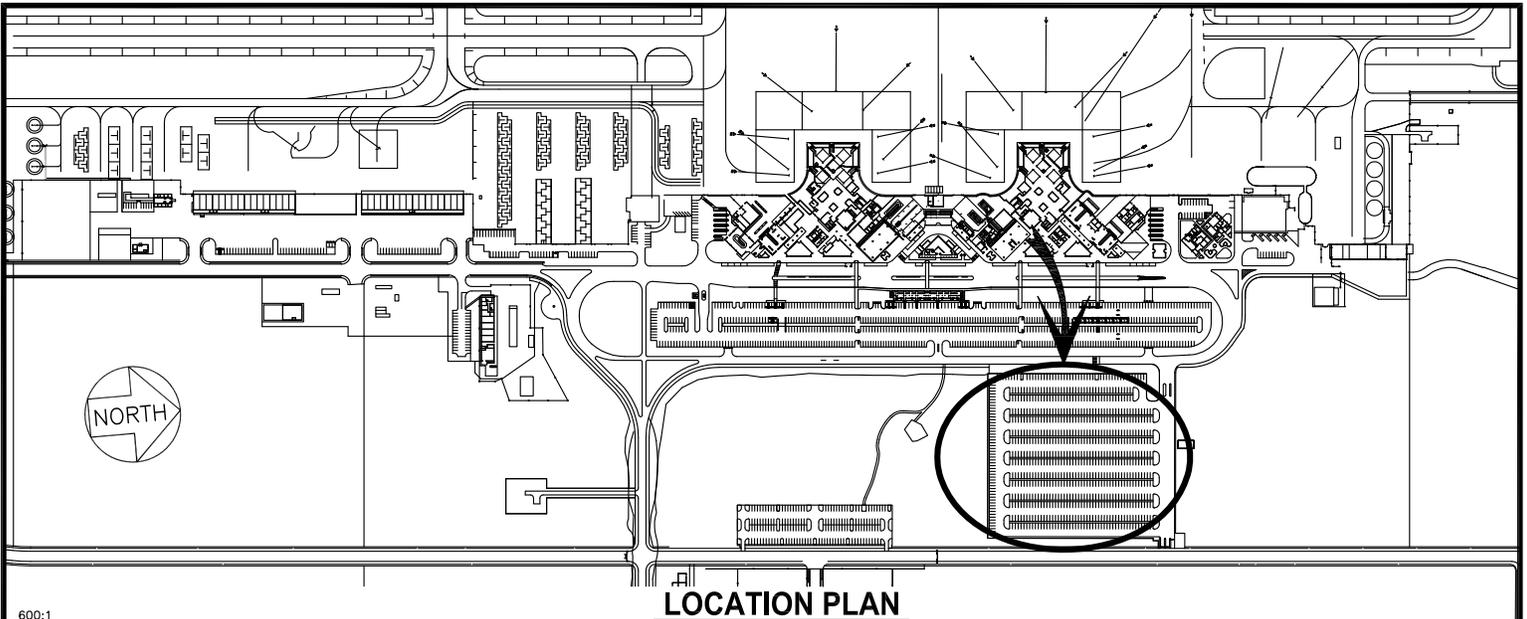


AUTOMOBILE PARKING FACILITIES

LOT A

PLATS E1, F1, 58

N:\AIRPORTS\KOA_Kona\CAD\PM\2014 automobile parking facilities\KOA 2014 Automobile Parking Facilities-0004_B3.dwg



DATE : JANUARY 2016

EXHIBIT: **B4**

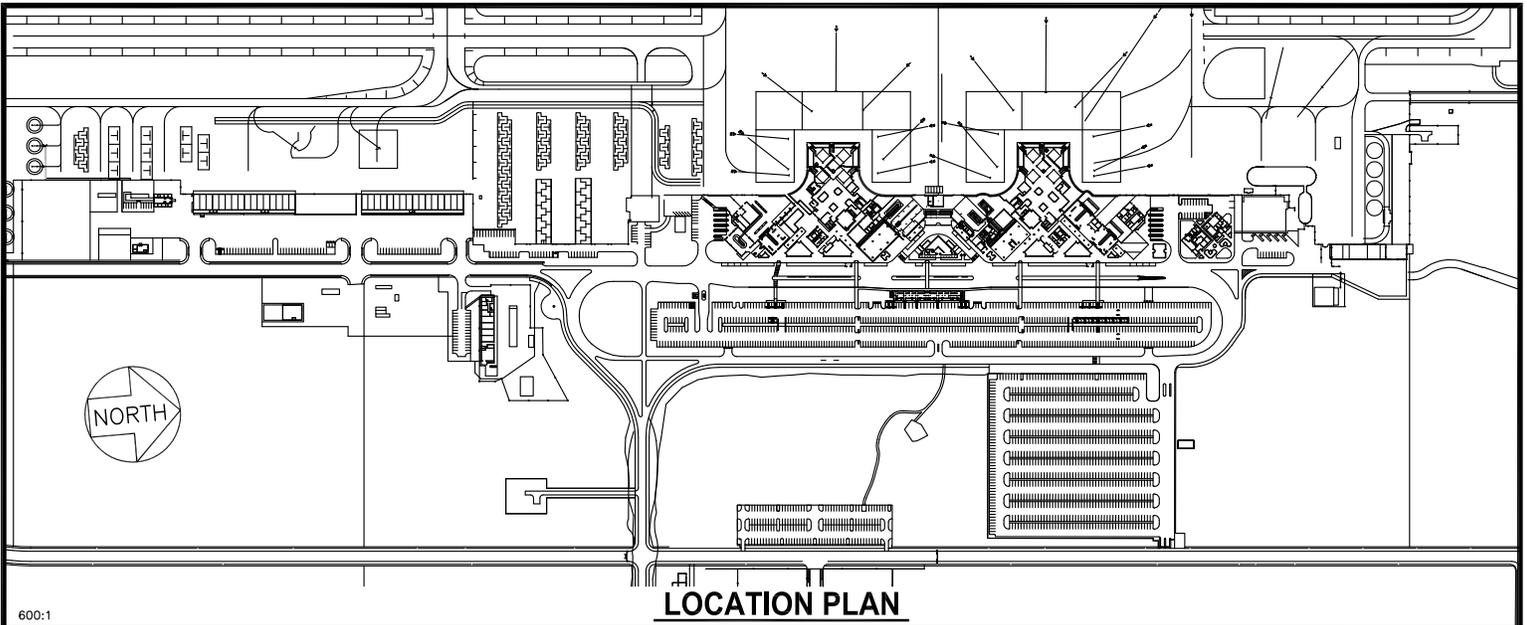


Airports Division

**AUTOMOBILE PARKING
FACILITIES**

LOT B

PLATS E1, 58



600:1

AREA/SPACE STALLS

611 101	7
611 102	23
611 103	16
611 104	24
611 105	19
611 106	24
611 107	19
611 108	24
611 109	24
611 110	2
611 111	24
611 112	24
611 113	2
611 114	24
611 115	24
611 116	2
611 117	24
611 118	24
611 119	2
611 120	24
611 121	24
611 122	2
611 123	24

AREA/SPACE STALLS

611 124	24
611 125	2
611 126	24
611 127	24
611 128	2
611 129	24
611 130	24
611 131	2
611 132	24
611 133	24
611 134	2
611 135	24
611 136	24
611 137	2
611 138	24
611 139	24
611 140	2
611 141	24
611 142	24
611 143	2
611 144	24
611 145	24
611 146	6

TOTAL: 786

DATE : JANUARY 2016

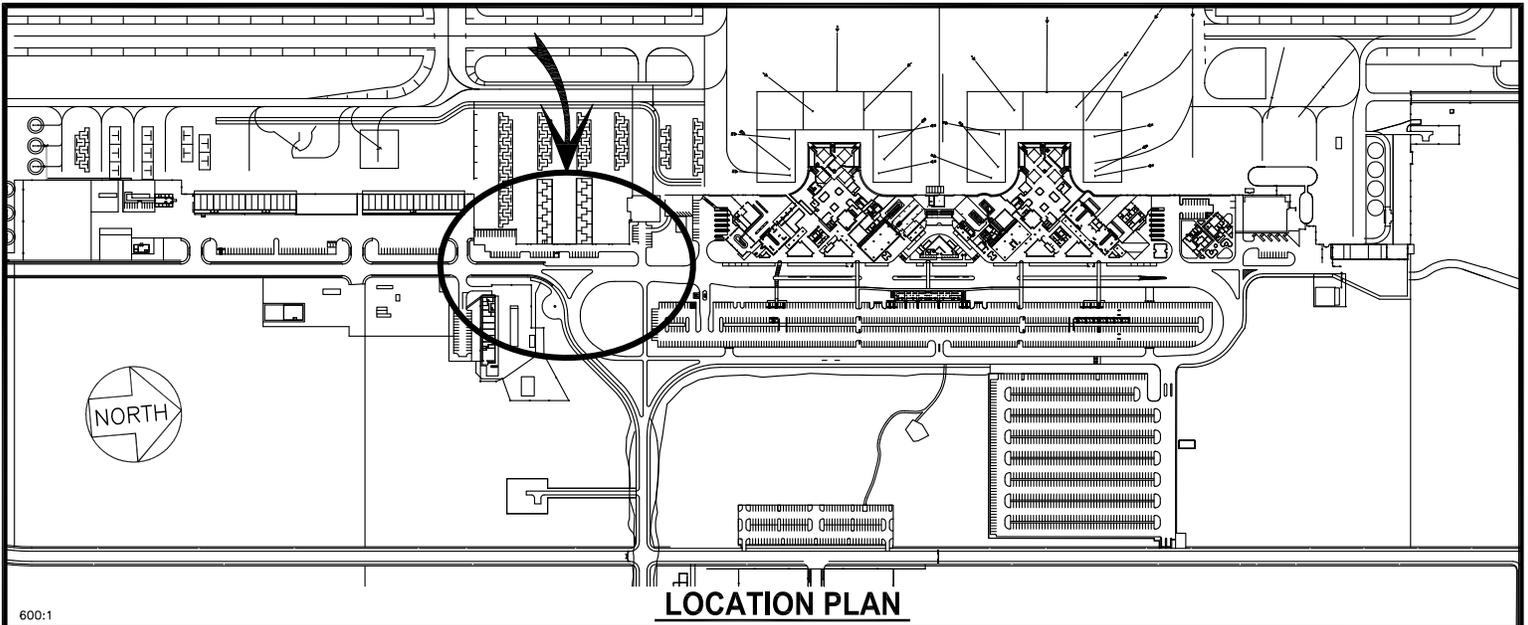
EXHIBIT: **B5**



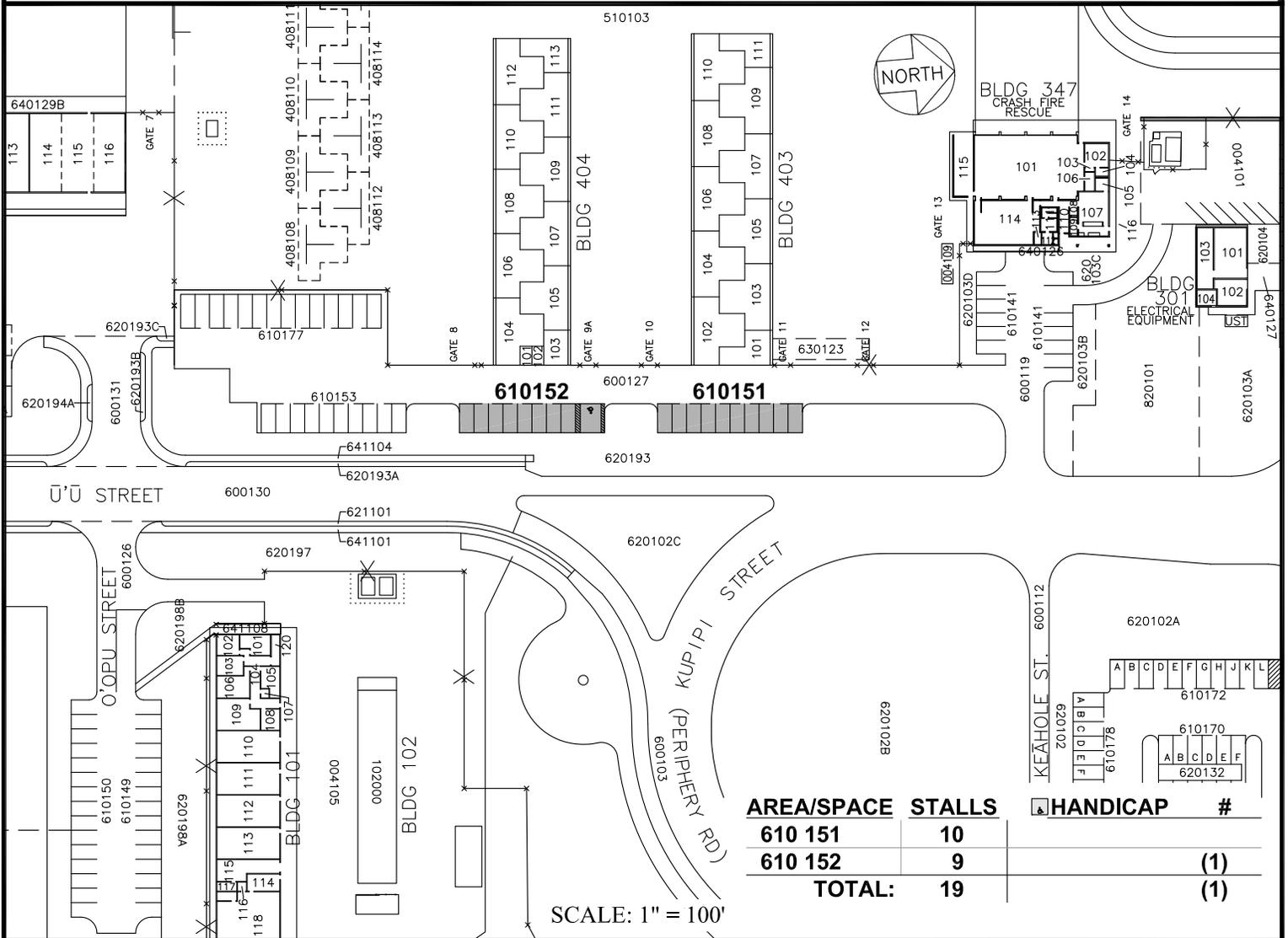
Airports Division

**AUTOMOBILE PARKING
FACILITIES**

**LOT B
(continuation)**



LOCATION PLAN



AREA/SPACE	STALLS	HANDICAP	#
610 151	10		
610 152	9		(1)
TOTAL:	19		(1)

SCALE: 1" = 100'

DATE : JANUARY 2016

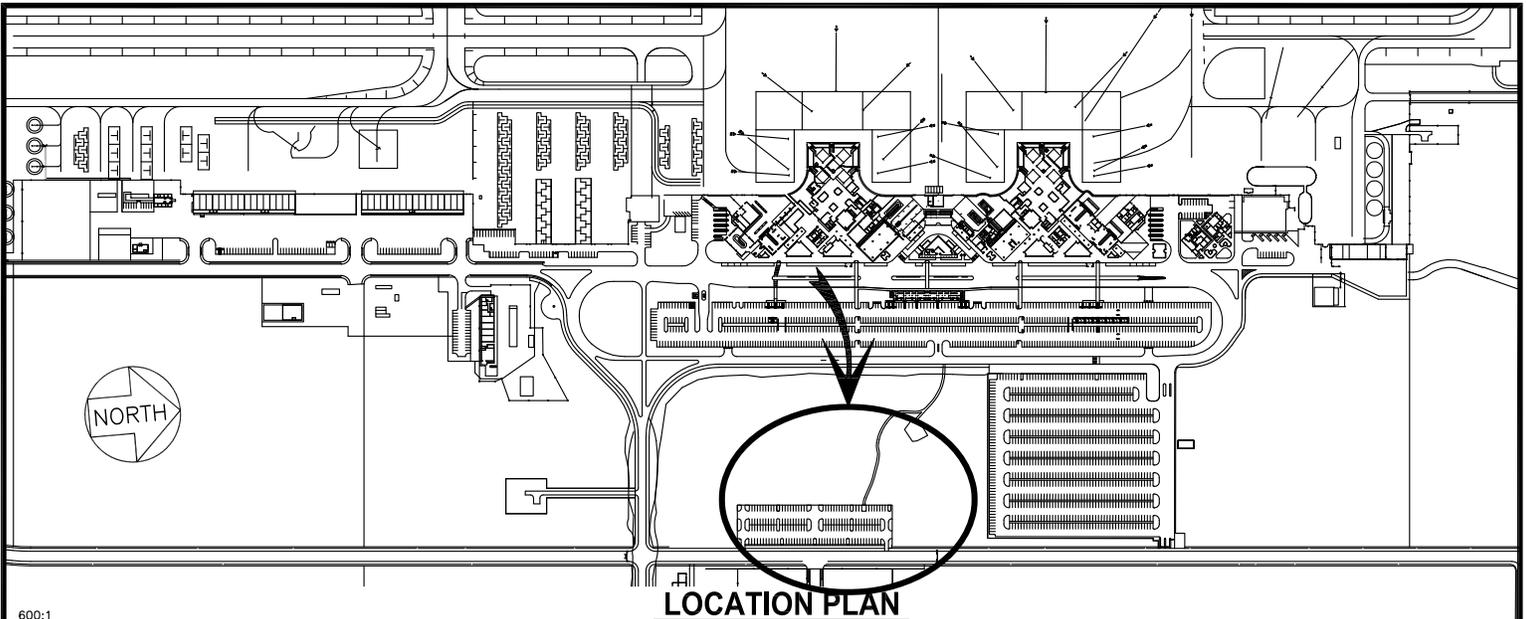
EXHIBIT: **B6**



AUTOMOBILE PARKING FACILITIES

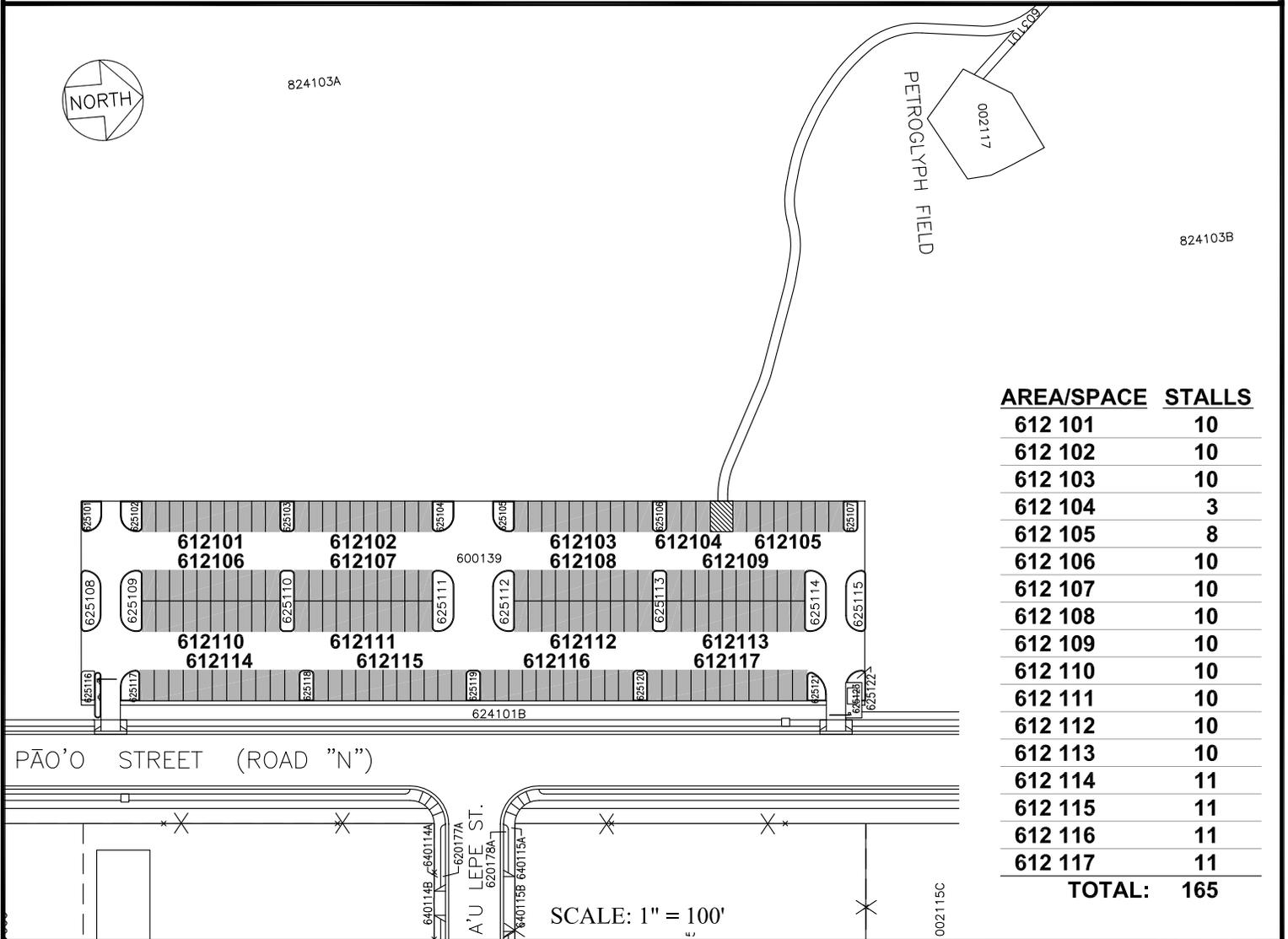
LOT C SOUTH RAMP

PLATS C1, D1, 59



LOCATION PLAN

600:1



AREA/SPACE	STALLS
612 101	10
612 102	10
612 103	10
612 104	3
612 105	8
612 106	10
612 107	10
612 108	10
612 109	10
612 110	10
612 111	10
612 112	10
612 113	10
612 114	11
612 115	11
612 116	11
612 117	11
TOTAL:	165

SCALE: 1" = 100'

DATE : JANUARY 2016

EXHIBIT: **B7**

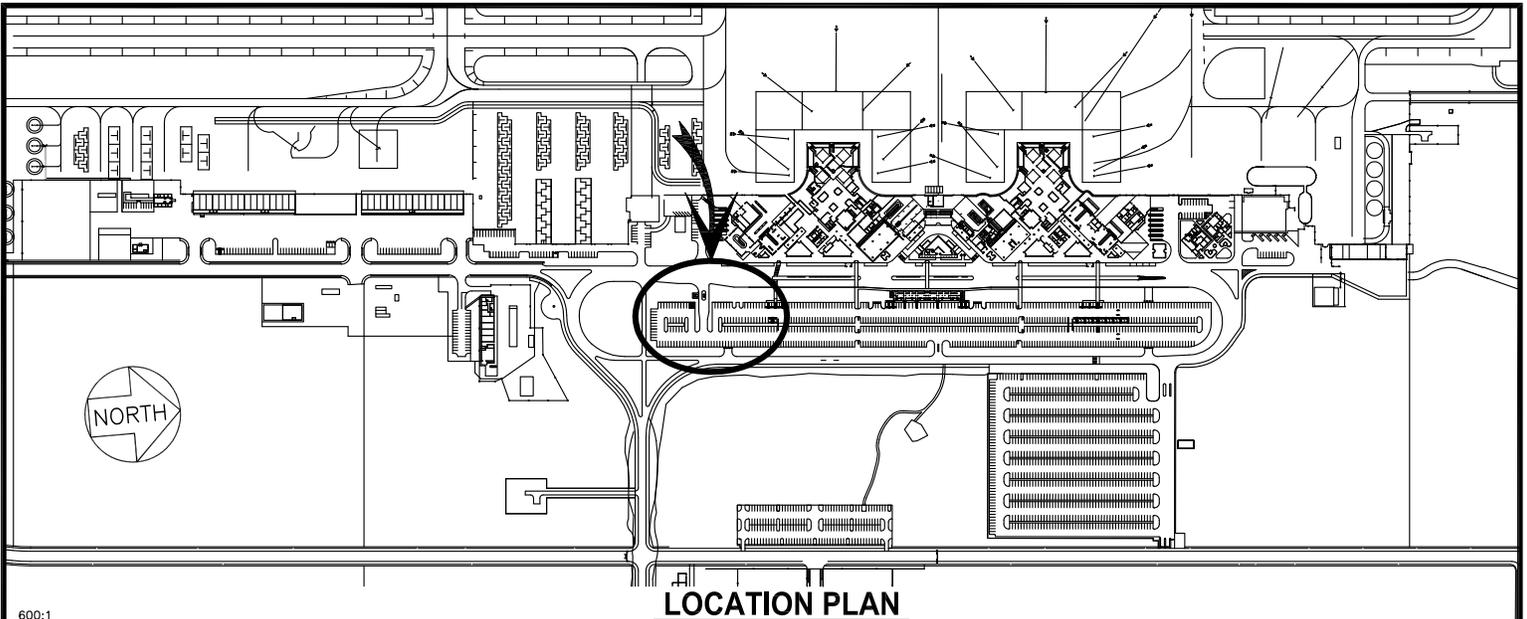


AUTOMOBILE PARKING FACILITIES

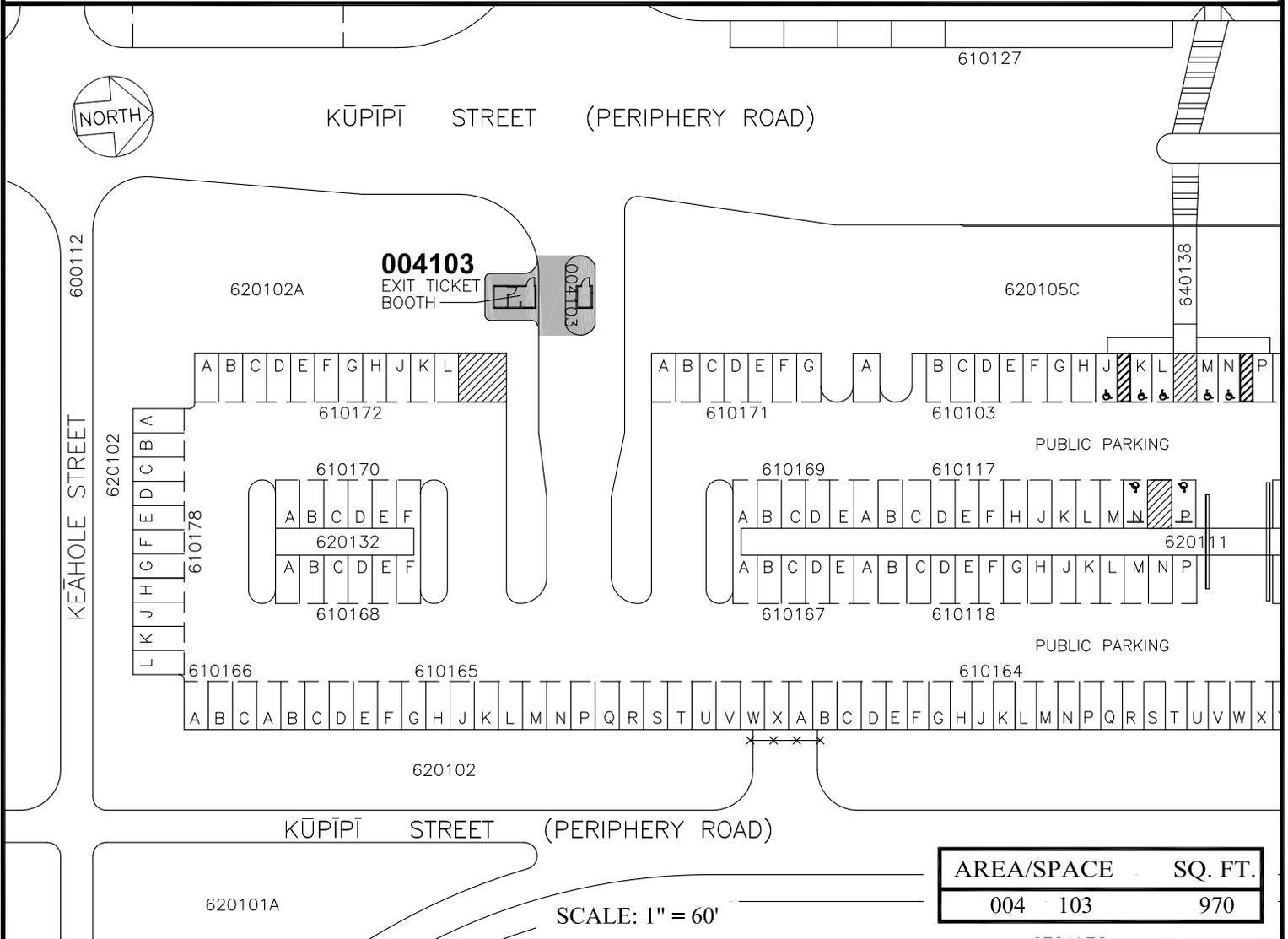
LOT D

PLATS 58, 59

N:\AIRPORTS\KOA_Kona\CAD\PM\2014 automobile parking facilities\KOA 2014 Automobile Parking Facilities-0008_B7.dwg



600:1



DATE : JANUARY 2016

EXHIBIT: **C**



Airports Division

**AUTOMOBILE PARKING
FACILITIES**

**EXIT GATE
PLAZA/OFFICE
GROUND LEVEL**

**004103
PLATS D1, 59**

KONA INTERNATIONAL AIRPORT
AT KEAHOLE

Number of Automobile Parking Spaces

Public - 712 stalls

Employees - 951 stalls

KONA INTERNATIONAL AIRPORT AT KEAHOLE

Public Automobile Parking Rates

First 1/2 hour or fraction thereof:	
If exit within 15 minutes of entry -	Free
If exit after 15 minutes of entry -	\$1.00
Second 1/2 hour or fraction thereof -	\$2.00
Each hour thereafter -	\$2.00
Maximum fee for 24 hours -	\$10.00
Electric vehicle with electric vehicle license plate -	Free
Lost ticket minimum per each 24 hours -	\$10.00
Monthly parking -	\$160.00

ATTACHMENT 2 – TENANT IMPROVEMENT GUIDELINES

May be reviewed and downloaded from the address below:

<http://hidot.hawaii.gov/airports/doing-business/other/tenant-improvement-guidelines>



Procedure No. 7.7 ENVIRONMENTAL PRESERVATION GUIDELINES

Approved by Owen Miyamoto

Effective Date: 05/01/1990

7.7.01 PURPOSE

The purpose of this procedure is to establish guidelines for the maintenance of spaces visible to the public at State airports.

7.7.02 POLICY

It is the policy of the Airports Division to maintain at all times an attractive decor in harmony with the architecture of the terminal building and other structures of the airport. The standards established by this procedure shall govern significant details such as: style, content, copy, location and color of signs, logos, advertising, posters, promotions, brochure distribution, commodity or service displays, decorations, and vending equipment.

7.7.03 APPLICABILITY

This procedure applies to Airports District Managers and airport tenants.

7.7.04 PROCEDURES

A. Approval

Prior to construction, installation or display by airport tenants, requests for approval by the State shall be submitted in writing to:

Airports Administrator
Airports Division
Department of Transportation
Honolulu International Airport
Honolulu, Hawaii 96819

B. General

1. These guidelines shall apply to all public spaces of the airport terminal buildings and also to leased areas which have been designed and finished by the State for airlines, concessionaires and other tenants where leased areas are visible to the public.
2. These guidelines shall not apply to interiors of office and storage spaces or concessionaire shops designed and finished by the tenant in accordance with plans previously approved by the State
3. Requests for permission to erect or modify any structure, display, or stand; to install or to paint any sign, poster, logo, decal, point of purchase piece, or banner; to place equipment; or to place and/or distribute any promotional material in spaces visible to the public at the airport shall be made in writing to the State. Detailed drawings, specifications, and samples of materials and colors of any proposal shall be submitted and shall be approved in writing by the State before the start of fabrication.
4. The tenant requesting permission to make changes shall be notified of approval or disapproval in writing, although such approval or disapproval may initially be given verbally. Review by the State shall be made promptly and replies made within two weeks of receipt
5. A tenant found to be in violation of these guidelines shall be notified of the violation in writing

although such notice may initially be given verbally. Any installed non-conforming or unapproved sign, display, structure, etc., shall be brought into conformance or removed at the sole expense of the tenant. Temporary signs, hand-lettered, written or printed on paper, cardboard, or similar materials shall be prohibited except in an emergency. The use of visible masking or adhesive tapes for the attachment of signs shall also be prohibited.

6. Seasonal decorations shall be planned, installed and paid for by the State.
7. Lettering style for all airline, concession and terminal directional and information signs shall be helvetica medium.
8. Requests to display special promotional materials such as posters, pictures, etc., introducing new services, etc., shall specify the number of days it is desired to display such material.
9. Verbal approval, disapproval, or notice shall be given only by the Airports Administrator.

C. Airlines

The placement of display material shall be limited to the following in relation to airline leased areas

1. Ticket counter and luggage check-in
 - a. One over-counter position identification at each position as approved by the State.
 - b. Not more than one schedule rack, as approved by the State, for each position and only material from the airline relating to scheduling shall appear in the schedule rack. Credit card signs or material shall not be permitted except credit cards of the airline.
 - c. Direct line telephone for service shall be permitted on counter and must be removed when counter is manned. Call button, where required, shall be flush with counter top.
 - d. Except for the position identification signs, nothing shall be allowed to be suspended in any manner over, in back of, or in front of the ticket counter.
 - e. Company insignia on wall behind ticket counter shall be submitted to the Airports Administrator for approval prior to installation. Glossy sign face material is not permitted.
 - f. The wall behind the ticket counter shall not be altered in any way to break the architectural conformity to all other counter backwall areas. Application of color, in the form of paint or wallcovering of any material, or any form of decoration, or the affixing of any signing, equipment or lighting, shall be prohibited.
 - g. Comfort mats for agents' positions shall be subject to approval by the State.
 - h. No adding machines, typewriters, radios, tape records, record players, or audio receivers of any type shall be permitted, except those required to conduct company business. Special operating equipment may be installed as approved by the State.
 - i. Airline signs, flight numbers, destination signs and other related signs originally installed by the State in ticket lobby area shall be maintained and revised by the State. Airline requests for sign changes shall be sent to the State at least 60 days prior to the effective date of change.
 - j. Luggage counter and conveyor housing tops shall be kept clear; no signs or equipment of any type shall be used.
 - k. Posters required by the federal government or IATA agreements shall be installed by the State.
2. Holding Areas at Gates

- a. Check-in desk tops shall be kept free of unnecessary material.
 - b. Airline identification sign shall be furnished by the State.
 - c. Ropes, tapes, relocated furniture and other barricades to channelize passenger movement is prohibited.
 - d. Airline computer terminals shall be installed in the check-in counter. Free-standing consoles are prohibited.
3. Entrance or Corridor Doors to Airline Leasehold Area
- a. Decals or special identification signs shall not be placed on office corridor doors exposed to public or common use areas within the terminal building without approval of the State.
 - b. Approved door signing shall company conform with State Airports Division "Signage and Graphic Design Manual".
 - c. Doors secured with padlock and hasp shall not be permitted.
 - d. Airline Club Entrance Identification shall have only signing approved by the State and shall not exceed two square feet in total area.
4. Exterior signs on structures other than the terminal or outside of such structures shall be approved by the State before being placed on any building other than the terminal building or in the vicinity of any building . Projecting signs shall be prohibited.
5. General
- a. Signs, extra tables, chairs, counters and equipment of any type visible to the public shall not be used without the approval of the State.
 - b. Furniture in public areas and holding rooms shall not be moved to be used as barriers or crowd control purposes. The furniture is not to be moved for any reason unless authorized by the State. Barricades, ropes, stanchions and other passenger control and channeling devices will be furnished by the State, except where specifically approved by the State.
 - c. Airline wheelchairs shall be returned to authorized storage areas after the flight has departed.
 - d. No signs, decals, stickers, posters, etc., shall be permitted.

D. Concession and Other Non-Airline Tenants

Concession areas shall be limited to the following:

1. Counters Between Concession Space and Public Area
- a. Typewriters, adding machines, radios or other types of sound equipment shall not be permitted on the tops of counters.
 - b. Only one brochure holder per concession counter shall be permitted and the material must relate to the business of the concession upon whose counter it is placed.
 - c. Merchandise shall not be permitted to be stacked on counters.
 - d. No promotional material, point of purchase material, credit card signs, or attention-getters with flashing, moving, or audible action shall be permitted.
 - e. Call button, where required, shall be flush with counter top.
 - f. Telephone shall not be permitted on counter tops except for direct line service when

counter is unmanned.

- g. No merchandise, signs, or banners shall be permitted to be suspended in front of, behind, or over counters; nothing shall be permitted beyond the lease line.
- h. No wastebaskets, ash urns, signs, point of purchase material, rugs, mats, floor signs inserted into terrazzo, etc., shall be permitted.

2. Concession Area With Counter and Finished Backwall by State

- a. Painting of the backwall shall not be permitted; the application of any material in any form altering the original appearance shall also not be permitted.
- b. Company insignia on wall behind ticket counter shall conform with the design and specifications set forth in the original terminal construction drawings on file with the Airports Division. Glossy sign face material shall not be permitted.

3. Store Frontage Between Concession Space and Public Area

- a. Each concession shall be provided with a sign over and parallel to the concession lease front lines by the State. No other signs shall be permitted on the store front.
- b. The service provided by the concession shall be the sole identification on the sign; no trade or corporate names shall be permitted on the concession space signs. International symbols, approved by the State, may be used on the sign. Foreign languages or symbols shall not be permitted. The sign style, color and letter type face shall conform to the airport standards. No other sign colors or letter type shall be permitted on the store frontage.
- c. Decorative exterior treatment or painting of any type individualizing the exterior of any concession shall not be permitted.
- d. Concessionaire shall not erect, construct, or place any signs or advertising pertaining to the concession upon any portion of the airport other than within the concession area. Signs, display racks or other devices directing traffic into a concession area or announcing entertainment within an area shall not be permitted.
- e. No signs, logos, decals, credit card identifications, lettering, banners, etc., shall be permitted on the glass show window of store front.
- f. No framing to block out glass area in any manner shall be permitted.
- g. Doorways shall not be used as a display area with merchandise blocking the entrance in any manner.
- h. No flashing action, moving action, or audible signs or displays shall be permitted in display windows.
- i. All lighting fixtures used in windows, including the method of installation, shall be subject to approval by the State.
- j. Credit card signs shall be on individual pedestals and shall be set back a minimum of twelve inches from the glass line and the aggregate area of one sign shall not exceed twenty-four square inches.

E. Office and Storage

The facade of office and storage spaces throughout the airport complex shall be subject to the following criteria and limitations:

- i. Storage space shall not be permitted overhead or projecting; door signing shall conform with the "Signage and Graphic Design Manual".

2. A padlock and hasp on storeroom or office doors shall not be permitted except when required by federal or state laws and regulations.
3. No other signs, posters, logos, decals, lettering, etc., shall be permitted on exterior facade, windows or doors.

F. Vending Machines

The installation of vending machines throughout the airport complex shall be subject to the following criteria and limitations:

1. Vending machines shall be allowed only in approved vending machine areas; the machines shall conform in width and height and approved manufacturers source.
2. All utility lines running to machines shall be hidden whenever possible and painted to conform with the background if they cannot be hidden.
3. The updating of machines shall be subject to the request of the State.

7.7.05 REFERENCE

"Signage and Graphic Design Manual", State of Hawaii Airports Division, 1984.



Procedure No. 7.6 DEVELOPMENT STANDARDS FOR LEASED AIRPORT PROPERTY

Approved by Owen Miyamoto

Effective Date: 01/15/1995

7.6.01 PURPOSE

The purpose of this procedure is to establish a standard that shall be followed by lessees in the development of leased property (in construction of improvements).

7.6.02 POLICY

It is the policy of the Airports Division that the development of leased airport property shall be aesthetically compatible with existing and planned airport facilities and accomplished in accordance with the applicable rules and procedures of the Department and all other applicable laws, ordinances, rules and regulations of federal, state and county agencies.

7.6.03 APPLICABILITY

This procedure applies to persons who lease airport property.

7.6.04 PROCEDURES

A. Definitions

1. "Airport" means the areas of land or water set aside by Executive Order of the Governor of the State of Hawaii for public airport purposes.
2. "Buildings" means the main portion of each structure including all projections, extensions, additions, changes, garages, outside platforms and docks, carports, canopies, eaves, and porches. Paving, ground cover, fences, signs and landscaping are specifically excluded from the definition.
3. "Building site" means the land included in the lease agreement.
4. "Corner building site" means a building site which has two or more lease boundary lines abutting a street.
5. "Department" means the Department of Transportation of the State of Hawaii.
6. "Director" means the Director of the Department.
7. "Improvements" means all buildings, structures, and facilities including paving, fencing, signs, and landscaping constructed, installed, or placed on, under, or above any building site by or on the account of a lessee.
8. "Landscaping" means all aesthetic improvement of building sites through the use of lawns, ground cover, trees, and shrubs, as well as walls, screenings, terraces, fountains, pools, and other water arrangements.
9. "Land use plan" means the most recent plan for the future development of airport adopted by the Department, wherein various segments of airport land are reserved for specified uses.
10. "Lease boundary line" means each of the perimeter lines of each building site as leased to each lessee.
11. "Lessee" means any person, firm, corporation, or other entity who has a lease with the Department

for a building site.

12. "Segment" means one of the areas of the airport designated for particular uses (general aviation commercial, general aviation noncommercial, etc.) on the land use plan.
13. "Setback area" means the minimum required area situated between a lease boundary line and a setback line.
 - a. "Front setback area" means the area between the street on which a building site abuts and the front setback line and extends from the side lease boundary line to side lease boundary line. On a corner building site, the front setback area shall apply to each lease boundary line abutting a street, unless otherwise specified in this procedure.
 - b. "Side setback area" means the area between the side lease boundary line and the side setback line and extends from the front setback line to the rear lease boundary line.
 - c. "Rear setback area" means the area between the rear lease boundary line and the rear setback line and extends from side setback line to side setback line.
14. "Setback line" means a line of a building site lying parallel to each lease boundary line and separated from it by the distance required to provide the minimum setback area.
15. "Site coverage" means the portion of the total building site area that may be covered by buildings.
16. "Site width" means the diameter of the largest circle which can be inscribed within the lease boundary lines of a building site.
17. "Street" means the paved portion of a right-of-way maintained by the Department for vehicular access to the building site and used as a thoroughfare by the public.
18. "Taxiway" means a Department-maintained aircraft taxiway, apron, ramp or any other right-of-way for aircraft whose edge is the edge of the right-of-way for all purposes of these standards.

B. Performance Standards For All Segments

1. General. No part of the airport or any improvement on it shall be used or allowed to be used at any time for the manufacture, storage, distribution, serving, or sale of any product or the furnishing of any service, in a manner which is unreasonably noxious or offensive or which is an unreasonable annoyance or nuisance to others at the airport because of odors, fumes, smoke, noise, glare, vibration, soot, or dust. No activity which may be dangerous to public health and safety, increases the fire insurance rating for adjoining or adjacent property, or is illegal shall be permitted.
2. Noise.
 - a. The sound pressure levels generated on a building site shall comply with the applicable Hawaii Administrative Rules of the State Department of Health—except for the authorized operation of motor vehicles, aircraft or other transportation equipment.
 - (1) To, from and on a building site.
 - (2) On the public area of the airport.
 - b. The testing of aircraft engines shall be conducted in noise-suppressing test cells so that sound levels do not exceed the levels referenced above.
3. Air Pollution. Atmosphere emissions produced by motor vehicles or aircraft—except for those produced by the authorized operation of motor vehicle and aircraft to, from and on a building site—shall comply with the applicable standards established by the State Department of Health or any other governmental agency.
4. Heat or Glare. Any operation producing intense glare or heat shall be performed within an enclosed or screened area in such manner that the glare or heat emitted will not be perceptible without

instruments at any lease boundary line of a building site.

5. Waste Disposal. All disposal of storm and sanitary sewage and industrial waste shall be in accordance with all applicable laws, rules or regulations of the Departmental and county, state and federal agencies.
6. Electronic and Radio Interference. No tenants shall construct facilities capable of reflecting radio signals or producing electrical, electronic, or radio emissions which will interfere with, obstruct, or adversely affect the operation of air navigation aids and airport radio communications.
7. Stormwater Pollution Prevention. the tenant shall:
 - a. Use all reasonable methods to minimize pollution from fuel spills and use of hazardous materials or hazardous waste;
 - b. Develop a waste minimization plan and coordinate it with the appropriate Airports District Manager; and
 - c. Develop a Stormwater Pollution Prevention Plan under the guidelines of Airports Division SWPPP and have it approved by the Airports District Manager.

C. Building Site Development Standards for all Segments

1. Permitted Uses. The uses permitted shall be those defined in the lease for the building site.
2. Automobile and Truck Parking and Loading Requirements
 - a. Paved off-street parking areas sufficient for all the automobiles and trucks of employees, tenants, and customers and other vehicles used in the conduct of a lessee's business shall be provided on each building site. Parking on the streets and at public areas on airport property shall be permitted only in areas and times specifically designated and posted by the Department.
 - b. Parking in the front setback area shall not exceed 60% of the required minimum front setback area, and shall be appropriately screened from view by landscaping. Parking and maneuvering space shall be provided in accordance with accepted traffic engineering standards.
 - c. Buildings shall be designed and placed upon each building site so that motor vehicles of maximum length permitted by the State of Hawaii at the time of construction of each building may be maneuvered and loaded or unloaded off the street. On-street vehicle maneuvering or loading shall not be permitted.
 - d. On the side of a building facing a street, no truck loading door or loading dock shall be nearer than fifty (50) feet to the lease boundary line. Loading facilities shall be constructed so that no part of the longest legal loading vehicle being loaded or unloaded at any loading dock, loading door, or loading area will extend beyond the lease boundary line.
3. Aircraft Parking and Servicing
 - a. Except for permitted parking and servicing of aircraft on designated areas of the airport, provisions for parking aircraft belonging to tenants and their patrons, invitees, employees, and others shall be on the building sites.
 - b. Whenever hangar doors open onto a lease boundary line abutting a taxiway, they shall be set back a distance which in the opinion of the Department shall provide sufficient clearance for the holding, maneuvering, and parking of aircraft as incidental to the ingress and egress of aircraft from the hangars. No holding, maneuvering, stopping, or parking of aircraft off a building site for purpose of hangaring, parking, or storing of aircraft shall be permitted.
 - c. All aircraft parked or left unattended on any building site shall be entirely within the lease

boundary lines.

4. Building and Construction Materials.
 - a. Any building material which has been approved by the Department and which complies with applicable building codes may be used.
 - b. All aircraft taxiways and parking areas on the building site shall be paved with materials of sufficient strength to accommodate the heaviest aircraft anticipated to be parked on the building site, or of sufficient strength to accommodate aircraft with gross ramp weights of at least 12,500 pounds, whichever is the greater.
 - c. Any connection from a driveway or sidewalk on a building site to the paved surface of an abutting street shall be constructed in accordance with the applicable standards of the Highways Division of the Department. Any connection from a taxiway or apron on a building site to the paved surface of an abutting public use taxiway shall be either:
 - (1) For a distance of twenty-five feet from the connection and of the same material and strength as the taxiway to which it is connected; or
 - (2) Painted in accordance with standards established by the Department to indicate that the connection is non-loading bearing.
 - d. All ventilating fans, cooling towers, equipment, etc. placed on roofs of buildings shall be screened from view or enclosed in a manner that is architecturally compatible with the main portion of the building structure.
 - e. Accessory buildings, enclosures, and fences shall be consistent in design and quality of materials with the buildings they serve.
5. Building Heights. All building heights shall conform to the rules and regulations of the Department and the Federal Aviation Administration.
6. Dust Control. All ground areas not covered by buildings shall be landscaped or paved, properly drained and graded, and maintained in good condition free of weeds, trash, and other debris.
7. Illumination. The design and location of exterior lighting shall be subject to the approval of the Department and shall comply with the requirements of the Federal Aviation Administration and other governmental agencies having applicable jurisdiction with respect to height, type, and placement of lighting standards as they may affect the safety of flight operations into, from, and around airport.
8. Landscaping.
 - a. All areas not paved or covered by buildings shall be landscaped in accordance with plans approved by the Department. In addition to trees, ground cover, and gardens, landscaping shall include, where appropriate, the use of walls, screenings, terraces, fountains, pools, and other water arrangements.
 - b. Such landscaping, as approved by the Department, shall be installed within a period not to exceed ninety (90) days after the notice of completion of the initial building. Hose bibs or sprinkler systems shall be provided to serve all landscaped areas.
 - c. Plans, specifications, and inspections for landscaping shall be accomplished by a professional landscape architect registered in the State of Hawaii and shall require the written approval of the Department prior to installation.
 - d. Plant material shall consist of a balanced mixture of trees shrubs and ground cover.
 - e. All trees shall at all times be limited to a height of thirty-five (35) feet above the curb line.

- f. A continuous greenbelt shall be required to be maintained on all building sites abutting streets; the greenbelt shall consist of grass lawns, ground cover, trees, shrubs, or any combination thereof as approved by Department. The greenbelt requirement shall be included in the minimum landscaping requirement for the building sites as set forth in this procedure.
 - g. Any unpaved area between the lease boundary line and the edge of the curb of the abutting street shall be landscaped and maintained to the satisfaction of the Department by the lessee of the building site.
9. Power, Telephone, Utilities, and Sewer. No electric power line, water pipe, gas pipe, sewer pipe, or drainage pipe (other than roof leaders) shall be installed or maintained upon any building site above the surface of the ground, except for meter connections which shall be screened or enclosed in a manner approved by the Department.
10. Setbacks. All front setback areas or side setback areas facing a street, with the exception of driveways, sidewalks, other walkways, and any parking, shall be used exclusively for the planting and growing of trees, shrubs, lawns and other ground cover, or material as approved by the Department. If landscaping is not properly maintained by the lessee, the Department may undertake such maintenance as it deems necessary with the resulting expense charged to the lessee.
11. Signs and Advertising. All signs on the airport shall comply with Airports Division Procedure 7.7 "Environmental Preservation Guidelines."
12. Hedges and Fences.
- a. Except as otherwise specified in this procedure, no hedge or fence shall be grown, constructed, or maintained on any lease boundary line or lines or in any setback area or an area which abuts a street.
 - b. No hedge or fence shall be grown, constructed, or maintained on or adjacent to any street setback line that exceeds six (6) feet in height or elsewhere within setback lines that exceeds ten (10) feet in height, without the prior written approval of the Department.
 - c. Fences shall be constructed and gates installed and controlled where necessary to restrict access from the street to the aircraft operations area; the design and placement of the fences and gates shall be subject to the written approval of the Department prior to installation.
13. Outside Storage
- a. No vehicle, equipment, material, supply, or product shall be stored or permitted to remain on any building site outside a permanent building unless such storage is suitably shielded from public view by an appropriate screen compatible in design with the permanent structure; the screen shall require the written approval of the Department prior to installation.
 - b. No aviation fuel shall be stored, except as approved by the Department, on any building site other than on aviation fuel storage areas reserved by the Department for such use, and in accordance with a valid written contract with the Department.
 - c. Activities that involve the dismantling of aircraft or the storage of salvaged aircraft, aircraft engines, air-frames, parts, or accessories shall comply with the provisions of this procedure for storage. Aircraft stored at the airport without a current airworthiness certificate (except for purposes of relicensing) may, at the discretion of the Department, be declared salvage aircraft and shall thereupon be treated as a salvaged aircraft for the purposes specified above.
- D. Design and Construction of Improvements for All Segments.
- 1. General. No improvements of any kind shall be erected, altered, placed, assembled, or permitted

to remain on a building site unless and until plans showing their type of use, location, size, and architectural and engineering design have been approved in writing by the Department

2. Plans Required. All plans for improvements shall be prepared by registered architects or engineers and shall include:
 - a. Topographic, grading, drainage, and utility plans showing one (1) foot contours and spot elevators referenced to airport datum and a plot plan at a scale not smaller than one (1) inch equals one hundred (100) feet and showing the relationship of the proposed improvements on the building site to the improvements on the adjacent sites and to the utilities, streets, and taxiways.
 - b. Preliminary plans and specifications of all proposed improvements in sufficient detail to determine compliance with these standards. The plans and specifications may be manufacturer's standard plans if sufficient. Plans shall be a suitable scale, but in no event smaller than 1/16-inch to the foot.
 - c. Ground cover plans (including landscaping) which incorporate, at a minimum, the Department's general landscaping and paving requirements.
 - d. An accurate architectural perspective of the proposed improvements, including the proposed exterior color schemes, style, materials, and design, working, and placement of all signs proposed.
 - e. Any other plans, specifications, or design features requested by the Department.
3. Approval of Plans.
 - a. Approval of plans and specifications for compliance with this procedure and for aesthetics shall be at the discretion of the Department .
 - b. Approval of plans and specifications may be withheld because of failure to comply with this procedure.
4. Plans for Alterations to Improvements. All plans for alterations to the building site either for the construction of additional improvements or for alterations to existing improvements which are visible from the exterior of any building or which affect the structural system of any building or change any grade or landscaping, shall be prepared, submitted, and approved under the applicable provisions of this procedure.
5. Issuance of Building and Related Permits. Prior to obtaining necessary building and other related permits, lessees shall obtain written approval from the Department stating that the uses and plans for the lessee's building site have been approved by the Department as being in full compliance with this procedure.

E. Special Requirements for Airline Maintenance Hangar Area.

1. Permitted Uses. Any use which involves the operation of a facility for the maintenance and overhaul of air carrier aircraft, engines, parts, accessories, and equipment. The sale of aviation services and the offering of any services, or repairs of any type to the general public shall be specifically prohibited. Permitted activities shall include, but not be limited to, the following:
 - a. The loading and unloading of aircraft.
 - b. The maintaining, storing, and servicing of aircraft, which shall include overhauling, rebuilding, repairing, inspecting and licensing, and the purchasing and selling of parts, equipment, and accessories.
 - c. The right of sale, disposal, and exchange of aircraft, aircraft parts and accessories therefor, and aviation equipment of every description as incident to the conduct of maintaining and overhauling air carrier aircraft, but not as distributor or as a dealer of same.

- d. The training of lessee's personnel but not members of the general public in any art, science, craft, or skill pertaining directly or indirectly to aircraft.
- e. The operation of offices and facilities incident to the conduct of lessee's business.

2. Building Site Requirements.

- a. On-line Maintenance Hangar:
 - (1) Minimum Site Area 2 acres
 - (2) Maximum Site Coverage 30%
 - (3) Minimum Landscaping Coverage 5%
- b. Airline Maintenance Base:
 - (1) Minimum Site Area 5 acres
 - (2) Maximum Site Coverage 30%
 - (3) Minimum Landscaping Coverage 5%

3. Setback Requirements.

- a. Front Setback Line 25 ft. minimum
- b. Side Setback Line 10 ft minimum on each side
- c. Rear Setback Line 10 ft minimum

4. Other Requirements. Engine runups shall be confined to soundproof test cell blocks or equivalent mobile suppressors.

F. Special Requirements for Cargo Mail Area.

- 1. Permitted Uses. Any use which involves the operation of a facility for the handling and storage of air cargo and mail shall include, but not be limited to, the following:
 - a. The loading and unloading of aircraft.
 - b. The receiving, delivering, dispatching, processing, handling and storing of air cargo, express, mail, and other property.

2. Building Site Requirements.

- a. Minimum Site Area 1 acre
- b. Maximum Site Coverage 50%
- c. Minimum Landscaping Coverage 5%

3. Setback Requirements.

- a. Front Setback Line 2
5 ft. minimum
- b. Side Setback Line 10 ft. minimum on each side
- c. Rear Setback Line 10 ft. minimum

G. Special Requirements for Aviation Support Area.

1. Permitted Uses. Any use which involves the operation of a facility to support the authorized businesses and services of others holding valid leases, contracts, or permits in the terminal complex shall include, but not be limited to, the following:
 - a. Inflight kitchens or catering services.
 - b. Airport employee cafeteria.
 - c. Offices and storage areas.
 - d. Ground transportation maintenance and storage areas.
 - e. Communications and meteorological facilities.
 - f. Airline training schools.
2. Building Site Requirements.
 - a. Minimum Site Area 1 acre
 - b. Maximum Site Coverage 50%
 - c. Minimum Landscaping Coverage 5%
3. Setback Requirements.
 - a. Front Setback Line 15 ft minimum
 - b. Side Setback Line 10 ft minimum on each side
 - c. Rear Setback 10 ft minimum

H. Special Requirements for General Aviation Commercial Fixed Base Operator Area.

1. Permitted Uses. Any business or service involving the sale of general aviation commercial services to the general public shall include, but not be limited to, the following as authorized in the lease from the Department to the lessee:
 - a. Aircraft servicing, repair, maintenance and storage.
 - b. Sales of new and used aircraft and aircraft parts, accessories, equipment, and materials at retail and wholesale prices.
 - c. Storage and vending of aircraft fuels, lubricants, and propellants.
 - d. Aerial photography, survey, and mapmaking services.
 - e. Air taxi, ambulance, and sightseeing services.
 - f. Nonscheduled, sightseeing, and charter services for the transportation of passengers, freight, cargo, and mail.
 - g. Flight schools--unless the Department has prohibited flight school activity at the airport and has provided adequate alternate landing facilities for this activity.
 - h. Offices, services, and retail activities complementary to the uses set forth above.
2. Building Site Requirements.
 - a. Minimum Site Area 2 acres

- b. Maximum Site Coverage 30%
- c. Minimum Site Coverage 5%
- d. Minimum Improvements:
 - (1) Aircraft shop and maintenance hangar 10,000 sq. ft.
 - (2) Office administration building 1,000 sq. ft.
 - (3) Paved apron area with access to hangar 40,000 sq. ft.
- e. Minimum Landscaping Coverage 5%

3. Setback Requirements.

- a. Front Setback Line 25 ft. minimum
- b. Side Setback Line 10 ft. minimum on each side
- c. Rear Setback Line 10 ft. minimum

I. Special Requirements for General Aviation Non-Commerical Area.

- 1. Permitted Uses. Any industrial, corporate, or business lessee that desires to hangar or accommodate one or more aircraft it owns or operates solely in connection with the internal conduct of its business for the transporting, not for hiring, of lessee's personnel, patrons, materials, and products shall be permitted to engage in certain activities including the following:
 - a. The loading and unloading of aircraft.
 - b. The maintaining, storing, and servicing of aircraft owned or operated and hangared by each such lessee on its building site by its own full-time employees.
 - c. The right of sale, disposal, and exchange of aircraft and their parts and accessories and of aviation equipment as directly incident to the conduct of maintaining and overhauling aircraft owned or operated and hangared by the lessee, by not as a regular business activity, or as a distributor or as a dealer of same.
 - d. The training of the lessee's personnel but not members of the general public in any art, science, craft, or skill pertaining directly or indirectly to aircraft owned or operated and hangared by the lessee.
 - e. The operation of offices and facilities incidental to the operation of the lessee's business.
- 2. Prohibited Uses. No use of noncommercial general aviation areas shall be permitted which, in the opinion of the Department will directly or indirectly compete with, impair, or restrict commercial aviation activities in the commercial aviation areas defined in subsection 7.6.04 H above.
- 3. Building Site Requirements.
 - a. Minimum Site Area 30,000 sq. ft.
 - b. Minimum Site Width 100 ft.
 - c. Maximum Site Coverage 60%
 - d. Minimum Landscaping Coverage 5%
- 4. Setback Requirements.

- a. Front Setback Line 25 ft.
- b. Side Setback Line 10 ft. minimum on each side
- c. Rear Setback Line 10 ft. minimum

J. Special Requirements for Fuel Farm Area.

- 1. Permitted Uses. The maintenance and operation of bulk storage facilities for gasoline, oil, grease, lubricants, and other fuels necessary for the operation of aircraft.
- 2. Prohibited Uses. No use of the fuel farm area shall be permitted which in the opinion of the Department will directly or indirectly compete with, impair, and restrict general aviation commercial activities as defined in this procedure. No aviation fuel or propellant may be purchased, stored, sold, or handled in these areas except by an aviation fuel vendor or user authorized under written contract by the Department to provide such fueling service at the airport. The servicing of aircraft in this area shall be specifically excluded.
- 3. Building Site Requirements.
 - a. Minimum Site Area 2 acres
 - b. Minimum Landscaping Coverage A minimum of two (2) feet inside the fencing abutting or facing a public right-of-way
- 4. Setback Requirements. As specified by the State Fire Marshall, or other governing agency.
- 5. Other Requirements.
 - a. In addition to the requirements in this procedure, the installation of improvements in the fuel farm area shall be subject to the requirements of county, state and federal agencies.
 - b. Each building site shall be completely enclosed by fences, with gate installed where necessary for access. Fences shall be installed on the lease boundary lines, except on the side of the building site that faces the common-use service road.

The fence line shall be consistent with existing fencing, and its location shall be subject to the prior written approval of the Department. The design of fences and gates shall be subject to the written approval of the Department prior to installation.
 - c. All ground areas not covered by fuel storage facilities, paving, or landscaping shall be covered only with gravel the installation and specification of which shall be subject to the written approval of the Department prior to installation.

K. General Provisions.

- 1. Conformance of Existing Improvements. All existing buildings and improvements on the airport shall be exempt from the provisions of this procedure for the duration of their present leasehold terms; provided, however, that no changes, alterations, or extensions shall be made to any existing improvements except in accordance with this procedure.
- 2. Continuity of Procedure.
 - a. This procedure shall apply to all development of airports operated by the Department
 - b. This procedure may be revised as required by the Department to retain flexibility to permit the adoption of new techniques, materials, criteria, etc.
- 3. Variances.
 - a. The provisions of this procedure and any request for variances from them are to be

interpreted, administered and enforced by the Director.

- b. Any tenant or prospective tenant may request a variance.
- c. Requests for variances shall be made in writing to the Director.
- d. The Director shall either approve or disapprove requests for variance within thirty days from filing.
 - (1) If approved, the variance shall be issued immediately.
 - (2) If disapproved, the Director shall provide a written statement setting forth the reasons for disapproval.

**DEPARTMENT OF TRANSPORTATION
ASSIGNMENT OF LEASE AND PREMIUM EVALUATION POLICY
ANNEX I**

Reference

Chapter 171-36(a)(5), Hawaii Revised Statutes (HRS)

No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made in accordance with industry standards, as determined by the board; provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that with respect to state agricultural leases, in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid;

Prior Approval

Any assignment of lease of Department of Transportation (DOT) property must have the prior written approval of DOT. Prior to giving its consent to an assignment, DOT must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the proposed assignment and purchase agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statements of the proposed assignee or any other such statements acceptable to the appropriate division, which statements shall be no older than one year prior to the date of the purchase agreement and audited or certified as correct by a financial officer of the proposed assignee. A consent to assignment by DOT shall not release the lessee (assignor) of any obligation to performed by the lessee or liability for acts or occurrences related to or resulting from the lessee's use or occupancy of the DOT property whether occurring before or after such consent unless the particular division is convinced that the assignee's financial responsibility is equal to or greater than the assignor.

No assignment of lease of DOT property shall be entered into until the Attorney General's Office (LEG) has first reviewed the proposed assignment and purchase agreement and the Director of Transportation (DIR) and the Board of Land and Natural Resources (Land Board) have given their approval. Such an assignment shall be entertained only if it meets one of the criteria set forth in Section 171-36(a)(5), HRS, except that the prerequisite stated in Section 171-36(a)(5)(A), HRS, shall be inapplicable to any DOT property.

Qualifications of Assignee

If qualification was required of a lessee as a pre-condition of the lease, the prospective assignee must also be qualified to assume the lease.

If a qualification questionnaire was required to be submitted by a lessee or concessionaire as a precondition of the lease or concession contract, the assignor shall submit a qualification questionnaire filled out by the prospective assignee in order that the appropriate division can evaluate whether the assignee has the required experience and background to assume the lease or concession contract.

Consideration to be Paid

Prior to review by LEG and approval by DIR and the Land Board, the lessee (assignor) must present the appropriate division with a written copy of the proposed purchase which includes the total consideration to be paid by the assignee whether by cash, credit or otherwise and any other cost data that the particular division may require.

Adjustment of Rental

In those leases wherein the DOT has the right to revise the rent of the demised premises upon an assignment, the lessee (assignor) shall also be required to present its cost data so that the appropriate division may review and analyze that information to determine whether the rent for the premises should be increased. The analysis shall accompany the request for review by LEG and the Land Board submittal.

Payment to DOT

All leases shall have an assignment clause that provides that the DOT shall receive from the lessee (assignor) a premium based on the amount by which the net consideration paid for the assignment, whether by cash, credit or otherwise exceeds the adjusted depreciated cost of improvements, renovations and trade fixtures being transferred to the assignee. The Engineering News-Record Construction Cost Index (CCI) (available at www.enr.com) and the Consumer Price Index for All Urban Consumers (CPI-U) (available at <http://stats.bls.gov/cpihome.htm>) will be applied to determine the adjusted depreciated costs. The value of the lessee's/assignor's inventory of merchandise should be deducted from the gross consideration paid to determine the net consideration. Intangibles such as goodwill, business name recognition, etc., are not deductible. (See Schedule A.)

To encourage long-term occupancy and discourage speculation, the premium for an assignment of a lease issued or awarded under Chapter 102 or 171, HRS, shall be the percentage of the excess payment (the selling price less the unamortized purchase price less the adjusted depreciated cost of all improvements, renovations and trade fixtures constructed or installed by the assignor) determined under Schedule A hereto, unless otherwise specifically provided in the lease, in accordance with the following schedule:

<u>Years</u>	<u>Percentage</u>
1 – 5	50%
6 – 10	45%
11 – 15	40%
16 – 20	35%
21 – 25	30%
26 – 30	25%
31 – 35	20%
36 – 40	15%
41 – 45	10%
46 – 50	5%
51 – 55	0%

The premium on subsequent assignments shall also be the percentage of the excess payment in accordance with the above schedule. For the purposes of the foregoing formula, the unamortized purchase price on subsequent assignments is the purchase price paid by the assignor when the lease was assigned to assignor less amortization on a straight line basis over the term of the lease remaining at the time of the assignment to assignor.

In addition to other remedies available to DOT under the lease, including, without limitation, the payment to DOT of the amount of the performance bond posted by lessee, DOT may, if the lessee has not performed lease covenants to improve or use the property for its specific uses, impose a surcharge of at least ten percent (10%) of the greater of the minimum guaranteed annual rental or the percentage rental for the year in which the lessee fails to so perform, provided the minimum guaranteed annual rental shall be no less than the minimum guaranteed annual rental for the second year of the lease term. The lessee may also be required to pay an amount equal to the minimum guaranteed annual rental for the second year of the lease term.

Depreciation of improvements, renovations and trade fixtures will be determined on a straight line basis. The whole term of improvements or renovations shall be defined as the period beginning with the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner and shall be based upon the anticipated life of the trade fixture. (See Schedules B and C)

All lessees shall be required to furnish the appropriate divisions with the actual costs of construction of all improvements and renovations within thirty (30) days after their completion as well as the purchase price and other costs of all fixtures acquired for the lessee's operations on, related to or connected with the premises, within thirty (30) days after such costs are incurred. Lessees shall be required to furnish evidence satisfactory to the divisions of the actual costs including, without limitation, furnishing copies of construction contracts, receipts and/or purchase agreements. Lessees shall also be required to furnish the appropriate division with an inventory of all equipment and personal property placed on the premises. The appropriate division shall maintain records of all costs incurred by the lessee for construction of improvements and renovations as well as installation of trade fixtures, equipment and personal property submitted by the lessee and shall include with said records, a copy of the Engineering News-Record Construction Cost Index (CCI) and Consumer Price Index for All Urban Consumers (CPI-U), as published by the U.S. Department of Labor's Bureau of Labor Statistics, for the year and month that construction and/or installation are completed.

In cases where the lessee has constructed or directed the construction of its own improvements, the lessee may be given the option of paying for an appraiser to determine the valuation of the improvements constructed, provided that the appraiser shall be selected by DOT.

If the lessee is a partnership, limited liability partnership, joint venture, limited liability company or corporation, the sale or transfer of twenty percent (20%) (or a percentage of less than twenty percent (20%) if such percentage represents a controlling interest in the lessee) or more of ownership interest or stocks by dissolution, merger or any other means must be reported to DOT and shall be deemed an assignment subject to the payment of a premium in accordance with the above schedule. However, transfers will not include (i) transfers of ownership among the lessee's shareholders when such transfers involve less than fifty percent (50%) of the ownership interest or (ii) transfers of ownership to persons who are not shareholders of the lessee at the time of the transfer, but who become both shareholders and employees of the lessee, and the transfer is of less than fifty percent (50%) of the ownership interest.

Qualifying Leases

All leases entered into after July 1, 2004 are subject to the payment of a premium percentage in accordance with the above schedule. The above policy does not apply to leases entered into between May 24, 1989 and June 30, 2004 unless consideration is paid by the lessee to amend the lease to incorporate the above policy. The terms of any existing lease that has been let through public auction cannot be amended.

For all leases entered into or assigned prior to May 24, 1989, the assessment of an assignment premium shall only apply to those leases wherein it has been determined by the Office of the Attorney General that the assessment of the assignment premium is applicable.

SCHEDULE A. Assignment of Lease Calculations

1. Subtract the amount, if any, attributable to inventory from the gross consideration for the assignment to obtain the net consideration.
2. Calculate the Adjusted Depreciated Cost of Improvements and Renovations (see Schedule B).
3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule C).
4. Determine the amount, if any, by which the net consideration for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated cost of improvements, renovations and trade fixtures being transferred to the assignee by subtracting the amounts derived in Steps 2 and 3 above from the net consideration.
5. Then multiply the excess amount, if any, determined in Step 4 above, by the appropriate premium percentage.
6. The result is the premium due DOT.

Example

A lease is being assigned 57 months after completion of the improvements at a gross consideration of \$650,000, \$50,000 of which is attributable to inventory.

The initial cost of the improvements was \$500,000 while the current year/month CCI and base year/month CCI are 121.1 and 102.3, respectively. The whole term for the improvements is 408 months.

For the trade fixtures, the initial cost was \$1,510 with the current year/month CPI-U and base year/month CPI-U being 118.1 and 104.6, respectively. The total life expectancy is 96 months.

1.	Gross Consideration:	\$650,000
	Inventory:	\$ 50,000
	Net Consideration:	\$600,000
2.	Adj Cost Imp/Ren:	\$591,887
	Depreciation:	<u>- 82,690</u>
	Adj Dep Cost Imp/Ren:	(509,197)
3.	Adj Cost Trade Fixtures:	1,705
	Depreciation:	<u>- 1,012</u>
	Adj Dep Cost Trade Fixtures:	(693)
4.	Excess:	\$ 90,100
5.	Appropriate Premium Percentage:	x (e.g.) 50%
6.	Premium Due DOT:	<u>\$ 45,055</u>

SCHEDULE B. Adjusted Depreciated Cost of Improvements and Renovations

1. Adjusted Cost of Improvements and Renovations

Multiply the actual cost of the improvements and renovations, if any, by the most recent year/month Engineering News-Record Construction Cost Index (CCI) and divide the result by the CCI of the year/month construction was completed (base year/month) to get the adjusted cost of improvements and renovations.

2. Depreciation

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the improvements and renovations by the whole term of the improvements and renovations, the whole term being the period beginning on the date the improvements and renovations are completed until the expiration date of the lease. Multiply the adjusted cost of the improvements and renovations by the depreciation percentage to determine the depreciation.

3. Adjusted Depreciated Cost of Improvements and Renovations

Subtract the depreciation from the adjusted cost of improvements and renovations. The balance is the adjusted depreciated cost of improvements and renovations.

Example

Actual cost:	\$500,000
CCI (most recent):	121.1
CCI (base):	102.3
Expired term:	57 mos.
Whole term:	408 mos.

1. Adjusted Cost of Improvements and Renovations:

$$\text{Actual Cost} \times \text{CCI (most recent)} / \text{CCI (base)}$$

$$\$500,000 \times 121.1/102.3 = \$591,887$$

2. Depreciation:

$$\$591,887/408 \text{ mos.} \times 57 \text{ mos.} = \$82,690$$

3. Adjusted Depreciated Cost of Improvements and Renovations:

$$\$591,887 - \$82,690 = \underline{\$509,197}$$

SCHEDULE C. Adjusted Depreciated Cost of Trade Fixtures

1. Adjusted Cost of Trade Fixture

Multiply the actual cost of the trade fixture by the most recent year/month Consumer Price Index for All Urban Consumers (CPI-U)* and divide the result by the CPI-U of the year/month in which the purchase was made (base year/month).

2. Depreciation

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the trade fixture by its anticipated life. Multiply the adjusted cost of the trade fixture by the depreciation percentage to determine the depreciation.

3. Adjusted Depreciation Cost of Trade Fixtures

Subtract the depreciation from the adjusted cost of the trade fixture. The balance is the adjusted depreciated cost of the trade fixture.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Example	Refrigerator	
	Actual cost:	\$1510
	CPI (most recent):	118.1
	CPI (base):	104.6
	expired term:	57 mos.
	Whole term: (Anticipated life)	96 mos.

1. Adjusted Cost of Trade Fixture:

Actual Cost x CPI-U (most recent) / CPI-U (base)

$$\$1510 \times 118.1/104.6 = \$1705$$

2. Depreciation:

$$\$1705 \times 57 \text{ mos}/96\text{mos.} = \$1012$$

3. Adjusted Depreciated Cost of Trade Fixture:

$$\$1705 - \$1012 = \underline{\$693}$$

Should the State decide to consent to the sublease but limit the amount of rental charged to the sublessee, the maximum allowable sublease income may be determined by applying the following mathematical equation:

$$M - T - R(M - T) - E = 0$$

whereby,

M = maximum allowable sublease income

T = general excise tax

R = rate for management and vacancy loss (10%)

E = total allowances excluding management and general excise tax*

*when applicable

Solving for M:

$$M = \frac{E + T - RT}{1 - R}$$

Effect of Termination or Involuntary Assignment

In the event that a lease or sublease becomes available to a new lessee or sublessee as a result of the involuntary termination of the lease or sublease by foreclosure of the lien of any mortgagee's interest in the leased or subleased premises (whether by court order or otherwise), the purchaser/assignee thereof and the interest so acquired shall not be subject to the requirements of this DOT Sublease Evaluation Policy. Subsequent subleases shall be subject to the requirements of this DOT Sublease Evaluation Policy

Department of Transportation
SUBLEASE EVALUATION POLICY
ANNEX II

Reference

Chapter 171-36(a)(6), Hawaii Revised Statutes

“The lessee shall not sublet the whole or any part of the demised premises except with the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further that in the case where the lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublease shall be included as part of the lessee’s gross receipts; provided further that the board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent downward,…” (Amended 1992)

Purpose

The purpose of the sublease evaluation policy is to discourage and dampen speculation. The basic rationale or philosophy behind the sublease evaluation policy is that the State, as mandated by statutes, should not allow anyone to make excessive “sandwich profits” from the use of State-owned land and will monitor it by participating in the distribution of such profits. The State does recognize the sublessor’s right to earn a fair return for its investment.

When the State determines that “sandwich profits” are being realized, the State may take such action as it deems necessary, including, without limitation:

- (1) limiting the amount of rent charged to the sublessee; or
- (2) receiving thirty percent (30%) of the “sandwich profit” from the sublessor while permitting the sublessor to retain the remaining seventy percent (70%).

The State may reevaluate the “sandwich profit” on an annual basis

Procedure

At the time the lessee requests approval of a sublease, the lessee shall submit any and all information the DOT deems necessary to properly analyze the proposed sublease, including, without limitation, the proposed sublease document, floor plans of the leased premises and the premises to be subleased, plans for any and all proposed improvements, estimated operating and other costs, total investment of the lessee, the proposed payments to DOT for permitting the sublease and any other financial information.

As part of its analysis of the proposed sublease, the State will consider:

- a. data found in the real estate market; including, without limitation, data relating to what other investors are experiencing for similar/comparable investments, and
- b. those allowances and operating expenses that are properly attributable to the sub-leased premises.

To qualify as properly attributable to the subleased premises and therefore eligible for deduction from the effective sublease income (gross annual sublease income minus the general excise taxes paid and/or payable), such allowances (including, without limitation, reserves for replacement of limited life items) and operating expenses must be reasonable, legitimate, adequately justified by the lessee and approved by the State. The operating expenses are to be prorated on an annual basis. Operating expenses are the periodic expenditures necessary to maintain the real property and continue the production of the effective gross income and include, but are not limited to the following:

1. **Fixed Expenses** - Fixed Expenses are operating expenses that generally do not vary with occupancy and have to be paid whether the property is occupied or vacant (i.e., real estate taxes, building insurance costs, etc.).
2. **Variable Expenses** - Variable Expenses are operating expenses that generally vary with the level of occupancy or the extent of services provided (i.e., utilities, painting, repair, maintenance, etc.).
3. **Reserve for Replacement Allowances** - Reserve for Replacement Allowances provides for the periodic replacement of building components that wear out more rapidly than the building itself and must be replaced periodically during the buildings economic life (i.e., roofing, carpeting, sidewalks, driveways, parking areas, etc.).
4. **Lease Rental** -The lease rental amount shall be the proportionate share of the total lease rent attributable to the subleased premises, based on the proportion the subleased area bears to the entire leased premises.

The Fixed Expenses, Variable Expenses and the Reserve for Replacement Allowances shall be prorated based on the proportion the leasable area of the subleased premises bears to the total leasable area of the building.

(For a detailed explanation on allowable operating expenses, please refer to Chapter 19, "Income Estimates," **The Appraisal of Real Estate**, Ninth Edition or such later edition, as applicable, prepared by the Textbook Revision Committee of the American Institute of Real Estate Appraisers.)

A reasonable return on the sublessor's investment which includes recapture of the sublessor's investment and some amount of profit is allowed. The allowance is the result of multiplying the sublessor's total investment in the subleased area by the Investment Return Rate.

The "Investment Return Rate" used in this DOT Sublease Evaluation Policy will be the sum of the following rates:

- a. **Treasury bonds rate.** The interest rate for thirty (30) year Treasury bonds in effect at the time the proposed sublease is being evaluated, as listed in the Wall Street Journal, or if not available, such similar publication as mutually agreed upon by the lessor and the lessee;
- b. **Capital recapture rate.** The annual percentage rate which would enable the lessee to recover the lessee's investment in the improvements constructed on the leased premises over the term of the lease (hereinafter the "capital recapture rate"). For example, if the lease term is twenty-five (25) years, the capital recapture rate shall be four percent (4%) per year; and
- c. **Premium rate.** A premium rate of two percent (2%).

The existing DOT lease rent attributable to the subleased area is also subtracted from the sublease income. Any balance remaining is the sandwich profit. If the State selects the option to approve the sublease rental, then the sandwich profit will be paid to DOT.

Should the State decide to consent to the sublease but limit the amount of rental charged to the sublessee, the maximum allowable sublease income may be determined by applying the following mathematical equation:

$$M - T - R(M - T) - E = 0$$

whereby,

M = maximum allowable sublease income

T = general excise tax

R = rate for management and vacancy loss (10%)

E = total allowances excluding management and general excise tax*

*when applicable

Solving for M:

$$M = \frac{E + T - RT}{1 - R}$$

Effect of Termination or Involuntary Assignment

In the event that a lease or sublease becomes available to a new lessee or sublessee as a result of the involuntary termination of the lease or sublease by foreclosure of the lien of any mortgagee's interest in the leased or subleased premises (whether by court order or otherwise), the purchaser/assignee thereof and the interest so acquired shall not be subject to the requirements of this DOT Sublease Evaluation Policy. Subsequent subleases shall be subject to the requirements of this DOT Sublease Evaluation Policy

Format

COMPUTATION SHEET

DOT Lease No. _____, _____, Sublessor,
 sublease to _____, Sublessee

Gross Annual Sublease Income (Including general excise tax and common areas maintenance charges)		\$ XX,XXX
Less general excise tax		- X,XXX
Effective Income		\$ XX,XXX
Less Allowances:		
Management and vacancy loss (Eff. Inc. x 10%)	\$X,XXX	
Investment return* (Total Inv. x %)	X,XXX	
Fixed Expenses* (e.g., real property taxes, building insurance costs, etc.)	X,XXX	
Variable Expense* (e.g., utilities, painting, repair, maintenance, etc.)	X,XXX	
Reserve for Replacement Allowances* (e.g., roofing, carpeting, sidewalks, driveways, parking areas, etc.)	X,XXX	
DOT Lease No. _____ rental (proportionate share of the lease rent for the leased premises attributable to the subleased area based on the proportion the subleased area bears to the entire leased premises)	X,XXX	
Total Allowances:		- X,XXX
SANDWICH PROFIT		\$ X,XXX

*Prorated based on the proportion the leasable area of the subleased premises bears to the total leasable area of the building.

**LIST OF PARKING REVENUE CONTROL SYSTEM EQUIPMENT
PURCHASED BY OPERATOR**

OPERATIONAL DATA REPORTS

Operational Data Reports to be Submitted by Operator within twenty (20) days of the end of each calendar month:

1) For public parking entries at Kona International Airport at Keahole:

- a. Number of public parking tickets issued for each day of the month.
- b. Number of card-activated entries for each day of the month.
- c. Start and end time and date when any entry lane was out of operation and not available for customer use during the month, along with the reason

2) For public parking exits at Kona International Airport at Keahole:

- a. Number of tickets collected for each day of the month
- b. Number of non-ticket exits for each day of the month
- c. Number of exiting customers paying by cash or check for the month
- d. Number of exiting customers paying by credit or debit card for the month
- e. Number of transactions by hours stayed duration for the month
- f. Start and end time and date when any exit lane was out of operation and not available for customer use during the month, along with the reason

3) Occupancies at Kona International Airport at Keahole:

Parking occupancies (number of occupied spaces) in the public parking lots at peak time and overnight for each day of the month

4 For parking at Kona International Airport at Keahole:

- a. Number of vehicles parked in public parking lot each day
- b. Duration of stay for each vehicle in public parking lot

4) Other

- a. Summary of customer complaints along with a copy of response letters sent during the month
- b. Summary of equipment and parking facilities' maintenance activities during the month
- c. Number of employee parking privilege sales during the month by location.

APPENDIX D

CONCESSION BOND

KNOW ALL BY THESE PRESENTS, that _____,
_____, as Principal,
and _____,
as Surety, are held and firmly bound unto the State of Hawai‘i, its successors or assigns, in the
full and just sum of _____
_____ DOLLARS (\$
_____) , in lawful money of the United States of America, for the payment of which to the State of
Hawai‘i, its successors or assigns, well and truly to be made, we do hereby bind ourselves and
our respective heirs, executors, and administrators and successors, jointly and severally, firmly by
these presents.

The condition of this obligation is such that if the above bounden Principal shall
fully and faithfully perform and fulfill all of the covenants, terms and conditions in that certain
Concession Agreement, dated _____, entered into by said Principal with the State
of Hawai‘i for the Management and Operation of the Automobile Parking Facilities at Kona
International Airport at Keahole in the State of Hawai‘i, and shall promptly pay all just claims
against the Principal, and shall hold harmless, indemnify and defend the State of Hawai‘i, its
officers and agents, successors or assigns, against loss or damage to property of the State of
Hawai‘i, or to the property of others, and from all claims, costs and liabilities for injury to or
death of persons when such loss, damage, injury or death arises or results from any acts or
omissions of the Principal, its officers, agents, employees, contractors and guests (including
invitees and licensees) in connection with the Management and Operation of the Automobile
Parking Facilities at Kona International Airport at Keahole, then this obligation shall be void,
otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED:

(1) That no amendment, modification, change, extension, alteration, deduction
or addition, permitted by said Concession Agreement, in or to the covenants and terms of the
Concession Agreement, shall in any way affect the obligation of said Surety on this bond; and
that said Surety does hereby waive notice of any such amendment, modification, change,
extension, alteration, deduction or addition in or to the covenants, terms and conditions of the
Concession Agreement.

(2) That suit on this bond may be brought before a court of competent
jurisdiction without a jury in the event of a breach of any, or all, or any part of, the stipulations,

agreements, covenants, terms or conditions contained in the Concession Agreement or in this bond, in accordance with the terms thereof.

WITNESS our hands and seals at _____,
State of _____, this _____ day of _____, 20_____.

Principal

Surety

APPROVED AS TO FORM:

Deputy Attorney General

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 20____, before me
appeared _____ to me personally known, who
being by me duly sworn, did say that _____ is (are) the _____
of _____
and that said instrument was signed and sealed in behalf of said corporation by authority of its
Board of Directors, and the said _____
acknowledged said instrument to be the free act and deed of said corporation.

Print Name: _____
Notary Public, _____ Judicial Circuit
State of _____

Doc. Description: _____
No. of Pages: _____

Notary signature

My Commission Expires: _____