

CONCESSION AGREEMENT NO. DOT-A-24-0005

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
AIRPORTS

REQUEST FOR PROPOSALS (RFP)
FOR
THE OPERATION OF THE RETAIL CONCESSION

AT
DANIEL K. INOUE INTERNATIONAL AIRPORT
ISLAND OF OAHU
STATE OF HAWAII

APPENDIX C
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RETAIL CONCESSION

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EXHIBITS A THROUGH K

ATTACHMENTS:

ATTACHMENT 1 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 2 ENVIRONMENTAL PRESERVATION GUIDELINES

ATTACHMENT 3 DEVELOPMENT STANDARDS FOR LEASED AIRPORT PROPERTY

ATTACHMENT 4 DEPARTMENT OF TRANSPORTATION
ASSIGNMENT OF LEASE EVALUATION POLICY

ATTACHMENT 5 CONCESSION BOND; PAYMENT BOND

ATTACHMENT 6 CONCESSIONAIRE'S LISTING OF HAZARDOUS SUBSTANCES

ATTACHMENT 7 CONCESSIONAIRE'S LISTING OF ENVIRONMENTAL PERMITS

CONCESSION AGREEMENT
for the
RETAIL CONCESSION
at Daniel K. Inouye International Airport
Island of Oahu
State of Hawaii

This Concession Agreement made this _____ day _____, 2025, by and between the STATE OF HAWAII, by its Director of Transportation, hereafter referred to as the "**STATE**" and _____, whose business and post office address _____, hereafter referred to as the "**Concessionaire**";

WITNESSETH

WHEREAS, the STATE, pursuant to Chapters 171, 261 and 263 of the Hawaii Revised Statutes, is vested with control and jurisdiction over the operation of airports within the State of Hawaii; and

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

WHEREAS, the STATE has solicited for proposals to exclusively operate the Retail Concession at Daniel K. Inouye International Airport (hereafter the "**Concession**" as more specifically defined below) in the State of Hawaii; and

WHEREAS, proposals were received from qualified proposers, which were carefully analyzed and fully reviewed, and the STATE awarded the Concession, including this Concession Agreement, to the Concessionaire; and

WHEREAS, the Concessionaire desires to secure and enter into this Concession Agreement in accordance with the terms and conditions contained herein and undertake to provide adequate retail facilities, offerings, and services of the type and character required by the STATE to meet the needs of air travelers, passengers and visitors at, and customers and users of, Daniel K. Inouye International Airport; and

WHEREAS, the STATE desires to enter into this Concession Agreement to make adequate retail facilities available to such air travelers, passengers and visitors at, and customers and users of, Daniel K. Inouye International Airport;

NOW, THEREFORE, the STATE and the Concessionaire, for and in consideration of the premises, and of the terms, covenants and conditions hereafter contained to be kept and performed by the STATE and the Concessionaire, respectively, DO HEREBY AGREE AS FOLLOWS:

ARTICLE I. DEFINITIONS

A. "**Administrator**" means the Airports Administrator, Airports, Department of Transportation, State of Hawaii or the Administrator's designated representative.

B. "**Airport**" means the Daniel K. Inouye International Airport, Honolulu, Island of Oahu, State of Hawaii, as shown on Exhibit A, dated March 2024 attached hereto and hereby made a part hereof.

C. "**Concession**" as used herein means the right to operate a retail concession on the Premises subject to the terms and conditions of this Concession Agreement, including the right and obligation to occupy, equip, furnish, operate and maintain retail facilities and to sell and deliver retail related products, services and merchandise to air travelers, passengers and visitors at, and customers and users of, the Airport; provided, however, that as used herein "retail" generally does not include food and beverage products, services, and items for immediate consumption, except as may be approved in writing by the STATE.

D. "**Concession Improvements**" means and includes, whether pre-existing or new, without limitation, any and all of the following: (a) walls, (b) partitions, (c) doors, (d) windows, (e) electrical and telecommunication wiring, service panels, conduits, service connections, receptacles or lighting fixtures attached to (e.g. track lighting) recessed/built-into walls, partitions, ceilings or floors, (f) built-in cabinets and shelving tracks, (g) ventilation and air conditioning systems, (h) fire sprinkler and detection systems, (i) plumbing lines and fixtures, (j) interior finish to floors, walls, doors, windows, or ceilings, (k) wall or floor treatments or coverings that are affixed to the surface, (l) carpeting which is glued, nailed or in any other manner permanently affixed to the floor surface, (m) the "**Storefront(s)**", which is described and defined as an entryway to a retail facility, including display windows, (n) the Kiosks, and (o) fixed Border treatments.

E. "**Concessionaire**" means the proposer to whom this Concession Agreement is awarded and who enters into this Concession Agreement with the STATE.

F. "**County**" means the City and County of Honolulu.

G. "**Department**" means the Airports, Department of Transportation, State of Hawaii.

H. "**Development Standards for Leased Airport Property**" refers to a procedure (Appendix C, Attachment 3) prepared by the Department that shall be followed by

concessionaires in the development of leased airport property, including any subsequent amendments thereto adopted by the STATE.

I. **"DHS"** means the Department of Human Services, State of Hawaii.

J. **"Director"** means the Director of Transportation, Department of Transportation, State of Hawaii, or the Director's designated representative.

K. **"Disadvantaged Business Enterprises" or "DBE"** 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 Department as a Disadvantaged Business Enterprise.

L. **"Environmental Preservation Guidelines"** refers to the manual (Appendix C, Attachment 2) prepared by the Department 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.

M. **"FFE"** means and includes, without limitation, any and all of the following: (a) trade fixtures, (b) office and business furnishings, (c) decorations, (d) equipment, (e) signs, (f) furniture, (g) draperies, (h) movable display cases and shelving, (i) movable appliances and drinking fountains, (j) communication (telephone, radio, telegraph) instruments and antenna, (k) window air conditioning units, (l) portable heaters, and (m) other similar articles or chattels not firmly or permanently affixed to, on or in the Premises, including the improvements thereon, purchased or installed by the Concessionaire.

N. **"HRS"** means Hawaii Revised Statutes.

O. **"Land Board"** means the Board of Land and Natural Resources of the State of Hawaii

P. **"MAG"** means the minimum annual guaranteed fee as set forth in Article VI.A.1.a. (Minimum Annual Guaranteed Fee).

Q. **"Percentage Fee"** means the percentage fee as set forth in Article VI.A.1.b. (Percentage Fee).

R. **"Premises"** means and includes all those areas described in Article III (Premises) hereof which may be amended from time to time, which the STATE authorizes and makes available to the Concessionaire to use for purposes of the Concession.

S. "Socially and Economically Disadvantaged Individuals" shall mean the term as defined under Code of Federal Regulations, CFR 49, Part 26 - §26.5 as amended.

T. "STATE" means the State of Hawaii, by its Department of Transportation.

U. "Tenant Improvement Guidelines" refers to the manual (Appendix C, Attachment 1) prepared by the Department which details specifications and guidelines to be adhered to for all improvements, additions, and renovations made by the Concessionaire to the Premises, including any subsequent amendments thereto adopted by the STATE.

V. "TSA" means the U.S. Department of Homeland Security Transportation Security Administration, or its successor agency.

ARTICLE II. CONCESSION AGREEMENT DOCUMENTS

The Concession Agreement documents covering the operation of the Concession at, on, from or involving the Premises and the construction and installation of improvements thereon shall consist of the following: (1) Notice to Proposers, (2) Instructions to Proposers, (3) Proposal Intent Package, including the Notice of Interest, (4) the Proposal Package, including the Proposal, (5) this Concession Agreement, (6) the Concession Bond, and (7) all other appropriate attachments.

ARTICLE III. PREMISES

The Concessionaire shall, upon payment of the required rents, fees and charges herein and the observance and performance of such further terms and conditions as are hereinafter provided, occupy and use the Premises during the term of this Concession Agreement to operate the Concession. The Premises are more particularly described hereafter and specific locations are identified. All Concession activities within the Premises must conform to the uses identified for that particular area of the Premises and cannot be adjusted, changed or altered without the STATE's prior written approval.

A. AT THE COMMENCEMENT OF THIS CONCESSION AGREEMENT ("Initial Allocation").

1. Retail (Sales) Space.

a. Terminal 1, Second Level, Building 310

(1) Building/Room No. 310-203A, containing an area of approximately 677 square feet, as shown on Exhibit B dated March 2024, attached hereto and made a part hereof; and

(2) Building/Room No. 310-205K, containing an area of approximately 128 square feet, as shown on Exhibit B dated March 2024, attached hereto and made a part hereof.

b. Mauka Extension, Second Level, Building 305

(1) Building/Room No. 305-220, containing an area of approximately 4,140 square feet, as shown on Exhibit C dated March 2024, attached hereto and made a part hereof.

c. Terminal 2, Diamond Head Domestic Extension, Second Level, Building 341

(1) Building/Room No. 341-245, containing an area of approximately 277 square feet, as shown on Exhibit D dated March 2024, attached hereto and made a part hereof;

(2) Building/Room No. 341-255B, containing an area of approximately 1,056 square feet, as shown on Exhibit D dated March 2024, attached hereto and made a part hereof;

(3) Building/Room No. 341-255C, containing an area of approximately 1,071 square feet, as shown on Exhibit D dated March 2024, attached hereto and made a part hereof;

(4) Building/Room No. 341-255D, containing an area of approximately 1,054 square feet, as shown on Exhibit D dated March 2024, attached hereto and made a part hereof; and

(5) Building/Room No. 341-255E, containing an area of approximately 1,808 square feet, as shown on Exhibit D dated March 2024, attached hereto and made a part hereof.

d. Terminal 2, Waiting Lobby, Second Level, Building 342

(1) Building/Room No. 342-220F, containing an area of approximately 1,414 square feet, as shown and delineated on Exhibit E-1 dated March 2024, attached hereto and made a part hereof;

(2) Building/Room No. 342-279, containing an area of approximately 2,635 square feet, as shown and delineated on Exhibit E-1 dated March 2024, attached hereto and made a part hereof;

(3) Building/Room No. 342-281A, containing an area of approximately 694 square feet, as shown on Exhibit E-2 dated March 2024, attached hereto and made a part hereof;

(4) Building/Room No. 342-281B, containing an area of approximately 982 square feet, as shown on Exhibit E-2 dated March 2024, attached hereto and made a part hereof;

(5) Building/Room No. 342-281C, containing an area of approximately 1,127 square feet, as shown on Exhibit E-2 dated March 2024, attached hereto and made a part hereof;

(6) Building/Room No. 342-281D, containing an area of approximately 980 square feet, as shown on Exhibit E-2 dated March 2024, attached hereto and made a part hereof;

(7) Building/Room No. 342-281E, containing an area of approximately 1,061 square feet, as shown on Exhibit E-2 dated March 2024, attached hereto and made a part hereof;

(8) Building/Room No. 342-281F, containing an area of approximately 821 square feet, as shown on Exhibit E-2 dated March 2024 attached, hereto and made a part hereof;

(9) Building/Room No. 342-282, containing an area of approximately 2,919 square feet, as shown on Exhibit E-2 dated March 2024, attached hereto and made a part hereof;

(10) Building/Room No. 342-286A, containing an area of approximately 1,276 square feet, as shown on Exhibit E-2 dated March 2024, attached hereto and made a part hereof;

(11) Building/Room No. 342-286B, containing an area of approximately 1,120 square feet, as shown on Exhibit E-2 dated March 2024, attached hereto and made a part hereof;

(12) Building/Room No. 342-286C, containing an area of approximately 845 square feet, as shown on Exhibit E-2 dated March 2024, attached hereto and made a part hereof; and

(13) Building/Room No. 342-287, containing an area of approximately 734 square feet, as shown on Exhibit E-2 dated March 2024, attached hereto and made a part hereof.

e. Ewa Domestic Extension, Second Level, Building 344

(1) Building/Room No. 344-245, containing an area of approximately 6,237 square feet, as shown on Exhibit F dated March 2024, attached hereto and made a part hereof;

f. Central Concourse, Second Level, Building 350

(1) Building/Room No. 350-217, containing an area of approximately 547 square feet, as shown on Exhibit G dated March 2024, attached hereto and made a part hereof;

(2) Building/Room No. 350-218A, containing an area of approximately 931 square feet, as shown on Exhibit G dated March 2024, attached hereto and made a part hereof;

(3) Building/Room No. 350-247, containing an area of approximately 352 square feet, as shown on Exhibit G dated March 2024, attached hereto and made a part hereof;

(4) Building/Room No. 350-248, containing an area of approximately 541 square feet, as shown on Exhibit G dated March 2024, attached hereto and made a part hereof; and

(5) Building/Room No. 350-249A, containing, an area of approximately 560 square feet, as shown on Exhibit G dated March 2024, attached hereto and made a part hereof.

g. Ewa Concourse, Second Level, Building 360

(1) Building/Room No. 360-202, containing an area of approximately 745 square feet, as shown on Exhibit H-1 dated March 2024, attached hereto and made a part hereof;

(2) Building/Room No. 360-203, containing an area of approximately 611 square feet, as shown on Exhibit H-1 dated March 2024, attached hereto and made a part hereof;

(3) Building/Room No. 360-221, containing an area of approximately 738 square feet, as shown on Exhibit H-2 dated March 2024, attached hereto and made a part hereof;

(4) Building/Room No. 360-222, containing an area of approximately 775 square feet, as shown on Exhibit H-2 dated March 2024, attached hereto and made a part hereof; and

(5) Building/Room No. 360-228, containing an area of approximately 1,622 square feet, as shown on Exhibit H-2 dated March 2024, attached hereto and made a part hereof.

h. Diamond Head Concourse, Second Level, Building 373

(1) Building/Room No. 373-242, containing an area of approximately 3,745 square feet, as shown on Exhibit I dated March 2024, attached hereto and made a part hereof.

2. Retail Storage Space (Non-Sales).

a. Ewa Domestic Extension, Second Level, Building 344

(1) Building/Room No. 344-278A, containing an area of approximately 740 square feet, as shown on Exhibit J dated March 2024, attached hereto and made a part hereof.

b. Diamond Head Connecting Link, Second Level, Building 363

(1) Building/Room No. 363-218A, containing an area of approximately 596 square feet, as shown on Exhibit K dated March 2024, attached hereto and made a part hereof.

B. ADDITIONAL SPACE.

1. STATE's Requirement. The STATE may make available to the Concessionaire at the Airport additional spaces over and above the Initial Allocation under this Concession Agreement and require the Concessionaire to operate the Concession therefrom if the volume of air travelers, passengers, visitors, customers and users of the Airport, in the STATE's sole discretion, justifies the opening of the Concession at any spaces at the Airport over and above the Initial Allocation. The decision to make available additional Concession spaces shall be in the sole discretion of the STATE.

2. Required Additional Space. No rent is payable by the Concessionaire for any additional spaces upon which the STATE is requiring the Concessionaire to operate the Concession.

3. Concessionaire's Request. The Concessionaire may request the use of additional space at the Airport over and above the Initial Allocation under this Concession Agreement for operation of the Concession. The STATE may grant or deny the Concessionaire's request, in whole or in part, in the STATE's sole discretion. The Concessionaire will pay space rent for additional space which the Concessionaire requests and the STATE approves as set forth in Article VI. (Concession Fee).

4. Agreement Amendment. The Concessionaire shall not use any additional space approved by the STATE unless and until an amendment to this Concession Agreement is signed by the STATE and the Concessionaire and properly approved by the Land Board where necessary and/or where otherwise required by the STATE in its sole discretion. The rent for any additional space requested by the Concessionaire and approved by the STATE is set forth in Article VI (Concession Fee). Any space added to the Premises after commencement of this Concession Agreement (whether at the request of the STATE or the Concessionaire) under an amendment to this Concession Agreement signed by the STATE and the Concessionaire and approved by the Land Board (where necessary and/or where otherwise required by the STATE in its sole discretion) shall become part of the Premises under this Concession Agreement.

5. Preparation Costs. The Concessionaire shall be solely responsible for all costs and expenses relating to the use and occupancy of any additional spaces over and above the Initial Allocation under this Concession Agreement, including, without limitation, all costs and expenses for readying and preparing such additional space for occupancy, and constructing and installing improvements, including any Concession Improvements and FFE, thereon.

6. Kiosks.

a. Use of Kiosks. Within certain portions of the Airport, the STATE may permit the Concessionaire, in the STATE's sole discretion, to construct, install and use a kiosk (hereafter collectively the "**Kiosks**") to operate the Concession. Any space at the Airport occupied by the Kiosks, upon the prior written approval of the STATE, will be deemed part of the Premises for purposes of this Concession Agreement.

b. Concessionaire's Request. The Concessionaire may request additional space over and above the portions of the Airport upon which the STATE initially permits the Concessionaire to use the Kiosks to operate the Concession. The STATE may grant or deny the Concessionaire's request, in whole or in part, in the STATE's sole discretion.

c. Conditions of Use. The Concessionaire shall use the Kiosks in accordance with the terms and conditions specified in this Concession Agreement and such other terms and conditions as the STATE may reasonably impose:

(1) Part of Concessionaire's Concession Improvements. The Kiosks shall be considered a part of the Concessionaire's Concession Improvements (as defined herein) and the construction and installation of the Kiosks shall be subject to the requirements of Article VII (Improvements), including obtaining the STATE's prior written approval. The design and plans for the Kiosks must be included in the Concessionaire's Plans (as defined herein and subject to the STATE's prior written approval), including, without limitation, the placement, layout, dimensions, shape, size, configuration, color, height, width, depth, style, composition, power and utility requirements, construction materials and an evaluation of the noise and other effects generated by the Kiosks.

(2) Adverse Effects. The STATE may order the Concessionaire to stop or discontinue use of any of the Kiosks if the STATE determines that any of the Kiosks are causing, resulting in, or contributing to adverse effects on Airport operations and use beyond or more intense than that which the STATE initially anticipated. The Concessionaire may not reopen or recommence Concession operations from such Kiosk(s) unless and until the adverse effects are mitigated to a level and an extent satisfactory to the STATE.

(3) Refusal to Comply. The Concessionaire's refusal to comply with and abide by any order by the STATE to stop or discontinue use of any of the Kiosks, shall constitute a material breach of this Concession Agreement, whether or not the notice of default or violation was issued by the STATE. If the Concessionaire fails to stop or discontinue Concession operations from such Kiosk(s), the STATE shall be entitled to assess an additional fee to the Concessionaire in the amount of \$250.00 per day under Article VI.G (Additional Charges) and any additional charges under Article XVIII (Termination by STATE) or terminate this Concession Agreement.

(4) Proper Approvals. The Concessionaire shall be solely responsible for obtaining any and all governmental and other approvals necessary to construct and use the Kiosks on or at the Airport and shall operate the Kiosks in compliance with all requirements imposed in connection with such approvals.

(5) Utility and Telecommunication Services. The Concessionaire shall be solely responsible for making arrangements to furnish and supply all utility and telecommunication services required for the Kiosks and pay for such utility and telecommunication services in the manner prescribed in Article VII (Improvements) and Article XV (Utility Service) herein.

(6) Placement. The number, location, placement, and duration of stay of the Kiosks at any portion of the Airport shall be determined by the STATE, at the STATE's sole discretion.

(7) Concessionaire Solely Responsible. With respect to the Kiosks and the areas of Airport occupied by the Kiosks, the Concessionaire shall be responsible and liable, and shall fully perform and fulfill all of the Concessionaire's obligations under this Concession Agreement, including the Concessionaire's obligation to maintain, repair, operate, reconstruct and remove and to indemnify, defend with legal counsel acceptable to the STATE and hold harmless the STATE, in the same manner and to the same extent as the Concessionaire is responsible, liable and obligated to fully perform under this Concession Agreement with respect to the Premises.

(8) Secured When Not In Use. The Kiosks must be properly secured when not in use and the Concessionaire must comply with all other conditions, including any and all security related conditions, imposed by the STATE on the use of the Kiosks.

C. CONCESSION LIMITED TO PREMISES. The Concessionaire shall conduct the Concession operations at the Airport solely and exclusively within the limits and confines of the Premises.

1. Subject to Relocation. The Concessionaire's obligation to conduct the Concession operations solely and exclusively within the Premises is subject to the provisions for expansion and relocation of any portion of the Premises as specified in Article VII (Improvements).

2. Border Area Exception. The Border Area, as described and defined as follows, will be an exception to the Concessionaire's obligation to conduct Concession operations solely and exclusively within the Premises.

a. Establishment. STATE may establish a border area following the entire length of the sales area of the Premises between the Premises and the public areas of the STATE Airports adjacent to the Premises which shall be no more than six (6) feet in width, and which shall extend vertically from the floor to a height of approximately ten (10) feet (hereafter the "**Border Area**"). This Border Area will be established by the STATE and no amendment to this Concession Agreement will be necessary to establish this Border Area.

b. Not part of the Premises. This Border Area shall not be a part of the Premises and shall not be considered space which can be added to this Concession Agreement pursuant to Article III.B (Additional Space) herein. No Border Area will be established for the Kiosks.

c. Concessionaire Solely Responsible. With respect to the Border Area, and the Storefront of a sales space, the Concessionaire shall be responsible and liable, and shall fully perform and fulfill all of the Concessionaire's obligations under this Concession Agreement, including the Concessionaire's obligation to maintain, repair, operate, reconstruct and remove and to indemnify, defend with legal counsel acceptable to the STATE and hold harmless the STATE, in the same manner and to the same extent as the Concessionaire is responsible, liable and obligated to fully perform under this Concession Agreement with respect to the Premises.

D. SPACE ADJUSTMENTS.

1. Changes to the Premises

a. Director's Discretion. The Premises and the specific areas assigned or provided to the Concessionaire to conduct the Concession under this Concession Agreement are subject to change, alteration, relocation, substitution, reduction, expansion, and/or other changes (collectively, "**Changes**") at the sole and complete discretion of the Director. The STATE reserves the right at any time during the term of this Concession Agreement to make such Changes. In the event of such Changes, the STATE shall provide Concessionaire with at least sixty (60) days' notice.

b. No Specific Space Guaranteed. The award of this Concession Agreement and the use of the Premises shall not mean the Concessionaire is guaranteed the right of occupancy or operation from any specific portion of the Premises for the entire term of this Concession Agreement. The Concessionaire acknowledges and agrees that in entering into this Concession Agreement, the Concessionaire has no reasonable expectation(s) that the Premises and the specific areas assigned shall remain the same and/or not be subject to Changes. To the contrary, as described in Article III.D.1.c. (Terminal 2 Project) below, the Concessionaire at a minimum expects that Changes may result from the Terminal 2 Improvements Project at the Airport (“**Terminal 2 Project**”). In any case, the STATE shall not be responsible, and the Concessionaire shall have no claim against the STATE, for any costs or expenses incurred by the Concessionaire in relocating or ceasing operations from any portion of the Premises.

Moreover, at any time during the term of this Concession Agreement, the STATE may, by letter setting forth the reasons, require the Concessionaire to surrender any portion of the Premises. Should the STATE require such surrender, the STATE may use its best efforts to provide the Concessionaire with substantially equivalent substitute space, provided, however, that the Concessionaire acknowledges and agrees that there may be a net reduction in the area of the Premises.

c. Terminal 2 Project. The Concessionaire is informed and acknowledges that the Terminal 2 Project is in process and could result in Changes that materially and/or adversely affect Concessionaire’s Concession operations under this Concession Agreement including but not limited to adjustments to the square footage of such portions of the Premises, and/or relocation of the Premises and/or portions thereof. Moreover, the Terminal 2 Project is likely to include plans with concepts and principles affecting, among other things, the Concession Improvements, Border Areas, Tenant Improvement Guidelines and other requirements. Thus, the Concessionaire agrees to and shall account for any such Changes resulting from the Terminal 2 Project in entering into this Concession Agreement and in making any Concession Improvements.

d. Concessionaire’s Agreement to Changes. With regard to any and all Changes, the Concessionaire agrees:

(1) to adjustments in the area of the Premises, including reduction and/or expansion;

(2) to move/relocate to temporary/interim locations including but not limited to Kiosk locations, if made available by the STATE as temporary/interim Premises;

(3) to pay the costs of moving to any temporary/interim and/or new/relocated Premises;

(4) to make Concession Improvements in accordance with this Concession Agreement for any temporary/interim and/or new/relocated Premises at Concessionaire's cost and expense;

(5) to adjustments in the Concession Fee and/or space rental made by the Director in its sole and complete discretion based solely on the area of any temporary/interim and/or new Premises;

(6) to cooperate with the STATE in such Changes and to execute upon receipt from the STATE, any amendments or other instruments as may be required to correctly reflect the Changes; and

(7) that any such relocation and its consequences shall not be a constructive eviction and/or default by the STATE of any covenants of this Concession Agreement and/or breach of any quiet enjoyment, and Concessionaire hereby waives any and all rent offsets and/or claims in connection therewith.

d. Adjustments. Notwithstanding the foregoing, the Director shall have the right but not the obligation to approve Changes, on a case-by-case basis, at some or all portions of the Premises, such adjustments to the square footage of such portions of the Premises, and/or relocation of such portions of the Premises, as is necessary to maintain the approximate total square footage of the Premises initially allocated to the Concessionaire under this Concession Agreement. If such adjustment or relocation of space, as determined by the Director, requires the Concessionaire to relinquish, remove, alter, or abandon a significant portion of the Concession Improvements made by the Concessionaire, the STATE may consider reimbursing to the Concessionaire, at the STATE's sole and complete discretion, the unamortized value of the portion of Concession Improvements thereby affected. The Concessionaire will not be eligible for any such reimbursement unless and until the value and amortization of such affected Concession Improvements is properly established and calculated in accordance with the terms of Article VII (Improvements) herein, to the STATE's satisfaction. The unamortized value of the relinquished, removed, altered or abandoned Concession Improvements shall be determined to be the balance after the depreciation taken on the most accelerated basis allowed under the Internal Revenue Code, regardless if such accelerated method is used by the Concessionaire.

e. Concessionaire's Release. The Concessionaire hereby releases and discharges the STATE, its successors and assigns, of and from any and all claims, demands, causes of action, liabilities, losses, damages, costs and expenses, which the Concessionaire may now or at any time hereafter have against the STATE arising or alleged to arise out of any of the changes described in Article III.D.1. (Changes to the Premises), Article III.D.2.b (No STATE Warranties), and Article III.D.2.c (Concessionaire's Acknowledgment), including, without limitation, the Terminal 2 Project and any other STATE Airport improvement project and any other changes, alterations, adjustments, amendments or revisions in, of, at or to any portion of the Premises.

f. No Relief. The Concessionaire shall have no claim for any rebate or adjustment of the Concession Fee including any rebate or relief from any of its minimum annual guaranteed payment obligations under this Concession Agreement except for that set forth in Article VI.H (Partial Relief from Obligation) and Article VI.I. (Relief Due to Economic Emergency) for any change (including decreases in sales revenue and volume) that may arise from or be attributable to any of the changes to the Premises set forth in Article III.D.1.a (Director's Discretion), Article III.D.1.b (No Specific Space Guaranteed), Article III.D.1.c (Terminal 2 Project), and Article III.D.1.d (Concessionaire's Agreement to Changes), including those changes resulting from a significant decrease in the number or volume, flow, or direction of potential customers and other pedestrian traffic by or to the Premises.

2. Changes to the Airport.

a. STATE's Right. At any time and from time to time, the STATE may, without the consent of the Concessionaire, and without affecting the Concessionaire's obligations and rights under this Concession Agreement, at the STATE's sole discretion, do the following:

(1) Changes. Change the shape, size, location, use, number and extent of the improvements on any portion of the Airport, including, without limitation, the concourses, piers, boarding areas, concession areas and security areas located in the terminal buildings;

(2) Additional Stories. Build additional stories above or below buildings and structures at the Airport including the terminal buildings;

(3) Public entrances. Eliminate or relocate and reroute public entrances to the Premises so long as there is at all times one public entrance to the Premises;

(4) Parking. Construct multi-level, elevated or subterranean parking facilities; and

(5) Expansion. Expand, change, alter, eliminate, reduce or contract the Airport, including redefining the boundaries of the Airport so as to include additional lands within the Airport or excluding lands from the Airport or both.

b. No STATE Warranties. The Concessionaire acknowledges and agrees that the STATE has made no representations, warranties, or covenants to the Concessionaire regarding the design, construction, repair, renovation, pedestrian traffic, access/ingress/egress or views of or at the Airport or the Premises. Without limiting the generality of the foregoing, the Concessionaire acknowledges and agrees that (i) the Airport, including the terminal buildings in which the Premises are located may from time to time hereafter undergo, renovation, construction and modification including but not limited to the Terminal 2 Project described to in Article III.D.1.c. (Terminal 2 Project), (ii) such renovation, construction and modification may include rerouting of pedestrian traffic and construction of

temporary scaffolds and other aids to construction, and (iii) the STATE may from time to time adapt rules and regulations relating to security and other operational concerns that may affect the Concessionaire's operation of the Concession and the volume, flow, and direction of pedestrian traffic.

c. Concessionaire's Acknowledgment. The Concessionaire acknowledges that such construction, repair, renovation, and modification at the Airport might involve barricading, materials storage, dust, noise, obstructions, the presence of workers and equipment, rearrangement, utility interruptions and other inconveniences normally associated with construction, repair, renovation and modification.

d. Concessionaire's Release. The Concessionaire hereby releases and discharges the STATE, its successors and assigns, of and from any and all claims, demands, causes of action, liabilities, losses, damages, costs and expenses, which the Concessionaire may now or at any time hereafter have against the STATE arising or alleged to arise out of any of the changes to the Airport described in Article III.D.2.a (STATE's Right), Article III.D.2.b (No STATE Warranties), and Article III.D.2.c (Concessionaire's Acknowledgment), including, without limitation, any Airport improvement project and any of the following resulting in changes, alterations, adjustments, amendments or revisions in, of, at or to any portion of the Airport: (1) design or redesign, (2) construction, (3) repair, (4) renovation, (5) removal or demolition, (6) pedestrian traffic routing through any part of the Airport, (7) access/ingress/egress to and from the Premises or (8) views, view planes or view corridors of or at the Airport or the Premises.

e. No Relief. The Concessionaire shall have no claim for any rebate or adjustment of the Concession Fee including any rebate or relief from any of its minimum annual guaranteed payment obligations under this Concession Agreement except for that set forth in Article VI.H (Partial Relief from Obligation) and Article VI.I. (Relief Due to Economic Emergency) for any change (including decreases in sales revenue and volume) that may arise from or be attributable to any of the changes to the Airport set forth in Article III.D.2.a (STATE's Right), Article III.D.2.b (No STATE Warranties), Article III.D.2.c (Concessionaire's Acknowledgment), and Article III.D.2.d (Concessionaire's Release), including those changes resulting from a significant decrease in the number or volume, flow, or direction of potential customers and other pedestrian traffic by or to the Premises.

ARTICLE IV. TERM

A. Five-Year Term. The term of this Concession Agreement shall commence at _____, and expire at 12:00 midnight on _____, unless (1) sooner terminated pursuant to Articles XVIII (Termination by STATE) or XXI (Termination by Concessionaire), or (2) extended, in the STATE's sole discretion, for an additional period not to exceed five (5) years, provided that any such extension shall be pursuant to a written amendment to this Concession Agreement and in accordance with applicable laws, or (3) extended, pursuant to and in accordance with the holdover provisions set forth herein.

B. Holdover.

1. STATE's Decision. The STATE may, but shall not be obligated to, permit the Concessionaire to holdover on or at the Premises 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 shall 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 resoliciting the Concession could result in greater revenue to the STATE, (3) the potential revenue loss resulting from a gap in the provision of the Concession services, (4) renovations of the Airport terminal complexes 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 Concessionaire in writing of the STATE's offer of a holdover tenancy. Within thirty (30) days of receipt of the STATE's notice, the Concessionaire shall notify the STATE in writing as to the Concessionaire's acceptance of said holdover tenancy. If the Concessionaire fails to so notify the STATE in writing within said thirty (30)-day period, the Concessionaire 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 Concessionaire to hold over and operate from, at and upon the Premises, in accordance with this Article IV (Term), for a period of time not to exceed one year from the date of expiration.

3. Holdover Terms.

a. Month-to-Month Tenancy. If the STATE permits the Concessionaire to holdover on or at the Premises, such a holding over 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 this Concession Agreement in effect immediately prior to the commencement of the holding over (hereafter the "**Holdover start**"), unless modified as deemed necessary by the STATE. Such modifications may include, but are not limited to, the Concessionaire's obligation to (1) pay to the STATE the rents, fees and charges in effect at the Holdover start, (2) furnish 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 this Concession Agreement in effect at the Holdover start.

b. Modifications. The Concessionaire's obligation to pay the rents, fees and charges in effect at the Holdover start shall, at a minimum, be modified as follows: the STATE may upon thirty (30) days prior written notice, after the Holdover start, increase or otherwise amend the rents, charges and fees (including but not limited to the Concession Fee), payable by the Concessionaire to the STATE. The Concessionaire'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 V. USE OF PREMISES

A. Authorized Uses.

1. Concession Plan. Within fifty (50) days of the Concessionaire's receipt of notice of award of this Concession Agreement to the Concessionaire, the Concessionaire shall submit to the STATE, for the STATE's prior written approval, a Concession Plan describing in detail the Concessionaire's plans for the operation of the Concession, including, without limitation, business philosophy, anticipated retailing concepts, store and presentation themes, brand and merchandise mix, tenant mix and program (including, without limitation, any arrangements to sublease, license, franchise or otherwise let any other entity use, occupy or operate from the Premises), proposed floor plans, proposed design, layout and placement of the Kiosks, marketing and retail offerings, customer service program, daily controls and sales program, hereafter the "**Concession Plan.**"

2. Concessionaire's Rights. Except as otherwise provided in this Concession Agreement, the Concessionaire shall have the exclusive right to use the Premises to (1) carry in stock, display, offer for sale, and sell the merchandise described in Article V.A.3 (Permissible Groups and Sub-categories of Merchandise) together with other merchandise that is typically offered for sale by airport retail concessions, all of which is subject to the STATE's prior written approval, and (2) perform, with the prior written approval of the STATE, any and all activities incidental thereto or which are reasonably necessary or desirable for the operation of the Concession. The Concessionaire's exclusive rights hereunder to use the Premises (a) are subject to the STATE's rights of entry as reserved herein and the other terms and conditions of this Concession Agreement, (b) shall remain exclusive during the Concession Agreement term only so long as the Concessionaire is not in default under this Concession Agreement, and (c) are subject to the terms and conditions of this Concession Agreement.

3. Permissible Groups and Sub-categories of Merchandise.

a. Packaged Food and Cooking Ingredients, Sauces, Condiments, and Dressings and Beverages (Bottled and/or Boxed).

(1) Foods Packaged for Long Distance Airplane Transport. Packaged food items which are not intended for immediate consumption and must be capable of withstanding, in good condition, a ten (10)-hour airplane transport without additional refrigeration, for example: Poi, meats, seafood, onions and preserved seeds or fruit products; Premium assorted nuts including cashews, pecans and other nut products; Premium chocolates, including chocolate-covered macadamia nuts; Premium packaged candies; Jellies and jams and preserved, dried or candied fruits; Packaged fresh tropical fruits, including papaya, pineapple, oranges and such other U.S. Department of Agriculture and Hawaii Department of Agriculture authorized fruits approved by the STATE; Portuguese sausage; Breads; Maui-styled potato chips or potato chips identified with the island on which the Airport is located (large bags); Premium cookies (large packages); Fresh ground and whole bean locally grown or packaged coffee;

Locally manufactured and valued food items packaged specifically for transport including haupia cakes, coconut cakes and other such bakery products;

(2) Beverages. All types of liquors (alcoholic beverages), especially those locally made or representative of Hawaii; Fruit juice mixes and concentrates for home use provided that such item is sixteen (16) fluid ounces or more such as guava juice, fruit punch and other juices; Souvenir or exotic beers (standard domestic not allowed); Miniature liquors.

b. Jewelry and Personal Accessories. Jewelry made from precious, semi-precious metals and stones and gems, synthetic gems and stones, including rings, bracelets, earrings, wrist/ankle-lets, necklaces and pendants; Costume or fashion jewelry; Figurines, statuettes and carving where the primary value is based on precious or semi-precious metal or stones that are designed into the figurines; Jewelry boxes constructed with precious or semiprecious metals or stones; Personal timepieces such as wristwatches, pocket watches, necklace watches or other time pieces which are part of personal jewelry; Watch repair services; Shells— Shell necklaces, earrings; Conch shells for display; Mounted and unmounted shells.

c. Clothing, Apparel, Leather Goods, Accessories, and Footwear- Men, Women and Children.

d. Luggage Handbags and Leather Carry Goods. Hard and soft cover luggage; Briefcases, Wardrobe carriers, Luggage carriers, Tote bags, Backpacks, Purses, Wallets and Handbags.

e. Cosmetics, Skin Care, Bath, Sundries and Fragrances. After shaves, Colognes, Perfumes, Toiletries, Lipstick, Eye shadow, Foundation, Nail polish, Body cleaners, Skin Conditioners, Lotions; Grooming and Personal Care Implements and Items.

f. Stationery, Cards and Writing. Writing paper, tablets and notepads; Writing instruments, Greeting cards, Envelopes, Postcards, Pens and pencils,

g. Toys, Games, Hobby and Models. Products meant for children, adults and all-ages, including battery operated and mechanical devices; Scale models and Hobby supplies.

h. Athletic, Sporting and Recreation Goods and Equipment. Fishing, Soccer, Football, Baseball, Basketball, Golf, Softball, Tennis, Camping, Hiking, Roller Blades, Scooters, Swimming and Diving.

i. Opticals. Binoculars and Eyewear (Sunglasses, reading glasses, frames, contact lenses); Telescopes, Microscopes, Magnifiers, Neck straps, Eyewear cases and holders.

j. Art Goods, Fine Arts, Woodworks and Crafts. Framed or unframed Artwork, Art supplies, Handcrafted work, Craft supplies, Lithographs and Prints.

k. Housewares, Tableware, China, Crystalware and Glass. Dishes, Cups, Bowls, Platters and Utensils; Linens and Towels; Etched glassware, Decanters, Blown glass designs, Leaded glass work and Glass mosaics; Fine and General Ceramic Ware, etc.

l. Fabrics, Quilts and Textiles. Yardage, Patterns, Comforters, Cushions, Cloths, Weaves and Wall Hangings.

m. Dance, Hula and Musical Instruments. Accessories, Implements, Dress Ensembles, and Instruments.

n. Other Souvenirs and Gifts.

4. Not exhaustive.

a. STATE's approval required. The groups and sub-categories of merchandise listed herein are not intended to be definitive or exhaustive provided however, the Concessionaire may not add specific merchandise or further groups and sub-categories of merchandise unless and until the Concessionaire first obtains the STATE's written approval.

b. Exclusivity. The Concessionaire shall have the exclusive right to operate and conduct the Concession under which Concessionaire is authorized to sell and offer for sale the merchandise listed in Article V.A.3 (Permissible groups and sub-categories of merchandise) from the Premises within the terminal buildings at the Airport. While there may be incidental overlap of merchandise between the Concession and other concessions at the Airport, which the STATE may permit, in its sole discretion, the STATE will not grant another Retail Concession to anyone else during the term of this Concession Agreement except as otherwise provided for in this Concession Agreement.

c. STATE's Sole Decision. The STATE shall have the sole discretion to determine (1) whether the specific merchandise the Concessionaire requests to carry and sell falls within an existing group or sub-category listed in Article V.A.3 (Permissible groups and sub-categories of merchandise) and (2) whether the specific merchandise shall be exclusive or non-exclusive to this Concession.

(1) Existing Group. If the STATE determines that such merchandise falls within an existing group or subcategory listed in Article V.A.3 (Permissible Groups and Sub-categories of Merchandise), the Concessionaire shall have the right to sell and offer for sale such merchandise from the Premises within the terminal buildings at the Airport.

(2) New Group. If the STATE determines that such merchandise does not fall within an existing group or subcategory listed in Article V.A.3 (Permissible Groups and Sub-categories of Merchandise), the STATE may, in the STATE's sole discretion, (1) permit the Concessionaire to sell and offer for sale such merchandise, or (2) deny the Concessionaire's request to carry and sell such merchandise, and in either case, determine

that the Concessionaire shall not have the exclusive right to sell and offer for sale such merchandise from the Premises within the terminal buildings at the Airport.

d. Conflict. In the event of a conflict between the Concessionaire and any other tenant or concessionaire at the Airport with respect to the services to be offered or products and merchandise to be sold by said tenants or concessionaires, including but not limited to any claims regarding exclusive rights to sell or offer such products and merchandise, the STATE shall meet and confer with all necessary parties. The STATE shall thereafter render a decision, in writing, determining the services to be offered or products to be sold by each. The STATE's decision shall be considered final, and the Concessionaire hereunder shall abide by and conform its conduct and performance to be consistent with the STATE's decision.

B. Prohibited Uses. The Concessionaire shall not sell any item or product not Authorized pursuant to Article V.A.3 (Permissible Groups and Sub-Categories of Merchandise) and Article V.A.4 (Not Exhaustive).

In addition to the foregoing, the Concessionaire shall not use the Premises or any portion thereof, or permit any of the same to be used by any of the Concessionaire's employees, officers, agents, invitees, or guests for any of the following:

1. No Illegality. For any illegal purpose.
2. No Nuisance. To do any act which results or may result in the creation or commission or maintenance of a nuisance on the Premises. The Concessionaire shall also not cause or produce or permit to be caused or produced upon the Premises, or to emanate therefrom, any offensive sounds, or any noxious or objectionable smoke, gases, vapors, or odors,
3. No Lodging. For lodging or sleeping purposes.
4. No Interference. For anything which may interfere with either the effectiveness of or access to utility systems, air conditioning systems, elevators or escalators (including facilities, structures, lines, equipment, conduits, and appurtenances, connected or appurtenant thereto) in or adjacent to the Premises; or which may interfere with the free access and passage in and to the Premises or public areas adjacent thereto, or in the streets or sidewalks adjoining the Premises.
5. No Overload. To overload any floor on the. Premises or place loads upon the floor, walls or ceiling which endanger the structure or obstruct the sidewalk, passageways, stairways, elevators, or escalators in front of, within or adjacent to the Premises and the terminal buildings in which the Premises are located.
6. No Effect on Insurance. To do or permit the doing of any act or thing upon the Premises which will either increase the premium rate of, be contrary to, or invalidate any fire, casualty, or liability insurance policies either required herein or carried by the STATE, covering the Premises or the buildings in which the same are located. The Concessionaire shall,

in connection herewith, obey, observe and adhere to all present and future rules, regulations, orders and decisions issued by the STATE or any governmental authority pursuant thereto, and the requirements and directions of fire or other underwriters on the applicable policies of the STATE and the Concessionaire, which may pertain or apply to the operation of the Concession upon the Premises.

7. No Vending Machines. To install, maintain or operate or permit the installation, maintenance or operation, of any coin, token, or credit card-operated vending machine or device for the purpose of vending or providing any product or service (and for the purposes hereof, amusement or entertainment shall be deemed a service) upon any portion of the Premises or the Airport without the prior written approval of the STATE.

8. No Deceptive Promotion. To engage in any deceptive promotional, sales or advertising practice which would mislead or otherwise provide any customer with an indication of a retail opportunity which is not as indicated or which significantly overvalues the product, service or merchandise being sold.

9. Promotional Medium Restriction. Use any advertising or promotional medium that may be seen, heard or otherwise experienced outside the Premises (such as searchlights, barkers or loudspeakers),

10. No Handbills. Distribute handbills or circulars to patrons of the Airport or to vehicles in the parking lots of the Airport, or engage in any other advertising in the Airport (except as may specifically permitted under this Concession Agreement).

11. No Recruitment. Other than the exceptions permitted under Article III.C.2. (Border Area Exception), Article VI.D.1. (Promote Business) and Article VIII.A. (Operation of the Concession) engage in any activity on the Airport outside the Premises for the recruitment or solicitation of business.

12. No Injury to Reputation. Do or permit to be done anything in any way tending to injure the reputation of the STATE or the Airport or the appearance of the Airport. The Concessionaire shall not, without the prior written consent of the STATE, reference the STATE or the Airport for any purpose other than the address of the business to be conducted by the Concessionaire in the Premises, nor will the Concessionaire do or permit anything in connection with the Concessionaire's business or advertising which in the judgment of the STATE may reflect unfavorably on the STATE or the Airport, or confuse or mislead the public as to the relationship between the STATE and the Concessionaire.

13. No Sales of Non-approved Merchandise. Sell or offer for sale any merchandise which does not fall within one or more of the permissible categories of merchandise set forth in Article V.A.3 (Permissible Groups and Sub-categories of Merchandise) without the prior written approval of the STATE.

14. No Second Hand Store. Use or permit the use of the Premises for the conduct and operation in or on the Premises of a second hand or discount store except that the Concessionaire may from time to time (but not more frequently than the STATE may permit) conduct clearance sales and offer discounted price merchandise subject to Article VI.B (Sales).

C. General Restrictions. The Concessionaire understands and agrees that the following products, merchandise or services are not included within the uses permitted under this Concession Agreement:

1. Game Rooms: Operation of mechanical or electronic game devices, electronic video game devices, and any like entertainment devices, except the Concessionaire may offer limited entertainment type services provided that (a) the Concessionaire obtains the STATE's prior written approval to offer for sale such entertainment type services and (b) such services are related to the services and merchandise authorized for sale under Article V.A.3 (Permissible Groups and Sub-categories of Merchandise), including, without limitation, interactive video or virtual reality recreation and sport activities relating to recreation and sport merchandise offered for sale under the Concession such as a video golf driving range.

2. Services: Operation of services such as a business center, shoe-shine service, locker service, luggage storage service and luggage handling service, with non-exclusive attendant retail rights (i.e., bag tags, boxes, shoelaces and polish, etc.).

3. Potential Nuisance Causing Items: The sale of potential nuisance causing items as determined by the Director, in the Director's sole discretion. These may include stickers, marking pens, spray paints, sticky candy, gum, toys which make loud noises, toy guns or other similar items found by the Director, in the Director's sole discretion, to interfere or have sufficient potential for interfering with Airport operations, or the safety, security, or comfort of the air travelers, passengers, visitors, customers and users of the Airport.

4. Objectionable Materials: The sale of obscene or socially objectionable material as determined by the Director, in the Director's sole discretion. Materials which may contain nudity which is artistic or historic in nature may be permitted provided that the display of such items is confined to designated areas or under controlled arrangements.

5. Blind Vendors: The sale of items which the DHS-sponsored Blind Vendor or DHS, itself, has been given exclusive rights at the Airport, The exclusive rights and items allowed to be sold by a Blind Vendor or DHS are based upon the Settlement Agreement between the Hawaii State Committee of Blind Vendors, the Hawaii Blind Vendors Association, Walter Ishikawa, Charlotte Kauhane, Esrom Nihoa, Yoshiko Nishihara, Miriam Onomura, Clyde Ota, Alice Schaar, Warren Toyama, Filo Tu, Jeanette Tu, the DHS, and the Department with attached Schedules and Exhibits dated July 28, 1993, hereinafter referred to as "Blind Vendors Agreement."

6. Duty Free Sales: The sale of any in-bond (duty free) merchandise including the right to make or receive deliveries at the Airport for such in-bond (duty free) merchandise.

7. Merchandise Delivery: The sale or assistance in distribution of products or merchandise delivered to the Airport following prior purchase off the Airport and delivered through any means for departing passenger pickup and which are other than bona fide sales made through the Concession.

D. Other Contracts.

1. Use by Others. If the Concessionaire plans to let or permit other entities to use, occupy or otherwise operate, in any way, from the Premises, the Concessionaire shall submit, as part of the Concessionaire's submission of the Concession Plan to the STATE, as required in Article V.A.1. (Concession Plan), the Concessionaire's plan and description to let or permit other entities to so use, occupy or otherwise operate from the Premises (hereafter the Concessionaire's "**Tenant Plan**"). The Concessionaire's Tenant Plan shall include, without limitation, all vendor arrangements, franchising agreements, licensing agreements, merchandising agreements, exclusivity agreements, management agreements, and any other arrangements or agreements under which any entity is permitted to use, occupy or otherwise operate from the Premises (hereafter collectively the "**Other Contracts**"). The Concessionaire's Tenant Plan shall be a part of the Concession Plan submitted by the Concessionaire to the STATE for the STATE's written approval.

2. Concessionaire's Covenant. The Concessionaire covenants and warrants that in preparing and implementing the Concessionaire's Tenant Plan, the Concessionaire, for itself and all those claiming by, through or under the Concessionaire, including, without limitation, any sub-Concessionaires, vendors, franchisees, licensees, contractors, merchandisers and agents, shall:

a. In Accordance with Tenant Plan. Ensure that all of the Other Contracts are performed and carried out in accordance with the Concessionaire's Tenant Plan, as approved by the STATE; and

b. Comply with Concession Agreement. Fully comply with and satisfy: (1) all applicable DBE procedures and requirements, (2) Article XXVIII (Assignment and Subletting) herein, (3) this Article V.D. (Other Contracts) and (4) all other applicable provisions of this Concession Agreement.

3. Contents of Tenant Plan. The Concessionaire's submission of the Concessionaire's Tenant Plan shall include, without limitation:

a. Identities. Names and addresses (business and post office address) of the entities involved with the Other Contracts, and telephone and facsimile numbers, email

addresses, together with the names and addresses of the principals, officers and on-airport representatives in each;

b. Business Arrangement. Type of business arrangement with the Concessionaire (e.g., sublease, franchise agreement, license, or vendor agreement);

c. Function and Activity. Function and activity covered or to be performed under each of the Other Contracts;

d. Map. A map showing the location and floor plan of the area covered by each of the Other Contracts; and

e. Additional Information. Any additional information deemed necessary by the STATE, including, without limitation, any updates as the STATE may from time to time request of the Concessionaire during the term of this Concession Agreement.

4. DBE Sublease. A DBE goal of fifteen percent (15%) participation in the Concession has been established. The Concessionaire shall consult with the STATE during Concessionaire's negotiations for DBE sublease, sub-concession, and sub-tenant agreements. If this DBE goal is satisfied by a sublease or subleases, or sub-concession or subtenant agreements, the sublease, sub-concession, and subtenant agreement(s) between Concessionaire and sub-lessee, sub-concessionaire, and subtenant(s) must receive the prior written consent of the STATE. Upon written notice of the STATE's necessary prior consent, the Concessionaire shall execute and consummate each sublease, sub-concession, or sublease agreement with each sub-lessee, sub-concessionaire, and subtenant and deliver the completed sublease, sub-concession, and subtenant agreement to the STATE within fourteen (14) business days after notice of the STATE's written consent and in accordance with the requirements contained in Article XXVIII.B.5 (Sublease Agreement) herein. The Concessionaire shall consult with the STATE during Concessionaire's negotiations for DBE sublease, sub-concession, and subtenant agreement.

5. Amendments to Tenant Plan. The Concessionaire shall obtain the prior written approval of the STATE for any amendment, change, revision, or other modification to any part of the Concessionaire's Tenant Plan, or any part of any of the Other Contracts, during the term of this Concession Agreement.

E. Abandonment or Non-Use of Premises. If the Concessionaire fails to properly occupy and use any portion of the Premises to operate the Concession in accordance with this Concession Agreement, and such failure shall continue for a period of more than thirty (30) days after delivery of written notice by the STATE, the Concessionaire shall be deemed to have abandoned that portion of the Premises and the Concessionaire shall return to the STATE, upon demand, such portion of the Premises deemed so abandoned ("**Abandoned Premises**") and release and relinquish any and all of the Concessionaire's rights relating thereto, all without any reduction in rent or any other compensation from the STATE. Such abandonment shall be a Default under Article XVIII (Termination By State) for which all applicable remedies are and

shall be available to the STATE. In addition to the STATE's rights with regard to such Default under Article XVIII (Termination By State), the Concessionaire shall forfeit and be deemed to have relinquished, released and waived any exclusive right the Concessionaire may have to sell or offer for sale the merchandise authorized under this Concession Agreement from such Abandoned Premises. Thus, the STATE may, at its sole discretion, operate and/or otherwise make such Abandoned Premises available to other entities including retail concessionaires to sell or offer for sale retail merchandise, including but not limited to the merchandise described in Article V.A.3 (Permissible Groups and Sub-categories of Merchandise).

F. Assignments of Specific Products Among Concessions. The right to sell certain items may be difficult to assign to any one concession strictly on the basis of a product or class definition. The STATE retains the right to make all assignments not specifically covered by this Concession Agreement.

G. Exclusiveness of Use of Premises.

1. During Concession Agreement Term. The Concessionaire shall have the exclusive right to occupy and use the Premises for the purposes of the Concession as set forth in this Concession Agreement except as is noted in Article XIV (Rights of Entry Reserved) hereof, during the term of this Concession Agreement as long as the Concessionaire is not in default hereunder.

2. STATE's Reservation.

a. Other Airport Areas. The STATE reserves the right to grant to other entities the right to sell or offer for sale retail merchandise, including the merchandise described in Article V.A.3 (Permissible Groups and Sub-categories of Merchandise), in areas of the Airport other than the terminal buildings in which the Premises are located.

b. Additional Spaces. The STATE may offer additional space to the Concessionaire to operate the Concession in the Airport terminal buildings over and above the Initial Allocation pursuant to Article III.B. (Additional Space). If the STATE requires the Concessionaire to operate the Concession from such additional space, the Concessionaire shall comply. If the STATE permits the Concessionaire to decide whether to operate the Concession from such additional space, the Concessionaire may decline to operate the Concession from such additional space. If the Concessionaire so declines to operate the Concession from such additional space: (1) the STATE may make such additional space available to other entities to sell or offer for sale retail merchandise, including the merchandise described in Article V.A.3 (Permissible Groups and Sub-categories of Merchandise) and (2) the Concessionaire shall thereby be deemed to have relinquished, released and waived any exclusive right the Concessionaire may have to sell or offer for sale the merchandise authorized under this Concession Agreement from such additional space.

c. Additional Merchandise.

(1) STATE's Request. The STATE may request that the Concessionaire sell or offer for sale merchandise that the STATE deems would upgrade the existing offerings and therefore help to optimize sales and revenues for the Concession.

(2) Concessionaire's Inability or Refusal to Carry. If the Concessionaire is unable (cannot timely obtain the merchandise or all necessary authorizations to sell relating thereto), declines or refuses to sell or offer for sale the merchandise requested by the STATE: (a) the STATE may grant to other entities the right to sell or offer for sale at the Airport such requested merchandise, and (b) the Concessionaire shall thereby be deemed to have relinquished, released and waived any exclusive right the Concessionaire may have to sell or offer for sale at the Airport such requested merchandise.

(3) Notification. The Concessionaire shall notify the STATE within thirty (30) days of receiving the STATE's request whether the Concessionaire intends to carry the requested merchandise and the date the Concessionaire will have the merchandise in stock to sell (hereafter the "**Sell date**").

(4) Failure to Carry. For every day after the Sell date the Concessionaire fails to have in stock for sale the merchandise requested by the STATE, the Concessionaire shall pay to the STATE, as additional rent, the sum of \$250.00 per day until the merchandise is ready for sale to the public. The STATE may grant extensions of the Sell date, upon written request by the Concessionaire, if in the STATE's sole discretion, any delays by the Concessionaire in having the requested merchandise in stock to sell was due to causes beyond the Concessionaire's control.

d. Conflict. In the event of a conflict between the Concessionaire and any other tenant or concessionaire at the Airport with respect to the services to be offered or the merchandise to be sold by said tenants or concessionaires, the STATE shall meet and confer with all necessary parties. The STATE shall thereafter render a decision, in writing, determining the services to be offered or merchandise to be sold by each. The STATE's decision shall be considered final, and the Concessionaire shall abide by and conform its conduct and performance to be consistent with the STATE's determination.

ARTICLE VI. CONCESSION FEE

A. Amounts. The Concessionaire shall pay to the STATE, without notice or demand, as and for the use of the Premises and for the privilege of operating the Concession at the Airport, for and during the term of this Concession Agreement, free from any and all claims, deductions, or set offs against the STATE, and at such times and in such manner as hereinafter provided:

1. Annual Concession Fee. The total annual concession fee ("Concession Fee") shall be the greater of the following:

a. Minimum Annual Guaranteed Fee. The minimum annual guaranteed fee (MAG) for the first year of the term of this Concession Agreement, shall be as set forth in the Concessionaire's proposal, being _____ and NO/100 Dollars (\$ _____), 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 Fee) for the preceding year; or

b. Percentage Fee. A percentage of the Concessionaire's annual gross receipts generated from, related or attributable to, or connected with the sale of merchandise authorized under Article V (Use of Premises) (herein the "**Percentage Fee**") for which the percentage shall be twenty percent (20%).

2. Additional Space Rents. The Concessionaire shall pay to the State, in addition to the annual Concession Fee, the annual sum of the space rents for additional Concession spaces requested by the Concessionaire and approved by the STATE, based on the applicable rental rates set forth in the STATE's Procedure No. 4.5 (Schedule of Rates and Charges), excluding those additional Concession spaces from or on which the STATE required the Concessionaire to operate the Concession, as prescribed in Article III (Premises) herein.

B. Sales.

1. Gross Receipts Defined. The term "**gross receipts**" shall include all receipts, whether by cash, coin or currency, on account, by check, credit or otherwise, derived or received by Concessionaire as a result of the Concessionaire's operation of the Concession and shall include all other receipts from or incidental to any business conducted through the use of the Premises or which is a part of, related to or connected with, the Concessionaire's operation of the Concession, regardless of whether the transactions resulting in the receipts (a) occurred at or outside of the Airports or some combination thereof, (b) involved a sub-concessionaire, assignee, licensee or other entity related to the Concessionaire, (c) involved electronic, e-mail, catalogue, computer/smart devices applications, online and/or telephone orders and/or (d) orders taken although said orders may be filled elsewhere. Such receipts include, but are not limited to:

a. Advertising Revenue. Advertising or promotion revenue in the form of cash, allowance, or other payment received from suppliers by the Concessionaire in connection with the display of merchandise at, in or on the Premises, except to the extent such payments are paid to Concessionaire by suppliers or vendors as reimbursement for promotional expenses paid by the Concessionaire on behalf of the vendors or suppliers and the Concessionaire submits to the STATE written evidence of such reimbursement satisfactory to the STATE.

b. Foreign Currency Exchange. The full amount of gross profit earned by the Concessionaire in the exchange of foreign currency.

2. Exclusions. The term "**gross receipts**" excludes:

a. Sales Taxes. Any and all retail sales taxes, excise taxes, or related direct taxes upon the consumer, required by applicable law and collected by the Concessionaire on such sales.

b. Scrap Materials. Receipts from the sale of waste or scrap materials resulting from the Concessionaire's operation of the Concession at the Airport.

c. Furniture Fixtures. Receipts from the sale or trade-in value of any furniture, fixtures, or equipment used upon the Premises and owned by the Concessionaire and provided it is not stock in trade.

d. Interstore Transfers. The value of any merchandise, supplies or equipment exchanged or transferred from or to other locations of business of the Concessionaire where such exchanges or transfers are not made for the purposes of avoiding a sale by the Concessionaire which would otherwise be made from or at the Premises or avoiding any of the rental obligations of the Concessionaire hereunder.

e. Refunds. Receipts in the form of refunds from or the value of merchandise, supplies, or equipment returned to shippers, suppliers or manufacturers.

f. Returns. Receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by the Concessionaire, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit.

g. Discounts. The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers.

h. Gratuities. The amounts of any gratuities paid or given by patrons or customers to employees of the Concessionaire. Gratuities shall not include service charges that are collected by Concessionaire unless such service charges are passed on 100% to Concessionaire's employees who provided the services to the customer paying the service charge.

i. Uniforms. Receipts from the sales at cost of uniforms or clothing to Concessionaire's employees where such uniforms or clothing are required to be worn by such employees.

3. No Kickbacks. The Concessionaire shall not be credited with nor allowed to have any reduction in the amount of the gross receipts, as hereinabove defined, which results from any arrangements for a rebate, kickback or hidden credits given or allowed to any customer.

C. Additional Space.

1. Requested by Concessionaire. If the Concessionaire requests and the STATE agrees to make available additional space over and above the Initial Allocation under this Concession Agreement, the Concessionaire shall pay rental for such additional space as follows:

a. Floor Rent. Floor rent equal to the square footage of additional space multiplied by the rates and charges applicable to such additional space as set forth in the STATE's Procedure No. 4.5 (Schedule of Rates and Charges). For purposes of this Concession Agreement, the space occupied by the Kiosks will be considered part of the Premises but will be handled as additional space; and

b. Gross Receipts. The gross receipts received or realized by the Concessionaire from or otherwise attributable to such additional space shall be included in the Percentage Fee obligation payable by the Concessionaire to the STATE under this Concession Agreement.

2. Requested by STATE. If the STATE requires the Concessionaire to take or use additional space over and above the Initial Allocation under this Concession Agreement, the Concessionaire shall not be obligated to pay floor rent for such space but shall include the gross receipts received or realized by the Concessionaire from or otherwise attributable to such additional space in the Percentage Fee obligation payable by the Concessionaire to the STATE under this Concession Agreement.

D. Business Practices and Records. In connection with the fee obligation of the Concessionaire, the Concessionaire hereby agrees to the following:

1. Promote Business. The Concessionaire shall use its best efforts in every proper manner to maintain, develop, promote, market, and increase the Concession business conducted by the Concessionaire hereunder.

2. No Diversion. The Concessionaire shall not divert or cause to be diverted, any business which would reduce gross receipts and/or revenues to the Concession and revenues the STATE.

3. All Sales Recorded. The Concessionaire shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions, whether for cash or credit. The Concessionaire shall issue to each customer a receipt or sales slip for each transaction, which transaction must be recorded on serially numbered receipts or sales slips. The Concessionaire shall keep full and complete books and source documents, in accordance with Generally Accepted Accounting Principles, of the gross receipts.

4. Storage Obligation. The Concessionaire shall prepare and keep during the term of this Concession Agreement and for a period of not less than three (3) years following the end of the final year of the term of this Concession Agreement, including any holdover period, adequate records which shall show inventories and receipts of all products and merchandise at or

upon the Premises and daily receipts from all sales and other transactions by or involving the Concessionaire and any other persons conducting Concession business at, upon or from the Premises. The Concessionaire further agrees to keep in storage in the State of Hawaii for the entire term of this Concession Agreement and the subsequent three-year time period required herein, in a form that is readily transferrable (electronically if available) all pertinent original sales records, serially numbered sales slips and such other sales records for all transactions as would normally be examined by a licensed independent certified public accountant pursuant to Generally Accepted Auditing Standards in performing an audit of the Concessionaire's sales and gross receipts.

5. Reports.

a. Monthly Report Deadline. The Concessionaire shall submit to the STATE on or before the 20th day of each and every month following each month of the term of this Concession Agreement, including the 20th day of the month following the end of said agreement term by expiration or sooner termination, at the place fixed for the fee payment, a written statement using forms prescribed or approved by the Director, to be certified as correct by the Concessionaire, or by a person duly authorized by the Concessionaire to so certify, showing in accurate detail, the amount of gross receipts for the preceding month.

b. Annual Report Deadline. The Concessionaire shall further submit to the STATE on or before the 60th day following the end of each agreement year during the term of this Concession Agreement, at the place fixed for the fee payment, a written statement certified as correct by the Concessionaire, or by a person duly authorized by the Concessionaire to so certify, showing in accurate detail the amount of gross receipts during the preceding agreement year, in the detail required in Articles VI.D.5.d.(1), (2) and (4), duly verified by a licensed independent certified public accountant of recognized standing, and which certification shall be satisfactory to the STATE in both scope and substance.

c. Form and Style. The statements referred to herein shall be in such form (e.g., no larger than 11" x 17" in size) and style and contain such details and breakdowns as the STATE may require. The statements referred to herein shall also be in a format that is readily transferrable electronically.

d. Breakdown. The monthly gross receipts shall, at a minimum, be separately reported as follows:

(1) Airport Sales Area. Each separate space identified as sales areas at the Airport and each of the Kiosks permitted by the STATE under Article III (Premises) herein.

(2) Merchandise Category. Each separate group of merchandise identified under Article V.A.3 (Permissible Groups and Sub-categories of Merchandise) for each separate space.

(3) Cumulative Summaries. Separate cumulative summaries of each month and year, respectively in the forms as described in Article VI.D.5.d. (1), (2), and (3) herein.

(4) DBE. A separate extract, from all of the gross receipts reported above, showing the gross receipts attributed to or generated by the DBE in the same manner and as required in Articles VI.D.5.d.(1) and (2) herein. If the Concessionaire has a sublease to meet the DBE goal under this Concession Agreement, each subleased space at the Airport shall be identified separately in the DBE extract required to be submitted to the STATE by the Concessionaire.

(5) Purchases from DBEs. Concessionaire shall provide with the reports specified in Article VI.D.5.d.(1), (2), (3) and (4), a separate report detailing any purchases of goods and/or services from DBEs. The report shall specify the goods or services purchased, the cost of each good or service and the name of the DBE company from which the goods and/or services were purchased.

e. STATE's Right to Prepare. Without prejudice to any remedies herein provided for default, if the Concessionaire shall fail to promptly furnish any such monthly or annual report or licensed independent certified public accountant's annual verification report, the STATE may have such report prepared on the Concessionaire's behalf by a licensed independent certified public accountant to be selected by the STATE, at the sole expense of the Concessionaire. The Concessionaire shall furnish to such accountant all records requested for the purpose of preparing such reports, and the Concessionaire shall pay to the STATE all expenses incurred by the STATE in securing such reports, including but not limited to attorneys' fees and costs.

f. Estimate of Gross Receipts. The STATE may make assessments upon the Concessionaire by recourse to such procedures selected by the STATE which would produce a reasonable gross receipts expectation upon which Percentage Fees may be computed. In the event that records have not been prepared and kept in accordance with the provisions set forth herein, the STATE shall, in addition to all other payments required herein, including any Percentage Fees based on a reasonable amount of gross receipts estimated by the STATE, be entitled to demand and receive from the Concessionaire an additional payment of ten percent (10%) of the greater of (a) applicable MAG or (b) the applicable Percentage Fees.

6. Audited Financial Statements. A complete set of the Concessionaire's entire detailed audited financial statements, including, without limitation, 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, prepared by a licensed independent certified public accountant is hereafter collectively referred to as the "**Concessionaire's financial statements**." The STATE may request the Concessionaire submit the Concessionaire's financial statements to the STATE if any of the following occur:

- a. the Concessionaire's request for the STATE's consent to an assignment or sublease or other similar transaction;
- b. the Concessionaire's request involves any type or claim of financial hardship or distress or any type of financial relief under this Concession Agreement, such as fees or other type of financial relief;
- c. the Concessionaire's request for any change to the terms of this Concession Agreement (assuming such change is permissible) which, in the STATE's discretion, may have a significant financial impact on Concession operations;
- d. the Concessionaire's submission of a fee, financial, or other type of monetary claim under or pursuant to this Concession Agreement; and
- e. the STATE reasonably believes in its sole discretion, that the submission of the Concessionaire's financial statements is necessary to effectively assess and monitor Concession operations.

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

7. Other Reports. In addition to the Concessionaire's financial statements required to be submitted pursuant to Article VI.D.6 (Audited Financial Statements) of this Concession Agreement, the STATE may request and the Concessionaire shall submit to the STATE such other financial and statistical statements, reports, and analyses, to be prepared by a licensed independent certified public accountant (if requested by the STATE), as the STATE may deem necessary, in the STATE's sole discretion, to adequately reflect and explain the Concessionaire's financial position and results, in such form and detail as the STATE may reasonably direct. The Concessionaire's financial statements and such other financial and statistical statements, reports and analyses as the Concessionaire may be required to submit hereunder shall not be prepared and submitted on a condensed or similar summary basis. The Concessionaire's submission of a condensed statement of assets, liabilities, and partners' capital (regardless of whether the same was submitted as part of the Concessionaire's federal or state tax return filings) shall not be sufficient to satisfy the Concessionaire's obligations hereunder.

8. Financial Records Inspection.

a. Access to records. The Concessionaire hereby grants unto the STATE, at all reasonable times, access to all of the following created, kept, maintained, updated and prepared by or on behalf of the Concessionaire relating to the Concession, including operations on the Premises: books, ledgers, journals, accounts, records, reports, files and all information created, processed, maintained or stored electronically (such as on USB flash drives, cloud storage, servers, smart devices, 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 (hereafter collectively the "**Records**").

c. Right to audit. The Concessionaire shall ensure that the STATE receives a written response to the STATE's request to audit all or any portion of the Concessionaire's financial statements or the Records within forty-eight (48) hours of the Concessionaire's receipt of the STATE's request. At any reasonable time thereafter, not to exceed five (5) days, the Concessionaire will permit a complete audit to be made by the STATE's accountant or by a certified public accountant retained by the STATE, of the Concessionaire's entire business affairs relating to the Concession business conducted during the term of this Concession Agreement, including, without limitation, the Concessionaire's financial statements and the Records. All of the Concessionaire's financial statements and the Records shall be available for such audit, examination, copying, extraction and/or inspection by the STATE and any auditor or accountant retained by the STATE on the Island of Oahu, State of Hawaii during normal business hours.

c. Concessionaire Shall Cooperate. The Concessionaire shall cooperate fully in the making of any inspection, examination or audit and provide copies to the STATE of the Records as may be requested or needed by the STATE, at the Concessionaire's sole cost and expense.

d. Failure to Comply. If the Concessionaire fails to fully and promptly by the deadlines required hereunder, comply with and satisfy the Concessionaire's obligations hereunder, including furnishing the copies of the Concessionaire's financial statements and the Records requested by the STATE or the STATE's auditor or accountant, the Concessionaire shall be deemed in default of this Concession Agreement and the STATE shall have the right to assess additional charges against the Concessionaire pursuant to Article VI.G (Additional Charges) and/or terminate this Concession Agreement under Article XVIII (Termination by STATE).

e. Auditing Standards. It is agreed that examinations of the Records will be conducted in accordance with generally accepted auditing standards applicable in the circumstances and that 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 the Concessionaire and 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 the Concessionaire.

f. Audit Cost Reimbursement. If such audit by the STATE's accountant or by a licensed independent certified public accountant retained by the STATE shall disclose that the Concession Fee has been underpaid by five percent (5%) or more for any period under examination, the STATE shall, in addition to the remedies provided in Article VI.D.5 (Reports) herein, be entitled to reimbursement 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.

g. Additional Charges. If such audit by the STATE's accountant or by a licensed independent certified public accountant retained by the STATE shall disclose that the Concession Fee has been underpaid by ten percent (10%) or more for the period under examination, the STATE shall have the right, in addition to all other rights the STATE may have under this Concession Agreement, upon ten (10) days' written notice to the Concessionaire, to terminate this Concession Agreement.

E. Time of Payment.

1. Minimum Annual Guaranteed Fee. The MAG and, if any, additional space or floor rent, required herein shall be paid monthly, in advance, but not more than one year in advance, on the first day of each month. The first fee and rent payment shall be on _____ or such other date as may be determined by the STATE based on the commencement date of this Concession Agreement.

2. Percentage Fees. On or before the twentieth (20th) day of each month during the term of this Concession Agreement, the Concessionaire shall pay to the STATE the amount, if any, by which the Percentage Fees required for the preceding month exceeds the amount of the MAG for said month.

3. Adjustments. The monthly payments of the Concessionaire for the MAG and Percentage Fees shall be subject to readjustments at the end of each year in order that at the end of each and every year during the term of this Concession Agreement, the Concessionaire shall have paid to the STATE that amount based upon either the percentage of annual gross receipts or upon the MAG, whichever is greater.

F. General Payment Provisions.

1. Place of Payment. All payments of money required to be made by the Concessionaire to the STATE hereunder shall be made when due when stated herein, without any demand or notice from the STATE and without deductions or offsets whatsoever, in legal tender of the United States of America at the STATE's office at the Airport, or at such other place as the STATE may designate in writing.

2. Late Payment. Any delinquent payment shall bear interest at the rate of twelve per cent (12%) per annum, which interest shall be paid by the Concessionaire in addition to such amount. Without prejudice to any other remedy available to the STATE, the Concessionaire agrees without further notice or demand, to pay interest at the rate of twelve percent (12%) per annum on each delinquent payment.

3. Delinquent Payment. The term "**delinquent payment**" as used herein means any payment of rent, service charges, fees or other charges payable by the Concessionaire to the STATE which is not paid when due.

4. Accrued Rent. The termination of this Concession Agreement by the lapse of time or otherwise shall not relieve the Concessionaire of its obligation to pay any rents, fees, or charges accrued during a period in which this Concession Agreement is or was in effect which are unpaid at the time of any such termination.

5. Pro Rata Payment. If this Concession Agreement terminates without fault of the Concessionaire on any day other than the last day of any calendar month, the applicable rents, fees and charges 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.

6. Application of Payment. The STATE may, at its option and its sole discretion, apply all payments received from Concessionaire to items then due and payable as the STATE may elect. If the STATE does not make any specific application, then payments shall be applied first to the item that has been longest overdue.

7. No Relief. No breach of this Concession Agreement by the STATE shall relieve Concessionaire of its obligation to make payments required by this Concession Agreement.

G. Additional Charges. In addition to the right of STATE to charge and collect upon demand additional rent, fees and charges as provided in this Concession Agreement or to terminate this Concession Agreement pursuant to Article XVIII (Termination by STATE) herein, the STATE may levy on and collect from the Concessionaire a charge of Two Hundred-Fifty and No/100 Dollars (\$250.00) per day for each day the Concessionaire is in violation of any of the terms of this Concession Agreement; provided that there shall be no levy unless the violation continues beyond the period specified in Article XVIII (Termination by STATE) for remedial action; and provided further that separate charges may be levied for violations of separate provisions even though the violations may be concurrent. Payment of the additional charges shall be due on demand from the STATE.

H. Partial Relief from Obligation. Based on §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 business at the Premises of the Concessionaire for a period of sixty days or more,

computed on the average monthly gross receipts for the eighteen months just prior to the period or as long as the Concessionaire has been in the 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 the Premises, with the approval of the Governor, the STATE may modify any of the terms of this Concession Agreement, including the agreed upon fee, for a period which will allow the Concessionaire to recoup the amount lost by such reduction, provided further that this provision shall not apply to this Concession Agreement if the application thereto may impair any contractual obligations with bondholders of the STATE, the State of Hawaii, or with any other parties. If §102-10, HRS, is revised or amended, the provisions contained in this Article VI.H (Partial Relief from Obligation) will be revised or amended to conform to such changes to §102-10, HRS. If the Concessionaire elects to receive or receives the relief described in this Article VI.H (Partial Relief from Obligation), the Concessionaire shall not be entitled to combine this relief with any other relief allowed under this Concession Agreement, including Article VI.I (Relief Due to Economic Emergency) below.

I. 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 Concessionaire, 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. The Concessionaire suffers a fifteen percent (15%) reduction in gross receipts for a period of sixty (60) days or more, computed on the Concessionaire's average monthly gross receipts for the eighteen (18) months just prior to the date from which the Concessionaire requests relief or as long as the Concessionaire 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 Concessionaire will suffer the required fifteen percent (15%) reduction in gross receipts; and

b. either of the following two conditions:

(1) The occurrence of an event that is sudden, extraordinary, and generates relatively immediate severe adverse economic impacts for the State of Hawaii, as determined by the Director of Transportation, 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 (hereafter the "**Sudden Event**"); or

(2) The Director of Transportation finds that from and after the date the Concessionaire requests relief, there has been a significant decrease in airline passenger departures (hereafter "**enplanements**") from the Airport of twenty per cent (20%) or more for a period of sixty (60) consecutive days or more, computed on the Airport' average monthly

enplanements for the eighteen (18) months just prior to the date from which the Concessionaire requests financial relief.

In the event the Concessionaire's request for relief under this Article VI.I (Relief Due to Economic Emergency) occurs in the first year of this Concession Agreement:

(1) the reduction of fifteen percent (15%) in gross receipts shall be calculated for the sixty (60) day period just prior to the Concessionaire's request for relief compared to the average monthly gross receipts for the eighteen months just prior to the date on which the Concession submitted its proposal; and

(2) The reduction of twenty percent (20%) in enplanements shall be calculated for the sixty (60) day period just prior to the Concession's request for relief compared to the average monthly gross receipts for the eighteen months just prior to the date on which the Concession submitted its proposal.

2. Concessionaire's Financial Hardship Claim. The Concessionaire 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 Article VI.D.6 (Audited Financial Statements) and Article VI.D.7 (Other Reports) herein.

3. STATE Determines Amount and Extent of Relief. The STATE may, if it deems necessary after reviewing the Concessionaire's financial statements and any other financial information submitted by the Concessionaire, modify the financial terms of this Concession Agreement, at the STATE's sole discretion, including, without limitation, waiving a proportionate monthly amount of the minimum annual guarantee in the applicable agreement year during which the Sudden Event occurs until (a) the decrease in passenger enplanements from the Airport is cumulatively less than twenty percent (20%) as compared to the same time of the previous year for at least sixty (60) consecutive days or (b) the decrease in the Concessionaire's gross receipts is cumulatively less than fifteen percent (15%) as compared to the same time of 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 Concessionaire, (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 Concessionaire.

5. STATE May Impose Additional Conditions in Granting Relief. In granting any financial relief to the Concessionaire, the STATE may impose such other requirements the STATE deems necessary, including, without limitation, additional reporting requirements to ensure that the STATE is able to timely monitor and assess the Concessionaire's receipt of gross receipts and the Concessionaire'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 the State of Hawaii, or to any other entities. This determination shall be made by the STATE, in the STATE's sole discretion.

ARTICLE VII. IMPROVEMENTS

A. Acceptance of Premises.

1. Initial Allocation. The Concessionaire has examined and knows of the condition of the Premises and agrees that the Concessionaire is accepting the Premises on an "As Is With All Faults" basis, in its existing form, content and state of condition. The Concessionaire further agrees that the STATE shall not be liable for any latent, patent and/or other deficiencies and/or defects in, on or under the Premises, including pre-existing improvements, fixtures and appurtenances thereto. The taking possession of the Premises and all that may be part thereof by the Concessionaire shall be conclusive evidence as against the Concessionaire that the Premises were in good and satisfactory condition when the Concessionaire took possession of the same and that their condition on such date will be suitable for the commencement of the Concession and construction of Concession Improvements. The Concessionaire agrees that the Concessionaire is not relying on any representations or warranties of any kind whatsoever, express or implied, from the STATE or the STATE's officers, employees, agents, servants, representatives, and contractors (hereafter collectively referred to as the "STATE's Agents") as to any matters concerning the Premises, including, without limitation:

a. Physical Condition. The quality, nature, adequacy, and physical condition and aspects of the Premises, 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.

d. Development Potential and Suitability. The development potential of the Premises and the use, habitability, merchantability, or fitness, suitability, value or adequacy of the Premises for any particular purpose. This includes the traffic, sales and/or revenue to be expected from the Concession and/or at the Premises.

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

f. Compliance. The compliance of the Premises 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 defined in this Concession Agreement) on, under, or about the Premises 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 properties comprising the Airport.

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

2. STATE to Provide.

a. Initial Allocation. The Initial Allocation provided by the STATE to the Concessionaire, shall at minimum be unfinished space within the confines of the Initial Allocation consisting of plastered or particle board walls, structural ceiling, concrete flooring and the utility stub outs, or nearby connections as further described in Article XV (Utility Service). Concessionaire shall accept the Initial Allocation and Premises in its "as is" condition and the STATE shall not be required to improve or alter such Initial Allocation and/or Premises.

3. Utility Connections. Utility service connections for electric power and telephones will be available for the Premises. Said utilities are to be separately metered or billed to the Concessionaire and the Concessionaire is to provide distribution of utilities within the Premises.

a. Electricity. Electricity shall be available to the Concessionaire at electric power panels located in the respective terminal Airport buildings. Heat and air conditioning will be made available at connection points determined by the STATE and the Concessionaire will be charged at established rates for its pro rata share of the cost of furnishing such heat and air conditioning as well as for all other utility services which are not separately metered.

b. Concessionaire to Pay Charges. All charges, including, but not limited to, deposits, installation costs, meter deposits and all service charges for electricity, heat, air conditioning and other utility services to the Premises, shall be paid by the Concessionaire regardless of whether such utility services are furnished by the STATE or by utility service providers.

c. Concessionaire's Release. The Concessionaire hereby expressly waives and releases any and all claims for compensation or for any diminution or abatement of the rents, fees and charges provided for herein for any and all loss or damage sustained by reason of any defect, deficiency or impairment of the heating or air conditioning systems, electrical apparatus, equipment, facilities, or wires furnished to the Premises which may occur from time to time from any cause or from any loss resulting from water, earthquake, wind, civil commotion, riot or any other cause beyond the control of the STATE; and the Concessionaire hereby expressly releases and discharges the STATE and the STATE's officers, employees, servants and agents from any and all demands, claims, actions, causes of action, liabilities, losses, damages, costs and expenses arising from any of the aforesaid causes. In all instances where damage to any utility service line is caused by the Concessionaire, its employees, contractors, suppliers, agents or invitees, the Concessionaire shall be solely responsible for the cost to repair such damage.

B. Concessionaire.

1. Concession Facilities Improvement Plans.

a. Improvements at Concessionaire's Cost. The Concessionaire, at its own cost and expense, shall renovate, upgrade, add, remodel and improve the Premises, by constructing, repairing, refurbishing, installing and otherwise providing any and all Concession Improvements and the Concessionaire's FFE which are necessary or desirable for the proper and efficient operation of the Concession or to adequately service the demand of the public and air travelers for the services described in this Concession Agreement.

b. Concessionaire's Plans. All designs, plans, specifications, drawings, cost estimates, schedules and timetables for and relating to the construction and installation of the Concession Improvements and the FFE on or at the Premises, including, without limitation, all areas covered by the Kiosks and the Other Contracts, shall hereafter be collectively referred to as the "**Concessionaire's Plans.**" Premises designs, treatments, themes, colors and textures employed by the Concessionaire must create an inviting and quality dining atmosphere, and complement the ambiance and interiors of the Airport's terminal complex. The range of touches used shall incorporate, to the greatest extent possible, architectural design and interior decor which embodies a "Hawaiian Sense of Place" to represent, evoke, convey and perpetuate the unique attributes of the history and culture of the State of Hawaii, its people and its islands.

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

d. Submittal Deadlines. The Concessionaire shall submit to the STATE the Concessionaire's Plans covering the Premises within fifty (50) days after the Concessionaire receives notice of the award of this Concession Agreement to the Concessionaire.

e. Border Area.

(1) Limited Use. The STATE, at its sole discretion, may permit the Concessionaire limited specific use of the Border Area, or portion thereof, to improve and enhance the entry into the Premises.

(2) Border Treatments. The STATE may consider permitting the Concessionaire to construct and install certain treatments and appointments to the Storefronts within the Border Area, including, without limitation, awnings, canopies, framed entries with roofs, window or door coverings, entry treatments (such as koa or dark wood framing, wood doors or decorative glass, chrome or plastic treatment), movable display cases, carts, and shelving, signage (such as blade, relief or highlighted), special lighting fixtures, and thematic decor items (such as palm trees, plants, flowers, surfboards, island relief maps and beach scenes), furniture, fixtures, equipment and appliances (hereafter collectively the "**Border treatments**").

(3) Border Treatment Plans. The Concessionaire must submit the design and plans for the Border treatments to the STATE, as part of the Concessionaire's Plans, for the STATE's prior written approval.

(4) Concessionaire Responsible. The Concessionaire shall be responsible, at the Concessionaire's sole cost and expense, for constructing, installing, maintaining, repairing, operating, removing and replacing the Border treatments. With respect to the Border treatments within the Border Area, the Concessionaire shall be responsible and liable, and shall fully perform and fulfill all of the Concessionaire's obligations under this Concession Agreement, including the Concessionaire's obligation to indemnify, defend with legal counsel acceptable to the STATE and hold harmless the STATE, in the same manner and to the same extent as the Concessionaire is responsible, liable and obligated to fully perform under this Concession Agreement with respect to the Concession Improvements on or within the Premises.

2. Compliance with Development Standards. The Concessionaire shall obtain the STATE's prior written approval for the Concessionaire's Plans, including any and all construction, repair, refurbishment or installation of improvements on the Premises and all such improvements must: (1) be of high quality, incorporate first-class quality materials, be completed with first-class workmanship, and meet applicable county building standards and specifications, and except as otherwise stated herein, comply with the STATE's Tenant Improvement Guidelines, Environmental Preservation Guidelines, and Development Standards for Leased Airport Property herein (Appendix C, Attachments 1, 2, and 3) (hereafter collectively the "**Development Standards**"), including any subsequent amendments adopted by the STATE, and any other design development guidelines which may be adopted by STATE, and (2) with respect to the sales areas of the Premises (including the Border Areas, Border treatments, and the Kiosks), the Concessionaire shall incorporate, to the greatest extent possible, architectural design and interior decor which embodies a "Hawaiian Sense of Place" to represent, evoke, convey and perpetuate the unique attributes of the history and culture of the State of Hawaii, its people and its islands. The Development Standards and other requirements are subject to change by the STATE including, but not limited to, changes in connection with the Terminal 2 Project.

3. STATE's Approval. The STATE shall not unreasonably withhold approval for the Concessionaire's Plans. The STATE may reasonably withhold such approval, including, without limitation, if, in the sole discretion of the STATE, such construction or installation will be:

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

b. Violation of Agreement. In non-compliance with any requirement of this Concession Agreement; or

c. Building Code Violation. In non-compliance with the building, electric, plumbing, health and fire codes of the County or the State of Hawaii; or

d. Development Standards Violation. In non-compliance with the Development Standards, including the STATE's requirements relating to the development of facilities, which effectively embodies, employs and emphasizes the unique characteristics of the State of Hawaii, its culture and history, its people and its islands, and harmoniously matches the external architecture of other similar portions of the Airport at which the facilities will be constructed or installed, or

e. Violation of Federal Requirements. In non-compliance with any federal laws, statutes, rules, regulations and orders.

4. Completion of Construction.

a. In General. The Concessionaire shall complete the construction and installation of the Concession Improvements and certain FFE such as trade fixtures, cash registering equipment, refrigeration equipment, display cases and shelving at or within the Premises which the STATE makes available for occupancy to the Concessionaire within ninety (90) days of the later of the following: (i) the date the STATE notifies the Concessionaire that the Initial Allocation or other portion of the Premises is available for occupancy or (ii) the date of the STATE's written approval of the Concessionaire's Plans for the Initial Allocation or other portion of the Premises made available for occupancy to the Concessionaire.

b. Failure to Complete. The STATE may, at its sole discretion, approve an extension of the completion date for the construction and installation of the Concession Improvements and certain FFE such as trade fixtures, cash registering equipment, refrigeration equipment, display cases and shelving on the Premises, for reasonable delays deemed by the STATE to be outside the Concessionaire's control. Any such extensions must be granted in writing. If the Concessionaire fails to completely construct and install the Concession Improvements on or within the Premises, by the deadlines set forth above, the STATE may, at its sole discretion, send written notice of default under this Concession Agreement to the Concessionaire. If the Concessionaire fails to cure this default as required under this Concession

Agreement, the STATE may terminate this Concession Agreement or assess and collect from the Concessionaire any and all charges related to defaults under this Concession Agreement, including the additional charges under Article VI.G (Additional Charges) and such other charges as may be assessed under the provisions of Article XVIII (Termination by STATE) or resort to any other remedy available to the STATE or some combination of all remedies.

5. Delay of Completion. Should significant delays occur which prevent or hinder the Concessionaire from completing the construction of the Concession Improvements on the Premises in a timely and reasonable manner, the STATE, at its discretion may, in writing, waive or reduce the minimum improvements requirement, unless the delay is caused by the Concessionaire. The STATE shall be the sole judge of whether a delay is caused by the Concessionaire.

C. Title. Title to any and all of the Concessionaire's Concession Improvements and the Concessionaire's FFE constructed or installed by the Concessionaire, at the Concessionaire's sole cost and expense, shall remain in the Concessionaire during the term of this Concession Agreement. At the expiration or termination of this Concession Agreement: (1) the title to any and all FFE shall vest in the Concessionaire and (2) title to all Concession Improvements shall vest in the STATE. If the Concessionaire fails to remove the FFE or any part thereof within (30) days after this Concession Agreement terminates or expires, the STATE may remove the same at the sole cost and expense of the Concessionaire. However, if this Concession Agreement is terminated pursuant to Article XVIII (Termination by STATE), title to any and all FFE and all Concession Improvements, shall at the option of the STATE, vest in the STATE. If the STATE opts not to take title to the FFE and/or Concession Improvements, the Concessionaire shall, at its sole cost and expense, remove all FFE and Concession Improvements to which the STATE opts not to assume title. The STATE shall not be required to compensate the Concessionaire for any of the FFE or the Concession Improvements, the cost of which should have been amortized by the Concessionaire; provided that, if this Concession Agreement is terminated prior to its expiration by the Concessionaire, pursuant to Article XXI (Termination by Concessionaire), the Concessionaire:

1. Removal. May remove its FFE (but not Concession Improvements) from the Premises in such a manner as to cause no damage to the Premises; and in the event of any such damage, the Concessionaire shall, at its own cost and expense, repair the same, to the STATE's satisfaction. If the Concessionaire fails to repair said damage, the STATE may, after thirty (30) days' notice, repair the same at the expense of the Concessionaire. The Concessionaire shall immediately reimburse to the STATE any and all repair costs incurred by the STATE, upon demand from the STATE. The Concessionaire shall not be entitled to any reimbursement for the FFE regardless of whether they are or are not removed.

2. Reimbursement. Shall be entitled to be reimbursed for the unamortized cost of the Concession Improvements, title to which vests in the STATE. The Concessionaire will not be eligible for any such reimbursement unless and until the value and amortization of such affected Concession Improvements is properly established and calculated in accordance with the terms of Article VII (Improvements) herein, to the STATE's satisfaction. The

unamortized value of the relinquished, removed, altered or abandoned Concession Improvements shall be determined to be the balance after the depreciation taken on the most accelerated basis allowed under the Internal Revenue Code, regardless if such accelerated method is used by the Concessionaire.

D. Concession Improvements and Personal Property.

1. Cost Accounting.

a. Concessionaire Furnish In-Place Costs. Within one hundred fifty (150) days after the commencement of this Concession Agreement, with respect to the Initial Allocation, and thirty (30) days after the subsequent completion of the construction or installation of any Concession Improvements or the Concessionaire's FFE by the Concessionaire on or at the Premises, the Concessionaire shall submit to the STATE a certified statement of the itemized in-place construction and installation costs incurred by the Concessionaire, at the Concessionaire's sole cost and expense, in completing the construction and installation of any Concession Improvements and the Concessionaire's FFE. The in-place costs for all Concession Improvements and the Concessionaire's FFE shall be itemized according to the portion of the Premises to which they pertain (by space number or other identifier as may be acceptable to the STATE). The Concessionaire shall submit annually to the STATE an inventory of all of the Concessionaire's FFE installed at or upon the Premises.

b. In-Place Costs. The in-place costs of the Concession Improvements and the Concessionaire's FFE 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 Concession Improvements and FFE for the Concessionaire's Concession operations on, related to, or connected with the Premises. All such in-place costs of the Concession Improvements and the Concessionaire's FFE submitted by the Concessionaire to the STATE shall be subject to the STATE's review and approval. Any amounts spent by the Concessionaire for construction, installation, planning, design, engineering, architectural, surveying, environmental, accounting, financial, legal and other services not directly related to construction and installation of the Concession Improvements and the FFE may not be used or included as part of the Concessionaire's in-place costs furnished to the STATE.

c. Concessionaire to Substantiate. The Concessionaire shall substantiate all such in-place costs by furnishing the STATE evidence of all costs incurred by the Concessionaire for construction and installation of said Concession Improvements and FFE, satisfactory to the STATE, including, without limitation, copies of construction contracts, detailed receipts and/or purchase agreements. The Concessionaire shall maintain records of all such in-place costs so incurred by the Concessionaire, 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, at the Concessionaire'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 the Concessionaire in

constructing and installing the particular Concession Improvements and FFE shall result in the Concessionaire being precluded from contesting the in-place cost figures estimated by the STATE based upon the evidence available to the STATE. The STATE may require the audit of the Concessionaire's Records, using the STATE's accountant or a licensed certified public accountant, at the Concessionaire's sole cost and expense, to verify the in-place costs submitted by the Concessionaire or to estimate the in-place costs that should have been submitted by the Concessionaire.

2. Minimum Investment - Concession Improvements.

a. Allocation. The Concessionaire shall invest a minimum of THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00) in constructing and installing the Concession Improvements and certain FFE such as trade fixtures, cash registering equipment, refrigeration equipment, display cases and shelving, at, on or within the Premises, which minimum investment shall be required for the Initial Allocation and shall be allocated as described in the Concessionaire's proposal for the Concession.

With respect to the minimum investment set forth above, which the STATE may modify, in whole or in part, in its sole discretion (but not increase the total minimum investment), the Concessionaire must ensure that upon completion of the construction and installation of the Concession Improvements and certain FFE such as trade fixtures, cash registering equipment, refrigeration equipment, display cases and shelving within the time herein prescribed, the Concessionaire shall have fully satisfied its obligation to invest a minimum of \$3,000,000.00 for construction and installation of the Concession Improvements and certain FFE. Any amounts spent by the Concessionaire for construction, installation, planning, design, engineering, architectural, surveying, environmental, accounting, financial, legal and other services not directly related to construction and installation of the Concession Improvements and said certain FFE may not be used or included to satisfy the Concessionaire's required minimum investment obligation hereunder.

b. Failure to Meet Obligation.

(1) Initial Allocation. If the Concessionaire fails to fully satisfy the Concessionaire's minimum investment obligation for the Initial Allocation within ninety (90) days of the later of the following: (i) the date the STATE notifies the Concessionaire that the Initial Allocation is available for occupancy or (ii) the date of the STATE's written approval of the Concessionaire's Plans for the Initial Allocation, the Concessionaire shall pay to the STATE, as an additional Concession Fee, an amount equal to the shortfall, if any, between the actual amount invested by the Concessionaire in the Concession Improvements for the Initial Allocation and the Concessionaire's minimum investment obligation for the Initial Allocation hereunder.

(2) Payable Upon Demand. The Concessionaire shall pay any such shortfall upon demand from the STATE. The additional Concession Fee may be imposed by the STATE beginning thirty (30) days after the required completion date for such Concession

Improvements as required under this Concession Agreement. The imposition of any such additional Concession Fee under this provision shall not preclude the STATE from seeking any other remedy available under this Concession Agreement, including, without limitation, assessing the additional charges under Article VI.G (Additional Charges) and any other charges that may be assessed under Article XVIII (Termination by STATE) against the Concessionaire.

E. Construction Program.

1. Overall Construction Program. Within fifty (50) days after the Concessionaire receives written notice of award of this Concession Agreement to the Concessionaire, the Concessionaire shall submit to the STATE a written description of the overall construction program for the Concession, including the construction and installation of the Concession Improvements and FFE, and a time schedule therefor, all of which shall be subject to the STATE's prior written approval. The construction schedule shall include, at a minimum, the following milestones: (a) conceptual design, (b) design development, (c) construction documents, (d) plan check and review and verification of all required approvals, (e) bid, (f) construction, and (g) projected date of beneficial occupancy. The Concessionaire shall comply with all of the requirements contained in this Article VII.E (Construction Program) with respect to the construction and installation of the Concession Improvements on any part of the Premises, including the Initial Allocation and any additional space made available by the STATE to the Concessionaire.

2. Construction Bond.

a. Premises at Start of Concession Agreement. Prior to commencing the construction or installation of the Concession Improvements on or at the Premises at the commencement of this Concession Agreement, the Concessionaire shall furnish to the STATE, at its sole cost and expense, a payment bond and a performance bond, each in the principal amount equal to the Concessionaire's minimum investment obligation for the construction and installation of Concession Improvements on or at the Premises at the commencement of this Concession Agreement.

b. Subsequent Improvements. Prior to commencing the construction and installation of any Concession Improvements, subsequent to the improvements completed and installed as part of Concessionaire's minimum investment obligation at the commencement of this Concession Agreement, the Concessionaire shall finish to the STATE, at its sole cost and expense, a payment bond and a performance bond, each in the principal amount equal to the Concessionaire's estimated cost of completing such subsequent Concession Improvements, as approved by the STATE.

c. General Terms. Each payment and performance bond shall be: (1) in substantially the same form as that attached hereto as this Attachment 5 to Concession Agreement (Performance Bond; Payment Bond) and incorporated herein by reference, (2) issued by a surety company authorized and licensed to transact business in the State of Hawaii, (3) for the full appropriate amount as stated above, (4) issued in favor of and name the STATE as

oblige, and (5) conditioned upon the full, faithful and satisfactory performance by the Concessionaire of its obligations to construct and install the Concession Improvements on or at the Premises.

3. STATE Approval of Concession Improvements. Prior to any work being done, the Concessionaire shall obtain the STATE's written approval of the Concessionaire's Plans covering the portion of the Premises upon which such work is to be done, and shall obtain all other governmental and approvals required by law. The Concessionaire's Plans shall employ optimum essentials of aesthetics, 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 Concessionaire shall submit five (5) sets of the Concessionaire's Plans for review and approval by the STATE in accordance with a time schedule furnished by the Concessionaire. All of the Concessionaire's Plans shall be first submitted to the STATE for written approval before the Concessionaire awards or lets any contract for the construction or installation of the Concession Improvements or enters into contracts for the purchase of any FFE to be installed in or on the Premises.

The Concessionaire shall not install any antenna or aerial wires, or radio or television equipment, equipment generating electromagnetic interference or radio-frequency interference, or any other type of telecommunication and/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 Concessionaire shall, at its sole cost and expense, employ competent and properly licensed architects, engineers and interior designers who will prepare the Concessionaire's Plans, including, without limitation, architectural, interior, exterior and engineering designs, detailed plans, specifications, and cost estimates of all Concession Improvements and FFE to be installed in or on the Premises. The Concessionaire shall, at its sole cost and expense, and prior to the start of construction, obtain all necessary permits and governmental approvals.

5. Adherence to the Concessionaire's Plans. No substantial change, addition or alteration shall be made in the Concessionaire's Plans so approved without first obtaining the STATE's approval in writing. No Concession Improvements or other improvements, or FFE other than as contemplated herein shall be constructed or installed in or upon the Premises without the prior written consent of the STATE and any 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 completion of the Concession Improvements and installation of the FFE as approved by the STATE, the Concessionaire shall not make any structural alterations (including, without limitation, ceilings, walls and floors) to any portion of the Premises without first obtaining the STATE's written consent; provided, however, that the

Concessionaire may make nonstructural alterations which the Concessionaire deems necessary for the operation of the Concession provided, however, that: (1) the Concessionaire reports to the STATE such nonstructural alterations and submits to the STATE the costs and plans at least fifteen (15) days prior to commencement of such alterations; (2) the nonstructural alterations are cosmetic and not structural in nature, do not affect a utility system, the Border Area, the Storefront or Storefront sign, are not inconsistent with the Concession Plan approved by the STATE; (3) the nonstructural alterations do not trigger a legal requirement upon the STATE to make any alteration, addition or improvement to the Premises and/or Airport, (4) are in compliance with the requirements of this Concession Agreement including but not limited to the Concessionaire's construction program and the Terminal 2 Project, if any, and (5) the cost of such nonstructural alterations do not exceed \$30,000.00 in the aggregate in any calendar year of this Concession Agreement.

7. Governmental Approvals. The Concessionaire, at its sole cost and expense, shall also procure all governmental approvals and permits necessary for the construction of the Concession Improvements and the installation of the FFE at or upon the Premises.

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

a. Certificate. A certificate certifying that the Concession Improvements and FFE have been constructed and installed in accordance with the approved Concessionaire's Plans and in strict compliance with all laws, rules, ordinance and governmental rules, regulations and orders;

b. As-builts. Two complete sets of as-built drawings containing a separate stamp from the Concessionaire's licensed architect or engineer after the date construction has been completed or accompanied by an attestation from both the Concessionaire and either the Concessionaire's architect or engineer that such submitted drawings constitute true and accurate representations of the as-built condition of the Concession Improvements and FFE, and one complete set in Computer Aided Design (CAD) format which complies with the STATE's current CAD standards. These drawings must include any applicable governmental approval or permit numbers, the Concession Improvements and FFE constructed or installed by the Concessionaire on or in the Premises, and the location and details of installation of all equipment, utility lines, and heating, ventilating, and air-conditioning ducts and related matters. The Concessionaire shall keep said drawings current by updating the same in order to reflect thereon any changes or modifications which may be made in or to the Premises; and

c. Invoices. As construction and installation of the Concession Improvements and FFE, including counters, partitions and furnishings, and the interior design and decor, is completed, duplicate receipted invoices for all materials and construction and installation costs incurred which the Concessionaire records as capital expenditures as part of the Concession Improvements or the FFE in or on the Premises.

F. Maintenance and Repair.

1. STATE. The STATE will maintain the terminal buildings at the Airport in or at which a portion of the Premises are located, and the exterior or the outer walls and roofs thereof, in good condition and repair, and at its expense, except for such damage to the structure as may be caused by the Concessionaire or its employees or agents. The STATE will also make or accomplish any repairs and replacements necessary to remedy and to maintain in good condition all utility service lines, storm sewers and Airport service roadways which are available to the Concessionaire for use in common with others.

Such maintenance and repair by the STATE shall not constitute either a bar, waiver, or release of any right or claim on the part of the STATE to recover damages from or against anyone, including the Concessionaire and any Airport concessionaire, licensee, permittee, or any other persons responsible for damage to any Airport property, real or personal.

2. Concessionaire. The Concessionaire shall, at all times and at its sole cost and expense, keep and maintain all portions of the Premises, including, without limitation: (a) all Concession Improvements, (b) all FFE, (c) any elevator, hallway, walkway, corridor and other common routing used by the Concessionaire to deliver and resupply its inventory of products and merchandise, (d) all mechanical room equipment such as, but not limited to, heat exchanges, fans, controls and electric panels, (e) exterior and interior portions of all doors, door checks, windows, showcases, plate glass, Storefronts, plumbing and sewage facilities within and exclusively serving the Premises, HVAC and electrical systems exclusively serving the Premises (whether or not located in the Premises), sprinkler systems, interior walls, floors, and ceilings (including floor and ceiling coverings), (f) lighting fixtures used to sign or identify the retail activity permitted upon the Premises (including the lighting fixtures and signs on the sides of the Premises that face the public and lobby areas where passengers, users and visitors at the Airport will pass through), and (g) obstruction lights and similar devices, fire protection and safety equipment and all other like equipment required by any law, statute, rule, regulation, order, or ordinance, in good repair and in a clean and orderly condition and appearance and shall keep the areas immediately adjacent to the Premises, particularly those adjacent to the entrances and exits, clean and orderly and free of obstructions. The Concessionaire shall take the same good care of the Premises that would be taken by a reasonably prudent owner who desired to keep and maintain the same so that at the expiration or sooner termination of this Concession Agreement, the Premises will be in a condition similar to that which existed at the commencement of this Concession Agreement, ordinary wear and tear excepted.

a. Preventative Maintenance. To accomplish this requirement, the Concessionaire shall establish an adequate preventative maintenance program and the provisions of the Concessionaire's program shall be subject to periodic review and approval by the STATE.

b. Maintenance. The Concessionaire's maintenance and repair obligation hereunder shall include, without limitation, the Storefronts, Border Area, Border treatments, the Kiosks, the interior and exterior cleaning of all windows, display cases, entrances and exits of the Premises (including the extended surface areas adjacent and surrounding such

entrances and exits), doors (exterior and interior) and the cleaning and repair of all floors, interior walls, ceilings, lighting, decor and FFE.

c. Refurbishment. Refurbishing shall include, without limitation, all refinishing, repairs, replacement, redecorating and painting necessary to keep and maintain the Premises in a first-class condition.

d. Failure to Comply. If the Concessionaire fails to properly perform and complete its maintenance, repair and refurbishment obligation hereunder, particularly with respect to nonstructural repairs, replacement, redecorating and painting, within a period of ten (10) days after the Concessionaire receives written notice from the STATE of such failure by the Concessionaire, the STATE may, at its option, and in addition to all other remedies which may be available to the STATE, repair, replace, rebuild, redecorate or paint any portion of the Premises included in said notice from the STATE to the Concessionaire, and the cost thereof, plus fifteen percent (15%) for administrative overhead, shall be paid by the Concessionaire to the STATE upon demand from the STATE.

e. Damage Repair. The Concessionaire shall suffer no strip or waste of the Premises and shall repair, replace, rebuild and paint all or any part of the Premises which may be damaged or destroyed by the acts or omissions of the Concessionaire, the Concessionaire's officers and employees or other persons. Any and all structural repairs, alterations and additions to be made by the Concessionaire to or on the Premises (and any and all other such work which is non-structural and costs \$3,000.00 or more) shall be subject to the requirements of this Article VII (Improvements) herein and all such work must receive the prior written consent of the STATE.

G. Relocation. The Concessionaire acknowledges and agrees that the STATE may require, in the STATE's sole and complete discretion and at the Concessionaire's sole cost and expense, an expansion or reduction of any portion of the Premises, and require the relocation of any portion of the Premises, in whole or in part, during the term of this Concession Agreement. This includes, but is not limited to, requirements and changes related to the Terminal 2 Project.

ARTICLE VIII. CONCESSION OPERATION

A. Operation of the Concession. In the operation of the Concession herein authorized, the Concessionaire shall handle only high-quality merchandise, shall furnish prompt, courteous and efficient service adequate to meet all reasonable requests therefor and shall ensure polite and inoffensive conduct and demeanor on the part of its representatives, agents, servants and employees. In particular, the Concessionaire shall, at all times during the term of this Concession Agreement, strictly comply with the following conditions and requirements:

1. Merchandise and Price Schedules. The STATE agrees that the Concessionaire's merchandise, including its schedules of prices, charges and rates for the same, shall be within the Concessionaire's discretion; subject, however, to disapproval by the STATE,

if in the STATE's sole discretion, the selection of such merchandise offered is inadequate or inappropriate or if any of said prices, charges and rates are excessive. The STATE shall meet and confer with the Concessionaire regarding such matters but the Concessionaire acknowledges that the STATE's determination as to the same shall be conclusive.

a. Concessionaire Shall Survey. From time to time as reasonably required by the STATE (a minimum of twice during the term of this Concession Agreement), the Concessionaire shall conduct and prepare or have conducted and prepared a survey of a market basket consisting of the Concessionaire's five (5) top selling items for each category and for the related merchandise subcategories listed in Article V.A.3 (Permissible Groups and Subcategories of Merchandise), to compare the prices of merchandise sold or offered for sale in the Concession with the prices charged for the same or substantially the same merchandise sold or offered for sale by retail establishments located in the County.

b. Survey Preparation and Report. The Concessionaire shall submit to the STATE, for the STATE's prior written approval: (1) all proposed survey forms, (2) the number and identities of the retail establishments to be surveyed, (3) a listing clearly identifying and describing the Concessionaire's five (5) top selling items comprising the market basket, (4) the time frame to complete the survey and report, (5) the methods and procedure to be used to compile, analyze and report the results of the survey, (6) the number of items included in the survey, and (7) any other pertinent matters relating to the survey. The survey report shall include the survey results, analysis and conclusions and shall be submitted to the STATE by the deadline contained in the time frame approved by the STATE.

c. Comparable Prices. The Concessionaire specifically agrees that prices on like or substantially similar products or merchandise sold in the Concession shall be equal or comparable to the prices charged by retail establishments located in the County. For purposes of this Concession Agreement "comparable prices" shall be no greater than twelve percent (12%) higher than the prices charged by retail establishments located in the County.

d. Additional Merchandise. The STATE may request the Concessionaire to add merchandise to the selection of merchandise offered for sale by the Concessionaire. If the Concessionaire is unable, declines or refuses to sell or offer for sale the merchandise requested by the STATE, the provisions of Article V.G.2.c (Additional Merchandise) shall apply.

e. STATE's Prior Approval. Prior to opening any portion of the Premises for business, the Concessionaire shall submit for the STATE's review and written approval, the Concessionaire's selection of merchandise and its schedule of prices, charges and rates for the same applicable to the portion of the Premises to be opened for business.

2. Nondiscrimination. The Concessionaire shall furnish its accommodations and all services authorized hereunder on a fair and equal, and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, comparable to the expected customary prices for retail merchandise in the

County; provided, however, that the Concessionaire may make or give such reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions as the Concessionaire may desire to the Concessionaire's employees or volume purchasers. If, however, the Concessionaire shall give any discount to any customer (i.e., to other than an officer or employee of the Concessionaire or to a volume purchaser), the percentage fee on the gross receipts for said transaction shall be computed and paid to the STATE pursuant to Article VI (Concession Fee) herein.

In addition, the Concessionaire, during the term of this Concession Agreement, agrees not to discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, age, or physical handicap or disability.

3. Type of Operation.

a. World Leading.

(1) First Class. The Concessionaire shall maintain and operate the Concession in an orderly, proper and first-class manner representative of a world-leading provider of retail merchandise.

(2) Hawaii Emphasis. To the greatest extent possible, the Concessionaire shall emphasize and feature service, providers, merchandise created, made, manufactured and produced in Hawaii. Premises' designs, treatments, themes, colors and textures employed by the Concessionaire must create an inviting and quality shopping atmosphere, and complement the ambiance and interiors of the Airport's terminal complex. The range of touches used shall incorporate, to the greatest extent possible, architectural design and interior decor which embodies a "Hawaiian Sense of Place" to represent, evoke, convey and perpetuate the unique attributes of the history and culture of the State of Hawaii, its people and its islands.

(3) Balance. The Concessionaire must strategically balance and carefully mix store sites, merchandise, services, vendors, sub-operators and other tenants, from time to time, to allow the best possible opportunities and stream of sales revenues at and from each sales area of the Premises.

(4) Result. The results of Concessionaire's efforts in this Article VIII.3.a. (World Leading) should be to create a sense of value, satisfaction and appreciation for the Concessionaire's Concession operation, the STATE and the Airport.

(5) No Annoyance. The Concessionaire shall not operate the Concession in any manner that tends to annoy or disturb, or be offensive to others at the Airport, and the STATE shall determine, in its sole discretion, whether the Concessionaire's operation of the Concession in fact annoys, disturbs or is offensive to others.

b. No Diversion. The Concessionaire shall not solicit or advertise Concession business anywhere at the Airport except in a manner first approved in writing by the STATE. The Concessionaire shall not divert, cause, allow or permit to be diverted any business from the Premises and shall take all reasonable measures, in every proper manner, to develop, maintain and increase the business conducted by it under this Concession Agreement. Further, the Concessionaire shall actively operate each of the retail facilities so as to best serve passenger needs and to maximize the revenue derived therefrom.

c. Hours of Operation. Said facilities shall be kept open during all hours in which flights arrive and/or depart from the Airport with the exact hours of service in each of the facilities operated by the Concessionaire to be determined solely by the STATE in light of the location of each such facility at the Airport and the requirements for service at such location. Initially, the Concession shall be operated at least sixteen (16) hours a day, seven (7) days per week. The Concessionaire may advise the STATE of the Concessionaire's analysis of the optimum arrangements, but the ultimate determination will be made by the STATE, who may require, by written notice to the Concessionaire that the business hours at any facility be changed to meet new conditions including, but not limited, to aircraft arrival and/or departure times and gates. The Concessionaire shall be excused from its obligations as set forth above in the event that its operations are closed or curtailed, in whole or in part, by reason of strike, lockout or other cause beyond the Concessionaire's control such as those causes listed in Article XXXIII (Force Majeure).

4. Costs of Operation. The Concessionaire shall bear any and all costs of installation and the operation of the Concession, in addition to the fees payable to the STATE pursuant to Article VI (Concession Fee) herein, and the Concessionaire shall bear any and all costs and expenses connected with the Concessionaire's use of the Premises and rights granted herein, including, without limitation, maintenance, insurance, air conditioning, janitorial service and supplies, waste or garbage disposal, business licenses and permits, and any and all taxes, assessments, or other similar charges.

5. Manager and Responsible Representative. The Concessionaire shall select and appoint, subject to written approval by the STATE, a managing director of the Concessionaire's operations at the Airport. Such person must be an outstanding, highly qualified and experienced manager or supervisor of large-sized retail operations, vested with full power and authority to accept service of all notices provided for herein and oversee the operation of the Concession herein authorized, including the quality and prices of merchandise and the appearance, conduct and demeanor of the Concessionaire's agents, servants and employees. The Concessionaire's managing director shall be assigned to a duty station or office at or near the Airport where such person shall ordinarily be available during regular business hours and where, at all times during that person's absence, a responsible subordinate shall be in charge and available. The Concessionaire shall provide the STATE with the names and phone numbers of the managing director and responsible subordinate(s).

6. Responsible Employees. In addition to the manager and responsible representative specified above, the Concessionaire shall also designate a responsible employee to be in charge of any sales area portion of the Premises at the Airport and the names and phone numbers of such employees shall be given to the STATE. Said employees shall be responsible for the proper operation of the Concession and for the conduct, demeanor and appearance of all employees, guests and patrons at the portion of the Premises for which they are responsible and which they supervise, and upon objection from the STATE concerning said matters, such employees shall immediately take all steps necessary to remove the cause of the STATE's objection.

7. Concessionaire's Personnel. The Concessionaire at all times shall employ and have on duty adequate personnel, all of whom shall present a neat and clean appearance and be courteous and efficient in the discharge of their duties, in order to promptly and efficiently serve the public and to provide the quality of operation required herein.

a. No Boisterous Behavior. No personnel employed by the Concessionaire, while on or about the Premises, shall use improper language, act in a loud, boisterous or otherwise improper way or be permitted to solicit business in an inappropriate manner.

b. Resolving Disputes. Duty personnel shall be informed and knowledgeable about the merchandise the Concessionaire offers and carries and be capable of resolving disputes on merchandise quality and value and handle and address complaints resulting from any aspects of the Concessionaire's activities. The Concessionaire shall be immediately responsive to resolving or handling any complaint or problem which may be brought to the attention of the Concessionaire. The STATE reserves the right to require Concessionaire's employees to wear badges, uniforms, or other reasonable means of identification so as to render such employees readily identifiable with the Concession.

c. Awareness Training. The Concessionaire shall have its employees participate in a training or orientation regarding the Airport's hospitality awareness program.

(1) Training Program. The Concessionaire shall develop and administer a training program for employees to assist in their understanding and awareness of airport operating procedures, activities and the general layout and location of major tenants. Training shall include awareness and familiarity with applicable STATE's rules and regulations and the STATE's airport training program requirements, appearance guidelines, customer relations and service greeting standards.

(2) Knowledgeable. The Concessionaire's staff shall also be knowledgeable about the layout of the Airport and shall assist travelers when asked or approached, in answering way-finding questions, other airport store locations, and directing the traveler to the appropriate site, counter, office or airport personnel or others for further assistance.

8. Waste Disposal. The Concessionaire shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused by or resulting from the operation of the Concession.

9. Hazardous Materials. The Concessionaire shall remove Hazardous Substances or any such materials at, upon, above or under the Premises which may endanger the life or health of people at the Airport. The Concessionaire's obligations attributable to the Concessionaire's use, generation, handling, storage, or release of Hazardous Substances which were on or from the Premises are further described in Article XIII (Compliance with Laws) herein.

10. Restocking. The Concessionaire shall reservice, resupply or restock its inventory of merchandise in the sales and storage areas only during periods when such activities would not unduly affect pedestrian traffic or during periods of low pedestrian activity. The use of electric or motorized carts is not permitted in any pedestrian area unless otherwise first approved in writing by the STATE and then for only certain limited occasions. The Concessionaire shall observe all rules prescribed or adopted by the STATE with respect to the use of equipment or vehicles at the Airport.

B. DBE Management Support. The Concessionaire shall provide broad based management support to the DBE, including, but not limited to, the following:

1. Provide Concession Improvements for DBE and, if necessary, construct a dividing wall.

2. Provide guidance and assistance in merchandise mix, purchasing And inventory maintenance.

3. Provide sales and management training to promote professional development of the DBE.

4. Assist and provide overall guidance to the DBE in the development of accounting systems and procedures.

5. Provide the necessary management support to the DBE to ensure the successful performance and viability for both operations.

C. Airport Activities. The Concessionaire shall provide a management representative to participate in Airport organized meetings designed to communicate information regarding events and activities affecting the operation of the Airport, as well as to meet with any consultant, planner or employee of the STATE identified by the STATE to discuss and review matters pertaining to Airport or Concession activities. The Concessionaire shall actively participate in the Airports Concessionaires Committee and other similar group established at the Airport which is organized to support Airport tenants in understanding and projecting the Aloha Spirit, Hawaiian hospitality, and giving quality customer service to air travelers, visitors and

residents, and encouraging participation in events and activities promoted or sponsored by these organizations and as specified in this Article VIII (Concession Operation).

D. STATE's Right to Monitor and Inspect. In addition to any other right the STATE may have to ensure the quality of merchandise and customer service, reasonable prices and high quality standards for the Concession facilities, operations, and services offered, as described above in this Concession Agreement, the STATE may inspect and monitor the Concessionaire's operation of the Concession, including, without limitation, the following:

1. Periodic Inspection. A periodic inspection may be made, as determined by the STATE, of all portions of the Premises at the Airport during normal operating hours.

2. Price List. The Concessionaire will provide, at the commencement of operations under this Concession Agreement and subsequently upon the STATE's request, a list of the merchandise offered for sale by the Concessionaire as part of the Concession together with applicable prices for each of the sales spaces (store or Kiosk) within the Premises. The Concessionaire shall ensure that the information contained in the price list is sufficiently detailed to enable the STATE to easily identify the brand, size, quantity (packaging), model, type or kind of merchandise and its applicable prices.

3. Concessionaire Assistance. The Concessionaire will provide, upon the STATE's request, any necessary assistance, cooperation, and materials to support the STATE's inspection monitoring efforts relating to the Concession.

4. Scope of Inspection. The STATE's monitoring and inspection of the Concessionaire's conduct in managing and operating the Concession may cover any aspect of the Concessionaire's operation of the Concession, including, without limitation, prices, quality, store operations, lighting, appearance, cleanliness, decor, displays, staff dress, staff attitude, customer service, merchandise and general customer satisfaction with the Concession.

5. Deficiencies. The STATE will (a) inform the Concessionaire of any discrepancies or deficiencies observed or noted by the STATE after the STATE has completed its inspection, review and evaluation and (b) specify a deadline for the Concessionaire to remedy or correct any discrepancy or deficiency.

6. Follow-up. The STATE may conduct any necessary follow-up inspection or check. If the Concessionaire does not correct or remedy the discrepancy or deficiency, to the STATE's satisfaction, by the STATE's deadline, the Concessionaire shall provide the STATE with written reasons for any such failure. If justified, appropriate time extensions, but not greater than allowed by law, or temporary exceptions, may be granted by the STATE. If the Concessionaire fails to adequately correct or remedy the discrepancy or deficiency, to the STATE's satisfaction, the STATE may resort to any remedy available to the STATE under this Concession Agreement and by law.

Nothing contained in this Article VIII (Concession Operation) shall be deemed to be a waiver or reduction of any rights or remedies the STATE may have for any violation or breach by the Concessionaire of any of the terms and conditions of this Concession Agreement.

ARTICLE IX. SIGNS

A. STATE's Approval. The Concessionaire shall not erect, construct or place any signs or displays pertaining to the Concessionaire's Concession business upon any portion of the Airport other than upon a portion of the Premises, unless otherwise first approved in writing by the STATE.

1. Concessionaire's Cost. The Concessionaire shall have the right to install and operate upon or at the Premises, at the Concessionaire's sole cost and expense, advertising signs containing the name of and representing the Concession business (but which shall not advertise, refer to, or indicate any part of the Concession schedule of prices, rates and charges).

2. Conformity. The signs shall be substantially uniform in size, type and location with those of other businesses and tenants at the Airport and conform to the STATE's Signage and Graphics Manual.

3. Submit Drawings. Prior to the erection, construction or placing of any such signs or displays, the Concessionaire shall submit to the STATE, for the STATE's review and approval in writing, drawings, sketches, design dimensions and type and character of the proposed sign or display. 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.

B. Removal of Signs. Upon the expiration or the sooner termination of this Concession Agreement, the Concessionaire, if requested by the STATE, shall remove, obliterate, or paint out any and all advertising signs, posters and similar devices and any displays placed by the Concessionaire on the Premises and restore any wall or surface area to which they may have been attached or affixed, including any previous signage installation, all to the satisfaction of the STATE. If the Concessionaire fails to so remove, obliterate, or paint out each and every sign or piece of advertising or display as requested by the STATE, the STATE may perform such work and the Concessionaire shall immediately pay to the STATE any and all costs so incurred by the STATE upon demand from the STATE.

Nothing in this Article IX. (Signs) contained shall limit nor be construed to limit the effect of the provisions of Article XII (Surrender of Premises) hereof.

ARTICLE X. INGRESS AND EGRESS

A. Reasonable access. The Concessionaire, its employees, customers, guests, contractors, suppliers of material, furnishers of services, agents and invitees, in common with others, shall have the nonexclusive right of ingress and egress to and from the Premises 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 product or materials shall be subject to the prior written approval 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 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 or consent to 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 the Concessionaire.

D. Right to Change Pedestrian Traffic Routing.

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 to or by the Premises. By entering into this Concession Agreement, however, the Concessionaire recognizes the STATE's rights and responsibilities to provide convenient and efficient public access and thoroughfare and the Concessionaire, 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. Concessionaire Release. The Concessionaire hereby releases and discharges the STATE, its successors and assigns, of and from any and all claims, demands, causes of action, liabilities, losses, damages, costs and expenses, which the Concessionaire may now or at any time hereafter have against any of the foregoing arising or alleged to arise out of the closing of any street, roadway, access area or other area, whether within or outside 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 other pedestrian traffic by or to the Premises, the Concessionaire shall not be entitled to any rebate or relief from any of its minimum annual guaranteed fee payment obligations under this Concession

Agreement (except for that set forth in Article VI.H (Partial Relief from Obligation) or Article VI.I. (Relief Due to Economic Emergency) herein. The Concessionaire shall have no claim for any rebate or adjustment of fee for any change which may arise as a result of the STATE's change, adjustment, amendment, alteration or revision to pedestrian traffic patterns or the imposition of restrictions on access into any portion of the Airport.

ARTICLE XI. LIABILITY AND INDEMNITY

A. Assumption of Liability. The Concessionaire shall assume liability for all of its, officers, employees, agents, servants, contractors, suppliers, customers, patrons, and invitees (hereafter collectively the "**Concessionaire's agents**") and the use of the Airport by the Concessionaire and Concessionaire's agents who are under the Concessionaire's direct control, shall be at the sole risk of the Concessionaire, and the Concessionaire shall assume full liability for all of the Concessionaire's agents as set forth herein.

B. Indemnity. The STATE shall not be liable for and the Concessionaire shall release, protect, defend with counsel acceptable to the STATE, indemnify, and keep and hold harmless the STATE and its directors, officers, elected officials, agents, and employees, and their respective successors and assigns, and all officers and employees of the State of Hawaii, including the Land Board (hereafter collectively the "**Other Indemnitees**") 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 suits and fees related thereto and reasonable attorneys' fees), fines or penalties, or any other liability, relating to or arising from any actual or alleged injury to or death of persons, including but not limited to actual or alleged work-related injuries or death of employees of the Concessionaire, actual or alleged damage to or destruction of property, including but not limited to property of the Concessionaire, sustained in, on, over, under, or about the Premises or the Airport, as a result of or related to the Concessionaire's use and occupancy of the Premises or use of any other portions of the Airport and/or any act or omission of the Concessionaire or Concessionaire's agents (as defined above).

This provision shall not be construed to be a limitation of any other indemnity by the Concessionaire as may be contained in Article XIII.B.6 (Concessionaires Indemnification), Article XIII.C.2.h.(2) (Release and Indemnity), Article XXVI (Litigation), or anywhere else within this Concession Agreement.

ARTICLE XII. SURRENDER OF PREMISES

A. Prompt and Peaceful Surrender. The Concessionaire shall yield and deliver peaceably to the STATE possession of the Premises and all Concession Improvements thereupon on the date of the cessation of this Concession Agreement whether such cessation be by termination, expiration, or otherwise, promptly, peaceably, quietly, and in as good order and condition as that which existed at the commencement of this Concession Agreement or at the time of installation of the Concession Improvements, reasonable wear and tear arising from use

of the Premises to the extent permitted elsewhere in this Concession Agreement and damage resulting from causes over which the Concessionaire had no control, excepted.

B. Transition. In the event the Concessionaire is not awarded the Concession for the period subsequent to the term beyond this Concession Agreement, the Concessionaire covenants with the STATE that the Concessionaire shall assist in the peaceful transition and occupancy of the Premises by the replacement concessionaire(s). The Concessionaire shall allow entry into and upon the Premises by the replacement concessionaire(s) during all reasonable hours and times prescribed by the STATE. Any dispute or disagreement regarding this transition to the replacement concessionaire shall be resolved by the STATE, and such decision by the STATE shall be deemed conclusive and binding upon the Concessionaire and replacement concessionaire. The Concessionaire shall not remove, damage, destroy, or otherwise render unusable any item, article, Concession Improvements, FFE, or portion of the Premises that, by the terms of this Concession Agreement, becomes or could become the STATE's property. If the Concessionaire fails to properly perform its obligations as described in this Article XII.B (Transition), the Concessionaire shall pay to the STATE, upon demand from the STATE, all monies deemed necessary by the STATE to correct, remedy, and cure the Concessionaire's failure, including, without limitation, repairing or replacing any item, article, Concession Improvements, FFE, or portion of the Premises damaged, destroyed, removed, or rendered unusable by the Concessionaire.

ARTICLE XIII. COMPLIANCE WITH LAWS

A. Generally. The Concessionaire shall at all times during the term of this Concession Agreement comply with all applicable laws, statutes, rules, regulations, orders and ordinances of all governmental authorities, including, without limitation, the United States of America, the State of Hawaii and the County, and any political subdivision or agency, authority, or commission thereof, which may have jurisdiction to pass laws, statutes, or ordinances or make and enforce orders, rules and regulations with respect to the Concession, the Premises, or the Airport, as the same may be amended. The Concessionaire's obligation to comply with all laws, statutes, rules, regulations, order and ordinances hereunder shall apply to the Concessionaire's use and occupancy of the Premises, the operation of the Concession thereon and the construction and installation of the Concession Improvements and FFE.

The Concessionaire shall also take out and keep current all licenses and permits required by any governmental authority for the Concessionaire's conduct of the Concession at or on the Premises and the Airport and pay promptly when due all fees.

Notwithstanding the foregoing provisions, the Concessionaire shall have the right, in its own name, to contest in good faith the validity or applicability of any law, statute, rule, regulation, order or ordinance of any governmental body or agency to the Premises or Concessionaire's operation thereon. The fact that the Concessionaire may, in connection with such contest, refrain from complying with such law, statute, rule, regulation, order or ordinance shall not affect in any way the Concessionaire's obligation to (1) refrain from subjecting any part

of the Premises to forfeiture or loss, and (2) pay the required fees set forth in Article VI (Concession Fee).

Without limiting any other provision herein, the Concessionaire shall release, indemnify, defend with legal counsel acceptable to the STATE, and keep and hold harmless the STATE, its successors and assigns, from and against any and all claims, demands, suits, actions, causes of action, judgments, liabilities, losses, damages, costs and expenses resulting or arising from the Concessionaire's failure to comply with the applicable laws as set forth herein.

B. Compliance with Americans With Disabilities Act.

1. Concessionaire's Warranty. The Concessionaire agrees that it shall conduct its Concession operation and use and occupy the Premises in accordance with the Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq. (hereafter collectively the "ADA"), including, without limitation, modifying the Concessionaire's policies, practices, and procedures, and providing auxiliary aids and services to disabled persons.

2. Accessible Services. The Concessionaire 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 Concessionaire shall provide the services specified in this Concession Agreement in a manner that complies with the ADA and any and all other applicable federal, state or county disability rights legislation. The Concessionaire agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Concession Agreement and further agrees that any violation of this prohibition on the part of the Concessionaire, its officers, employees, agents, servants or assigns shall constitute a material breach of this Concession Agreement.

3. Concessionaire's Alterations. With respect to all work required to be performed by the Concessionaire in preparing the Premises for the Concessionaire's use and occupancy, including, without limitation, the construction and installation of all Concession Improvements and FFE on or at the Premises, the Concessionaire agrees to complete such work in full compliance with the ADA at Concessionaire's sole cost and expense. Upon the STATE's request, the Concessionaire shall provide the STATE with evidence reasonably satisfactory to the STATE that all such work by the Concessionaire was completed in compliance with the ADA. The Concessionaire further agrees that any future alterations or improvements made by the Concessionaire to the Premises shall comply with the ADA.

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

5. Notice. The STATE and the Concessionaire agree to promptly give written notice to the other (not to exceed three (3) days), of any notices which it receives alleging ADA violations.

6. Concessionaire's Indemnification. The Concessionaire shall release, indemnify, defend with legal counsel acceptable to the STATE and keep and hold harmless the STATE, its successors and assigns, from and against any and all claims, demands, suits, actions, causes of action, judgments, liabilities, losses, damages, costs and expenses resulting or arising from the Concessionaire's failure to comply with the Concessionaire's obligations hereunder with respect to the ADA and/or otherwise under the ADA.

C. Compliance with Environmental Matters.

1. Definitions. For purpose of this Concession Agreement, Concessionaire agrees and understands that the following terms shall have the following meanings:

"Environmental Laws" shall mean all federal, state 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, 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 (hereinafter the "**EPA**") and of the State of Hawaii, Department of Health (hereinafter the "**DOH**"), and includes without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act and the Safe Drinking Water Act, as the same may be amended from time to time, the Hawaii Environmental Response Law, Hawaii Revised Statutes Chapter 128D, as the same may be amended from time to time, as well as any similar federal, state and local laws and ordinances, and regulations now or hereafter adopted, published and/or promulgated pursuant thereto.

"Hazardous Substance" shall mean and include any chemical, substance, organic or inorganic material, controlled substance, object, condition, waste, living organism, or combination thereof which is, may be, or has been determined by proper state or federal authority under any environmental law to be, hazardous to human health or safety or detrimental to the environment. This term shall include, without limitation, but not be limited to, any flammable explosives, petroleum hydrocarbons, asbestos, radon, radioactive materials, organic compounds (including those organic compounds known as polychlorinated biphenyls (PCBs), polychlorinated biphenyls methane, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, and any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "extremely hazardous wastes", "hazardous materials", "toxic substances" or words of

similar import under the Environmental Laws and other materials or substances that are regulated by state or federal authorities.

2. Concessionaire's Activities and Duties

a. Compliance with Environmental Laws. Concessionaire agrees, at its sole expense and cost, to comply with all Environmental Laws that apply to the Premises during the term of this Concession Agreement, and Concessionaire's occupancy of, and activities on, the Premises. This duty shall survive the expiration or termination of this Concession Agreement which means that the Concessionaire's duty to comply with Environmental Laws shall include complying with all Environmental Laws, regulations and orders that may apply, or be determined to apply, to the occupancy and activities of the Concessionaire on the Premises after the expiration or termination of this Concession Agreement. The Concessionaire shall promptly pay when due all fines and assessments against Concessionaire, the STATE and/or the Premises relating to any Environmental Laws or the existence of Hazardous Substances at the Premises. Failure of the Concessionaire to comply with any Environmental Laws shall constitute a breach of this Concession Agreement for which the STATE shall be entitled, in its discretion, to terminate this Concession Agreement and take any other action at law or in equity it deems appropriate.

b. Hazardous Substances. Concessionaire shall not use, store, treat, dispose, discharge, release, generate, create, or otherwise handle any Hazardous Substance, or allow the same by any third person, on the Premises without first obtaining the written consent of the STATE and 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. Concessionaire shall keep STATE fully informed at all times regarding all matters relating or related to or covered by the Environmental Laws affecting the Concessionaire or the Premises. This duty shall include, without limiting the foregoing duty, providing the STATE with a current and complete list and accounting of all Hazardous Substances of every kind, by completing, submitting and updating Attachment 6 (Concessionaire's Listing of Hazardous Substances) in this Concession Agreement, which are present on or about the Premises and furnishing the STATE with evidence that the Concessionaire has in effect all required and appropriate permits, licenses, registrations, approvals and other consents that may be required of or by federal and state authorities under all Environmental Laws, by completing, submitting and updating Attachment 7 (Concessionaire's Listing of Environmental Permits). This duty shall also include providing immediate written notice of any investigation, enforcement action, remediation or other regulatory action, order of any type, or any legal action, initiated, issued, or any indication of an intent to do so, communicated in any way to the Concessionaire by any federal or state authority or individual which relates in any way to any Environmental Law or any Hazardous Substance and the Concessionaire or the Premises. This written notice to the STATE shall include the Concessionaire immediately providing the STATE with copies of all written communications from individual or state and federal authorities, including copies of all correspondence, claims,

complaints, warnings, reports, technical data and any other documents received or obtained by the Concessionaire. At least thirty (30) days prior to termination of this Concession Agreement, or termination of the possession of the Premises by Concessionaire, whichever occurs first, Concessionaire shall provide to the STATE written evidence satisfactory to the STATE that Concessionaire has fully complied with all Environmental Laws, including any orders issued by any governmental authority to the Concessionaire that relate to the Premises.

d. Notice to Authorities. Concessionaire shall provide written notice to the EPA and the DOH, at least sixty (60) days prior to the termination of this Concession Agreement, or sixty (60) days prior to Concessionaire's termination of possession of the Premises, whichever occurs first, that Concessionaire intends to vacate the Premises and terminate its operations on those Premises. The Concessionaire shall allow the agents or representatives of said authorities access to the Premises at any and all reasonable times for the purpose of inspecting or testing for compliance with any Environmental Laws. The Concessionaire shall provide copies of said written notices to STATE at the time said notices are provided to said authorities.

e. Disposal/Removal. Except for materials that are lawfully sold in the ordinary course of the Concessionaire's business, the Concessionaire shall cause any Hazardous Substances to be removed from the Premises for disposal and to be transported from the Premises solely by duly licensed Hazardous Substances transporters to duly licensed facilities for final disposal as required by all applicable Environmental Laws. The Concessionaire shall provide 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.

f. Environmental Investigations and Assessments. The Concessionaire, at its sole cost and expense, shall cause to be conducted such investigations and assessments of the Premises to determine the presence of any Hazardous Substance on, in, or under the Premises as may be directed from time to time by the STATE, in its sole discretion, or by any federal or state authority. The extent and number of any environmental investigations and assessments shall be determined by the STATE or the federal or state authority directing said investigations and assessments to be conducted. The Concessionaire shall retain a competent and qualified person or entity that is satisfactory to the STATE or governmental authority, as the case may be, to conduct said investigations and assessments. The Concessionaire shall direct said person or entity to provide the STATE or governmental authority, if so requested, with testable portions of all samples of any soils, water, ground water or other material that may be obtained for testing and provide to the STATE and the governmental authority written results of all tests on said samples upon completion of said testing.

g. Remediation. In the event that any Hazardous Substances are used, stored, treated, disposed on the Premises, handled, discharged, released, or determined to be present on the Premises, Concessionaire shall, at its sole expense and cost, remediate the Premises of any Hazardous Substances, and dispose/remove said Hazardous Substances in accordance with Article XIII.C.2.e (Disposal/Removal) herein. This duty to remediate includes

strictly complying with all Environmental Laws and directives to the Concessionaire to remediate said Hazardous Substance from the STATE. This duty to remediate shall include replacement of any materials, such as soils, so removed with material that is satisfactory to the STATE and governmental authority, as the case may be.

h. Restoration and Surrender of Premises. The Concessionaire hereby agrees to restore the Premises, at its sole cost and expense, including the soil, water and structures on, in or under the Premises to the same condition as the Premises existed at the commencement of this Concession Agreement, fair wear and tear to the structures excepted. In the event Concessionaire does not restore the Premises to the same condition as it existed at the commencement of this Concession Agreement, as determined by the STATE, Concessionaire understands and agrees that STATE may exercise its rights under Article XIII.C.2.h (1) (STATE's Right to Act) herein, and until such time as the restoration is complete to the satisfaction of the STATE, Concessionaire shall be liable concession fees, rent, and all other charges due under this Concession Agreement in the same manner and amount as if this Concession Agreement had continued in effect during the period of restoration.

(1) STATE's Right to Act. In the event Concessionaire 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, STATE shall have the right, but not obligation, in its sole discretion, to perform those duties, or cause them to be performed. Concessionaire hereby grants access to the Premises at all reasonable hours to the STATE, its agents and anyone designated by the STATE in order 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 the Concessionaire and Concessionaire hereby agrees to pay for those costs and expenses and indemnify the STATE for any liability incurred. This obligation shall extend to any costs and expenses incident to enforcement of STATE's right to act, including without limitation, litigation costs, attorney's fees and the costs and fees for collection of said cost, expense or liability.

(2) Release and Indemnity. Concessionaire hereby agrees to release the STATE, and the STATE's officers, agents, successors and assigns from any liability of any kind, including, but not limited to, any liability for any damages, penalties, fines, judgments or assessments that may be imposed or obtained by any person, agency or governmental authority against the Concessionaire by reason of any Hazardous Substance that may be present by whatever means on, in or under the Premises. The Concessionaire hereby agrees to indemnify, defend with legal counsel acceptable to the STATE, and hold harmless the STATE from any liability that may arise in connection with, or by reason of, any occurrence involving any Hazardous Substance that may be alleged to be connected or related in any way with the Premises, the STATE's ownership of the Premises, or this Concession Agreement, including without limitation, the presence of any Hazardous Substance on, in, or under the Premises.

(3) Surety/Performance Bond for Cleanup/Restoration. At its sole cost and expense, Concessionaire shall provide the STATE with a bond, with a surety acceptable to the STATE, in the STATE's sole discretion, in the amount of \$100,000.00 to assure removal of any Hazardous Substances and the remediation and restoration of the Premises during the term of, and at the conclusion of this Concession Agreement so as to comply with the terms of this Concession Agreement to the satisfaction of the STATE and in order to comply with Environmental Laws. Concessionaire shall provide written evidence that said bond or security has been secured by the Concessionaire which evidence shall indicate the term during which said bond or other security shall irrevocably remain in effect.

(4) Burden of Proof. In all instances covered in this Article XIII.C. (Compliance with Environmental Matters), the Concessionaire accepts the burden of establishing that it is not responsible for the existence of Hazardous Substances in the Premises. If the Concessionaire cannot establish that it is not responsible for the existence of Hazardous Substances in the Premises, the Concessionaire shall be deemed responsible for the existence of the Hazardous Substances.

D. Airport Security. The Concessionaire shall comply with any and all of the security requirements covering the Airport and all applicable security access procedures, rules or regulations prescribed by the STATE and/or the TSA.

1. Security Agreements. The Concessionaire shall enter into security agreements with the STATE that may be required by the TSA for security purposes covering the Airport and said agreements shall become part of this Concession Agreement and the covenants, terms and conditions herein, although executed separately.

2. Concessionaire to Maintain Security. The Concessionaire shall also maintain security in such a manner that unauthorized persons shall not have access to any secure or restricted aircraft operations area through any portion of the Premises, and guests, visitors, invitees, agents or any other parties acting with the permission of the Concessionaire, shall be under the control, supervision, or guidance of the Concessionaire when entering any secure or restricted operations area. The Concessionaire 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 Concessionaire accepts liability and responsibility (a) for the Concessionaire's failure to comply with any Airport security requirements and applicable security access procedures, rules or regulations prescribed by the STATE and/or the TSA and to prohibit unauthorized persons and vehicles from entering the Airport's restricted operations area through any portion of the Premises, and (b) for any reimbursement to the STATE for the STATE making direct payment to any citing authority for any fines or penalties of any and all airport security violations by the Concessionaire, its contractors, agents, representatives, guests or invitees. Failure to observe this security requirement shall be cause for the assessment of additional charges under this Concession Agreement and/or termination of this Concession Agreement by the STATE.

ARTICLE XIV. RIGHTS OF ENTRY RESERVED

A. Right of Entry for Any Reasonable Purpose. The STATE's Agents shall have the right at all business hours with reasonable notice to enter upon any and all portions of the Premises for any reasonable purpose without the same constituting an eviction of the Concessionaire and/or any infringement or violation of the Concessionaire's rights. Entry for a reasonable purpose shall including, without limitation, the purposes set forth in this Article XIV. (Rights of Entry Reserved).

B. Inspection. The STATE and the STATE's Agents, shall have the right at all business hours with reasonable notice to enter upon all portions of the Premises described in Article VIII.D.1 (Periodic Inspection) herein, for the purpose of inspecting the same, for observing the Concessionaire's performance of its obligations under this Concession Agreement, and to serve or post or keep posted on the Premises notices provided by any applicable law, statute, rule, regulation or order of any governmental authority and 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.

C. Maintain Systems. Without limiting the generality of the foregoing, the STATE and the STATE's Agents, shall have the right, for its own benefit, for the benefit of the Concessionaire, or for the benefit of persons other than the Concessionaire at the Airport, to: (1) maintain existing and future utility, mechanical, electrical, and other systems, (2) to enter upon said Premises with all material that may be required, at all reasonable times to make such repairs, replacements or alterations as may, in the opinion of the STATE, be necessary or desirable and, (3) from time to time, complete construction and installation work over, in or under the Premises for access to other parts of the Airport not otherwise conveniently accessible. The STATE shall return the Premises to substantially the same condition as existed prior to the STATE's entry upon said Premises.

D. No Obligation to Construct or Repair. Nothing in this Article XIV (Rights of Entry Reserved) shall impose or shall be construed to impose upon the STATE any obligations to so construct or maintain, or to make repairs, replacements, additions or alterations to the Premises, nor shall the STATE's entry upon the Premises, or any portion thereof, create any liability on the part of the STATE for any failure to do so.

E. Showing the Premises. At any time, and from time to time, during ordinary business hours, the STATE, the STATE's Agents and the STATE's invitees, whether or not accompanied by interested parties, shall have the right to enter upon the Premises, or any portion thereof, for the purposes of exhibiting and viewing all parts of the same, and the Concessionaire shall grant and allow such inspection and viewing without undue conditions, provided the STATE does not unreasonably interfere with the conduct of the Concessionaire's Concession business.

F. No Abatement. No abatement of rents, fees or other charges shall be claimed by or allowed to the Concessionaire by reason of the STATE's exercise of any or all of the rights

contained in this Article XIV (Rights of Entry Reserved) herein; provided, however, that nothing in this Article XIV (Rights of Entry Reserved) contained shall permit or be construed to permit the STATE to exercise any right of access or entry for any of the purposes denoted hereinabove, 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 by the Concessionaire.

ARTICLE XV. UTILITY SERVICE

A. Utility Services to Premises.

1. Services Provided. The STATE shall provide in the terminal buildings of the Airport the following utility services: reasonable amounts of water, electricity, telephone, wastewater outlets, heating, ventilation and air conditioning to a point determined by the STATE. All extensions of the facilities required by the Concessionaire for said utility services from the point(s) at which the STATE makes such utility services available shall be at the Concessionaire's sole cost and expense. Any utility services provided by the STATE shall be conditioned upon the availability of adequate sources. The STATE shall have the right to reduce heating, cooling and lighting as required by any mandatory or voluntary energy saving allocation, or similar statute, regulation, order or program.

2. Utility Costs. During the term of this Concession Agreement, all utility charges, including, but not limited to, deposits, installation costs, meter deposits, and all service charges for electricity and other public utility services to the Premises (such as water, telephone and wastewater) shall be paid by the Concessionaire, regardless of whether such utility services are furnished by the STATE or by utility service providers.

3. Service Points. If the Concessionaire desires any changes to any points of supply as described in this Article XV (Utility Service), the expense of making such changes or alterations shall be at the Concessionaire's sole cost. When the Concessionaire makes connections or re-connections, due to repairs to the service points or lines provided by the STATE or makes service disconnections to cease service, the Concessionaire shall comply with the STATE's procedures to provide the necessary advance request and notice, and coordinate said action to make connections, re-connections or disconnections with the STATE.

4. Meters. The Concessionaire, at its sole cost and expense, shall be responsible for the installation of electric and water meters and shall connect said utility meters to the energy monitoring and control system at the Airport. For metered electricity, the Concessionaire shall pay electricity charges based on rates charged the STATE, but on non-metered Premises, the Concessionaire shall pay a pro-rata share to be determined by the STATE.

5. No Overload. The Concessionaire shall not use any utility services in any way which overburdens and/or overloads any utility facilities. The Concessionaire shall not install any equipment which shall exceed the capacity of any utility facilities or which shall require additional utility facilities without the STATE's prior written approval, in the STATE's

sole discretion. If such installation is approved by the STATE and if the STATE provides such additional facilities to accommodate Concessionaire's installation, Concessionaire agrees to pay the STATE, on demand, the cost of providing such additional utility facilities.

B. Non-Liability for Interruption of Utility Services.

1. Concessionaire Not Relieved. 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 Concessionaire of any of its obligations hereunder, or shall be construed to be an eviction of the Concessionaire, or shall constitute grounds for any diminution or abatement of the rents, fees and charges provided for herein, or grounds for any claim by the Concessionaire against the STATE for damages (consequential or otherwise), unless first approved, in writing, by the STATE in its sole discretion.

2. Waiver of Damages. The Concessionaire 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, air conditioning) or for the failure or interruption of any public or passenger conveniences. The Concessionaire'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.

3. Damage Repair. If any damage to any electricity, water, sewer, telecommunication, or telephone service line or facility or utility service connection, or any other utility service line or facility or utility service connection is caused by the Concessionaire, or the Concessionaire's agents, the Concessionaire shall, at its sole cost and expense, repair, restore or replace such utility service line or facility or utility service connection.

C. Telecommunications Equipment.

1. STATE's Prior Approval. The Concessionaire 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 Premises (such as common areas and other respective non-leasehold areas of the Airport), or in currently designated or future primary or secondary minimum-points-of-entry. The Concessionaire shall be responsible for paying the STATE 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 operators, and any entity which provides telecommunication services, such as Hawaiian Telcom, AT&T, government entities, or other Airport tenants.

3. Plans. The Concessionaire 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, to the STATE for approval 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 Concessionaire 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 containing a separate stamp of the Concessionaire's licensed contractor who completed the system, circuits and infrastructure or accompanied by the Concessionaire's attestation that said as-built documentation are true and accurate.

5. No Sale. The Concessionaire 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 the Concessionaire shall not interfere with the STATE's telecommunication facilities and services. All such facilities and services shall comply with all applicable municipal, state, and federal rules and regulations, including without limitation, the Federal Communications Commission licensing regulations and the State of Hawaii Public Utilities Commission.

7. STATE's Corrective Actions. The Concessionaire 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 the Concessionaire's non-compliance with this Article XV (Utility Service).

ARTICLE XVI. INSURANCE

A. Generally

1. Concessionaire's Cost. The Concessionaire shall procure, at its sole cost and expense, and keep in effect at all times during the term of this Concession Agreement, the types and amounts of insurance coverages specified herein. The specified insurance shall also, either by provisions in the policies, by the STATE's own endorsement form or by the endorsement attached to such policies, include and insure the STATE, the STATE's Agents and their successors and assigns, as insured, against the areas of risk covered by the insurance coverages specified herein, including, without limitation, protection against any and all claims,

demands, suits, actions, causes of action, judgments, liabilities, losses, damages, costs and expenses, including costs of suit and attorneys' fees, resulting from any bodily or personal injury, death or property damage, arising out of or related to any acts or omissions of the Concessionaire, the Concessionaire's agents or occupants, the use and occupancy of the Airport, including the Premises and the roadways of the Airports by the Concessionaire, the Concessionaire's agents and occupants and the operation of the Concession on the Premises, including related functions performed by or on behalf of the Concessionaire at the Airport.

2. Form of Policies.

a. Form and Substance. All insurance required to be furnished by the Concessionaire hereunder shall be pursuant to policies in form and substance satisfactory to the STATE and issued by companies of sound and adequate financial responsibility, who are licensed and authorized to do business in the State of Hawaii, all as satisfactory to the STATE. The STATE may, upon reasonable notice and reasonable grounds increase or change the insurance required hereunder, in which event the Concessionaire shall obtain such required insurance.

b. Required Provision. All insurance, except the Workers' Compensation and Employer's Liability Insurance, shall:

(1) Additional Insured. Name the STATE, the STATE's Agents and their successors and assigns as additional insureds.

(2) Severability of Interest. Contain a severability of interest (cross liability) clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability." and a contractual endorsement which shall state "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under insured's Concession Agreement with the State of Hawaii at Daniel K. Inouye International Airport in the State of Hawaii."

(3) Waiver of Subrogation. Contain a waiver of subrogation endorsement in favor of the STATE.

(4) Notification. Provide that the STATE shall be notified, in writing, at least sixty (60) days prior to any termination, cancellation or material change to any such insurance policy (including the Worker's Compensation and Employer's Liability Insurance).

c. All Insurance. All insurance shall;

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

(2) No Premiums. Not require the STATE to pay any premiums for any insurance coverage required to be obtained by the Concessionaire under this Concession Agreement.

(3) No Partnership. Not be construed to mean that the inclusion of the STATE, the STATE's Agents and their successors and assigns, as insureds or additional insureds, is not intended to, and shall not, make them or any of them, a partner or joint venturer with the Concessionaire, in the operation of the Concession at the Premises or the Airport.

(4) Deductibles. Provide for reasonable deductibles or retentions, acceptable to the STATE, based upon the nature of the Concessionaire's operation of the Concession and the type of insurance involved.

(5) Failure to obtain. Allow that upon failure of the Concessionaire to provide and maintain the insurance required herein after a ten (10) day prior written notice to comply from the STATE, the STATE may, but shall not be required to, procure such insurance at the Concessionaire's sole cost and expense and the Concessionaire agrees to immediately reimburse the STATE for the cost thereof plus fifteen percent (15%) for administrative overhead. Any lapse in, or failure by the Concessionaire to procure, maintain and keep in full force and effect such insurance coverage as is required under this Concession Agreement, at any time during and throughout the term of this Concession Agreement, shall be a violation of this Concession Agreement and shall give the STATE the right to assess additional rent and/or terminate this Concession Agreement pursuant to Article VI.G (Additional Charges) and Article XVIII (Termination by STATE), respectively, herein.

d. Subrogation. The STATE agrees to release the Concessionaire from the STATE's claim for loss or damage caused by fire or other casualty covered by fire insurance policies, with extended coverage, to the extent of any payment received by the STATE from the insurers. This release includes also a waiver of subrogation by the STATE's insurer of any right of action against the Concessionaire in the event of such loss or damage and payment therefor to the STATE. Said waiver of subrogation is conditional upon acceptance of such waiver by the STATE's insurer affected thereby. Evidence of such waiver shall be in writing.

e. Proof of Insurance. The Concessionaire shall provide proof of all specified insurance and related requirements to the STATE either by production of the actual insurance policies, by use of the STATE's own endorsement forms, by broker's letter acceptable to the STATE in both form and content, or by other written evidence of insurance acceptable to the STATE, together with appropriate written evidence, satisfactory to the STATE, that the insurance premiums thereon have been paid. The documents evidencing all specified coverages shall be submitted to the STATE prior to the Concessionaire occupying the Premises. Each policy shall contain the applicable policy number, the inclusive dates of policy coverage and the insurance carriers' name, shall bear an original signature of an authorized representative of said carrier and shall provide that such insurance shall not be subject to cancellation, reduction in coverage or nonrenewal except after written notice by certified mail, return receipt requested, to

the STATE at least thirty (30) days prior to the effective day thereof. The STATE reserves the right to have submitted to it, upon request, all pertinent information about the agent and carrier providing such insurance.

f. Annual Review. The Concessionaire agrees that the insurance limits specified by the STATE herein shall be reviewed for adequacy annually throughout the term of this Concession Agreement by the STATE who may, thereafter, require the Concessionaire to adjust the types and/or amounts of insurance coverage to whatever types and/or amounts the STATE deems to be adequate, in its sole discretion.

B. Construction. Before commencing construction of any initial or subsequent work on Concession Improvements or the installation of FFE on, in or at the Premises, or any portion thereof, the Concessionaire 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, or require all its contractors and subcontractors to procure, maintain and keep in full force and effect during and throughout the entire period of construction and installation, adequate insurance to protect both the STATE and the Concessionaire against the risks mentioned in Article XVI.A (Generally) herein, which risks shall be covered by a policy or policies of insurance of the types and minimum amounts indicated as follows:

1. Commercial 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 Personal/Advertising Injury (subject to a Personal/Advertising Injury Aggregate of at least \$1,000,000.00) arising out of contractor’s or sub-contractor’s Premises, Operations, Products, and Completed Operations. The policy shall include Contractual Liability for Bodily Injury and Property Damage obligations assumed in the contract or agreement between the Concessionaire and Concessionaire’s contractor or sub-contractor, Broad Form Property Damage, coverage for explosion, collapse, and underground hazards “XCU”, and Fire Damage Legal Liability (Damage to Rented Premises) of not less than \$100,000.00 Each Occurrence.

2. Workers' Compensation and Employers' Liability. Workers’ Compensation coverage meeting the statutory requirements of the State of Hawaii 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 Hawaii laws.

3. Builder's Risk. Concessionaire or Concessionaire’s contractors shall procure property insurance written on a builder’s risk “all risk” or equivalent policy form, including insurance against the perils of fire (with extended coverage) and risks of physical loss or damage including but not limited to theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, testing and startup. Coverage shall also apply to temporary buildings 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 contract sum, plus the value of subsequent contract modifications and the cost of materials supplied or installed by others, comprising the total value for the entire project at the site on a Replacement Cost basis, including reasonable compensation for architect's, engineer's, and similar consultant's services and expenses. This property insurance shall include coverage for portions of the project when stored off site or in transit. Such property insurance shall be maintained until the project is completed or until no person or entity has an insurable interest in the property other than Concessionaire and STATE, whichever is later. This insurance shall include the insurable interests of STATE, Concessionaire, and Concessionaire's Contractors, Sub-Contractors, and Sub-subcontractors in the project, as their interest may appear. If this property insurance includes deductible provisions, the Concessionaire shall pay all deductibles or costs not covered because of such deductible provisions.

4. Professional Liability. When any architects, engineers, construction managers, or other professional consultants are hired by Concessionaire or Concessionaire's contractors or sub-contractors, Professional Liability Insurance covering their errors and omissions shall be maintained with limits of at least \$1,000,000.00 Each Occurrence and including contractual liability. If or when such policies are renewed or replaced, any policy retroactive date on the renewal or replacement policy must coincide with or precede the date work started under the contract for professional services. Any claims-made policy which is not renewed or replaced must have an extended reporting period of at least two (2) years.

C. Operation. The Concessionaire shall, at its sole cost and expense, procure, maintain and keep in full force and effect during and throughout the term of this Concession Agreement, adequate insurance to protect both the STATE and the Concessionaire against the risks mentioned in Article XVI.A (Generally), which risks shall be covered by a policy or policies of insurance of the types and minimum amounts indicated as follows:

1. Comprehensive General Liability Insurance: Combined single limit coverage of not less than \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate per policy year, arising from any one accident or other cause covering:

- a. Bodily injury and death.
- b. The Premises, completed products and operations of the Concessionaire.
- c. Contractual liability for any general indemnification agreement in any contract including, without limitation, this Concession Agreement.

2. Property Damage Liability Insurance, including Broad Form Property Damage Insurance and, where applicable, Underground, Explosion and Collapse Hazard Liability Insurance: Combined single limit coverage of not less than \$1,000,000.00 per occurrence arising from any one accident or other cause;

3. Workers' Compensation Insurance: Workers Compensation insurance shall be not less than \$1,000,000.00 each accident, \$1,000,000.00 each employee by disease, \$1,000,000.00 policy aggregate by disease, or such higher amount as may be otherwise required by applicable federal and state laws;

4. Employment Practices Liability Insurance: Employers' Liability Insurance shall be not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate per year;

5. Water Damage Legal Liability Insurance: Combined single limit coverage of not less than \$50,000.00 per occurrence arising from any one cause; and

6. Fire and Extended Coverage Insurance for Other Hazards and Perils: On all of the buildings, structures and other improvements, including the Concession Improvements, whether owned by the STATE or the Concessionaire, and the Concessionaire's FFE in or on the Premises, or any portion thereof, as would be procured and maintained by a reasonable and prudent owner thereof, the necessary fire policy or policies and extended broad form coverage for other hazards and perils such as, but not limited to: hail, windstorm, hurricane, lightning, explosion, smoke, sprinkler leakage, vandalism, malicious mischief, damage by aircraft and glass, the minimum combined replacement value of which shall be not be less than \$500,000.00 or the value of the Concession Improvements as submitted by the Concessionaire to the STATE, whichever is greater, per occurrence arising from any one cause.

7. Business Interruption Insurance. Business interruption insurance insuring that the minimum annual guaranteed fee in effect under this Concession Agreement during the time of the business interruption will be paid to the STATE for a period of one (1) year if the Concessionaire is unable to operate the Concession at the Premises due to a risk required to be insured against by the Concessionaire hereunder. This business interruption insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots or other civil commotion.

8. Other Insurance. Any other form of insurance as the STATE may reasonably require from time to time in amounts as the STATE may reasonably require, including but not limited to insurance for insurable risks against which a prudent tenant would protect itself and for insurable risks against which landlords of comparable properties in the State of Hawaii require their tenants.

D. Motor Vehicles. The Concessionaire, at its sole cost and expense, shall procure, maintain and keep in full force and effect during and throughout the term of this Concession Agreement, State of Hawaii No-Fault motor vehicle (or automobile) liability insurance policy or policies of at least (1) \$1,000,000.00 per person per accident and \$1,000,000.00 per occurrence for bodily injury and death; (2) an aggregate of \$2,000,000.00 per accident or occurrence for bodily injury and death; and (3) \$50,000.00 per accident or occurrence for property damage; and (4) a combined single limit coverage of not less than \$1,000,000.00 per accident or occurrence for bodily injury, death and property damage for each of its motor vehicles or automobiles,

including each motor vehicle or automobile from the Concessionaire's fleet operating on or within any Airport roadways and other areas of the Airport. For all vehicles operated by the Concessionaire or the Concessionaire's agents or occupants, entering and operating within the restricted Air (Aircraft) Operational Area of the Airport, the Concessionaire shall obtain additional insurance coverage of at least (i) \$5,000,000.00 per person per accident for bodily injury and death; (ii) an aggregate of \$5,000,000.00 per accident or occurrence for bodily injury and death; (iii) \$5,000,000.00 per accident or occurrence for property damage; and (iv) a combined single limit coverage of not less than \$5,000,000.00 per accident or occurrence for bodily injury, death and property damage. The insurance obtained by the Concessionaire hereunder shall cover all of the Concessionaire's agents and occupants or the Concessionaire shall require the Concessionaire's agents and occupants to obtain, at their sole cost and expense, such insurance coverage in favor of the STATE.

ARTICLE XVII. DAMAGE OR DESTRUCTION

A. Partial Damage. If all or a portion of the Premises 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 the limitations as hereafter provided; if said damage is caused by the negligence or omission to act of the Concessionaire, the Concessionaire's agents or occupants, the Concessionaire shall be responsible for directly and fully paying for all such repair and for directly and fully reimbursing the STATE for the cost and expenses incurred in such repair upon demand and as directed by the STATE.

B. Extensive Damage. If the damages are so extensive as to render 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 the limitations as hereafter provided, and an appropriate portion of the rents, fees, and charges payable herein shall abate from the time of the damage until such time as the 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 of the Concessionaire, the Concessionaire's agents or occupants, said rents, fees, and charges will not abate and the Concessionaire shall be responsible for reimbursing 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 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 replaced except after more than thirty (30) days, the STATE shall be under no obligation to repair, replace, or reconstruct the Premises, and an appropriate portion of the rents, fees, and

charges payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the Premises are fully restored. The STATE shall notify the Concessionaire 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 Premises have not been repaired or reconstructed, the Concessionaire 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 Concessionaire's obligations as set forth in this Concession Agreement, particularly in Article XLIII (Survival of Obligations) herein. Notwithstanding the foregoing, if the Premises, or a substantial portion thereof, are completely destroyed as a result of the negligence or omission to act of the Concessionaire, the Concessionaire's agents or occupants, said rents, fees, and charges shall not abate and the STATE may, in its discretion, require the Concessionaire to repair and reconstruct the Premises within twelve (12) months of such destruction and pay the cost therefor, or the STATE may repair and reconstruct the same within twelve (12) months of such destruction and the Concessionaire shall reimburse the STATE for the cost 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 Premises to restore it to an unfinished space consisting of plastered or particle board walls, structural ceiling, concrete flooring and the utility stub outs, or nearby connections as further described in Article XV (Utility Service). Concession Improvements, redecoration and replacement of furniture, equipment, supplies and FFE shall be the sole responsibility of the Concessionaire and any such Concession Improvements, redecoration, refurbishing, and reequipping shall be at a minimum equivalent in quality to that originally installed.

E. Restrictions on Abatement. The foregoing provisions for abatement of the obligation to pay rents, fees, and charges required under this Concession Agreement and for cancellation of this Concession Agreement shall not apply if the Concessionaire has caused or is responsible in any part for the Premises becoming damaged, destroyed, untenable, or uninhabitable.

ARTICLE XVIII. TERMINATION BY STATE

A. Events of Default. The Concessionaire shall be in breach or violation of this Concession Agreement, and the STATE shall have the right to terminate this Concession Agreement if any one or more of the following events ("**Default**") shall occur:

1. Transfer of Interest. When, without the prior written approval or consent of the STATE, any interest of the Concessionaire under this Concession Agreement shall be transferred or assigned, whether voluntarily or involuntarily, by reason of assignment, sublease 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 Concessionaire, without the prior written approval or consent of the STATE and except to the extent permitted in Article XXVIII (Assignment and Subletting), is changed by inter vivos stock transfer to one or more individuals or entities who are not stockholders at the inception of this Concession Agreement, or if the Concessionaire 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 Concessionaire is a partnership of any type and the partnership is dissolved as a result of any act or omission of its partners or any 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 shall take possession of all or substantially all of the property of the Concessionaire, and such possession or control shall continue in effect for a period of at least fifteen (15) days, without being contested by the Concessionaire in good faith by proper legal proceedings within said fifteen (15) day period; or

5. Bankruptcy. When a petition is filed by or against Concessionaire in connection with any of the following: (i) in any bankruptcy or other insolvency proceeding; (ii) seeking any relief under any state or federal debtor relief law; (iii) for the appointment of a liquidator or receiver for all or substantially all of Concessionaire's property or for Concessionaire's interest in this Concession Agreement; (iv) for the reorganization or modification of Concessionaire's capital structure; or (v) in any assignment for the benefit of creditors; however, if such a petition is filed against Concessionaire, then such filing shall not be a Default unless Concessionaire fails to have the proceedings initiated by such petition dismissed within ninety (90) days after the filing; or

6. Abandonment. When the Concessionaire shall voluntarily abandon, desert or vacate the Premises, or discontinues its operation of the Concession on or at the Premises, which includes but is not limited to voluntary abandonment, deserting or vacating any part of the Premises; or

7. Prevented From Use. After exhausting or abandoning any right of further appeal, the Concessionaire shall be prevented for a period of at least ninety (90) days by the action of any governmental agency from using the Premises, regardless of the fault of the Concessionaire; or

8. 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

9. Successor Corporation. The Concessionaire 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

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

11. Failure to Pay Rent/Fees. When the Concessionaire fails to duly and punctually pay the rents, fees and/or 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 Concessionaire's receipt of a written notice from the STATE demanding such payment or payments; or

12. Failure to Pay Taxes. When the Concessionaire fails to duly and punctually make payments due to any agency of the State of Hawaii or any political subdivision (county) of the State of Hawaii, including, but not limited to, payments for any permit, license or lease, 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

13. Poor Quality Control. When the Concessionaire fails to provide, maintain and upgrade, as necessary, the quality of Concession merchandise or services to the satisfaction of the STATE, as required by Article V (Use of Premises) and Article VIII (Concession Operation) herein, within fifteen (15) days from and after receipt of written notice from the STATE to correct or cure the condition objected to; or

14. Failure to Perform. When the Concessionaire fails to keep, perform, and observe each and every other 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 Concessionaire's receipt of a written notice from the STATE of such breach or violation by personal service or registered mail or certified mail to the Concessionaire, except where fulfillment of the Concessionaire's obligation requires activity over a period of time, and the Concessionaire begins to perform whatever may be required for fulfillment within ten (10) days after receipt of said written notice and diligently continues such performance, showing reasonable improvement or correction, without interruption except for causes beyond the Concessionaire's control; or

15. General Assignment. The Concessionaire 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 United States, or of any state 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 Premises; or

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

17. Other Contract. When the Concessionaire fails to cure or remedy any breach or violation of any promise, covenant, term and condition in any other permit, contract lease, or other agreement entered into with STATE by Concessionaire at and/or 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 this Article XVIII.A (Events of Default) herein, 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 Concessionaire.

If the Concessionaire 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:

1. 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.G (Additional Charges) hereof; and

2. Termination Letter. Concurrent with or subsequent to the assessment of such additional charge, 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 Concessionaire.

If this Concession Agreement is terminated by the STATE because of default, the Concessionaire will not be allowed to apply for any other concession or lease offered by the State of Hawaii for a period of five (5) years following the date of termination as prescribed and set forth under Section 171-13, HRS, as applicable, or any other applicable law.

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 this Article XVIII.B (Default and Termination) herein, the right to re-enter the Premises and every part thereof demised under this Concession Agreement 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 Concessionaire under this Concession Agreement, and shall in no event constitute an acceptance of surrender.

D. Concessionaire's Rights Cease. Upon such termination by the STATE, all rights, powers and privileges of the Concessionaire granted hereunder shall cease. Unless otherwise

stated herein, the Concessionaire shall immediately vacate the Premises occupied and used by it under this Concession Agreement, and the Concessionaire 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, the Concessionaire shall have no right to or claim upon any Concession Improvements or the value thereof, which may have been previously constructed, installed, erected or placed by the Concessionaire on, in or at the Premises. The STATE may also remove or store any of the Concessionaire's FFE located thereon or therein, at the sole cost and expense of the Concessionaire, without the STATE being liable to the Concessionaire for damage or loss thereby sustained by the Concessionaire.

E. Waiver of Redemption and Damage. The Concessionaire 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 to remove the Concessionaire, the Concession Improvements and the Concessionaire's FFE from the Premises and store or dispose of any of the Concessionaire's property, including the Concessionaire's FFE.

The Concessionaire hereby waives any and all rights of redemption granted by or under any present or future law or statute in the event it is dispossessed for any cause, or in the event the STATE obtains or retains possession of the Premises in any lawful manner. The Concessionaire further agrees that in the event the manner or method employed by the STATE in reentering or regaining possession of the Premises gives rise to a cause of action in the Concessionaire in forcible entry and detainer under the laws of the State of Hawaii, the total amount of damages to which the Concessionaire shall be entitled in any such action shall be the sum of One Dollar (\$1.00), and the Concessionaire 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 Concessionaire's Obligations.

1. Concessionaire's Obligations Remain. In the event this Concession Agreement is terminated by the STATE, or in the event the STATE reenters, regains or resumes possession of the Premises, all of the obligations of the Concessionaire 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. Rent Remains Due. Subject to the STATE's obligation to mitigate damages, the amount of the rent, fees and charges 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, reentry, regaining or resumption of possession 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. Subsequent to Termination. The amount of damages for the period of time subsequent to termination, reentry, regaining or resumption of possession, subject to an offset for any rents, fees and charges received by the STATE during the remaining term of this Concession Agreement as if no termination, reentry, regaining or resumption of possession had taken place from a succeeding operator of the Concession, shall be the greater of:

a. MAG. On account of the Concessionaire's MAG obligation, the cumulative total thereof less the amount paid prior to the effective date of termination, reentry, regaining or resumption of possession; or

b. Percentage Fees. On account of the Concessionaire's percentage of annual gross receipts, the appropriate amount if in excess of said MAG, which gross receipts would have been received by the Concessionaire during the balance of the term of this Concession Agreement as if there had been no termination, reentry, regaining or resumption of possession. For the purpose of calculation hereunder, the amount of gross receipts shall be derived by taking the Concessionaire's total gross receipts during the twelve (12) months immediately preceding termination, dividing said total by three hundred sixty-five (365) days and then multiplying the result by the number of days in the balance of term hereof.

4. No Effect on STATE's Rights. The STATE and the Concessionaire agree that the damages specified above shall not affect or be construed to affect the STATE's right to such damages in the event of termination, reentry, regaining or resumption of possession where the Concessionaire has not received any actual gross receipts under this Concession Agreement.

G. Additional Rights of STATE. The STATE, upon termination of this Concession Agreement, or upon reentry, regaining or resumption of possession of the Premises, may occupy the Premises and shall have the right to permit any person, firm, corporation or entity to enter upon the Premises and use the same. Such occupation by others may be of only a part of the Premises, or the whole thereof or a part 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 shall also have the right to repair or to make such structural or other changes in the Premises as are necessary in its judgment to maintain the suitability thereof for uses and purposes similar to those granted under this Concession Agreement without affecting, altering or diminishing the obligations of the Concessionaire hereunder.

H. Termination Before Commencement. If any of the events enumerated in this Article XVIII.A (Events of Default) herein shall occur prior to the commencement of this Concession Agreement term, the Concessionaire shall not be entitled to enter into possession of the Premises, or any portion thereof, and the STATE, upon the occurrence of any such event, or at any time thereafter during the continuance thereof, by twenty-four (24) hours' notice, may cancel or terminate the interest of the Concessionaire under this Concession Agreement, such cancellation or termination to be effective upon the date specified in such notice.

ARTICLE XIX. WAIVER

A. STATE Waiver. No acceptance by the STATE of rents, 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 Concessionaire, shall 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 of the other party under this Concession Agreement or to exercise any right, power or remedy consequent upon a breach thereof shall 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 Concessionaire, in the performance of any of the covenants, provisions, requirements, stipulations, terms or conditions of this Concession Agreement shall 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 default, performance or 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 XX. 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 the Concessionaire has breached this Concession Agreement or has been or then is in default: (1) to withdraw all or a portion of the Premises from this Concession Agreement, terminate and cancel this Concession Agreement with respect to the portion of the Premises so withdrawn and to reoccupy said portion of the Premises thereunder in the public interest or (2) to recapture any portion of the Premises not utilized by the Concessionaire for the purposes identified or prescribed by this Concession Agreement.

B. Notice. The STATE shall give the Concessionaire written notice of any such withdrawal or recapture and the STATE's intent to cancel or terminate this Concession Agreement as to the portion of the Premises so withdrawn or recaptured no less than sixty (60) days prior to the effective date of such cancellation or termination.

C. Concession Improvements. Except as provided in Article XX.D. (No Claim Against the STATE), the STATE shall pay to the Concessionaire the then unamortized value of the Concession Improvements constructed or installed by the Concessionaire, at the

Concessionaire's sole cost and expense, in, at or upon the portion of the Premises being withdrawn or recaptured.

The unamortized value of the withdrawn Concession Improvements shall be determined to be the balance after the depreciation taken on the most accelerated basis allowed under the Internal Revenue Code, regardless if such accelerated method is used by the Concessionaire.

D. No Claim Against the STATE. The Concessionaire shall peaceably surrender the portion of the Premises the STATE desires to withdraw or recapture and the Concessionaire shall remove all Concession Improvements and the Concessionaire's FFE in accordance with Article XII (Surrender of Premises) herein if required by the STATE, all at no cost to the STATE. The Concessionaire shall not, by reason of its surrender, be entitled to any claim against the STATE for any reduction in rent or for any of the Concessionaire's cost of removal. If an alternate location at the Airport is made available by the STATE, in its sole discretion, the STATE may permit the Concessionaire, without rent adjustment and by appropriate amendment to this Concession Agreement, to relocate the portion of its Concession business affected by the withdrawal or recapture to the alternate location, all at no cost to the STATE. The Concessionaire shall not be entitled to any other payment (except as provided herein) for the STATE's withdrawal or recapture of the requested portion of the Premises. If the Concessionaire is in breach of any provision of this Concession Agreement or has been or then is in default of this Concession Agreement, the STATE need not compensate the Concessionaire for the unamortized value of the Concession Improvements. In such event, the Concessionaire shall be deemed to have waived its rights to the Concession Improvements and any compensation that might be payable therefor.

E. Surrender of Entire Premises. If the surrender of the portion of the Premises requested by the STATE renders the remainder of the Premises unsuitable for the purposes of the Concessionaire under this Concession Agreement, and the STATE does not provide an alternate location, the Concessionaire may surrender the remainder of the Premises and be relieved of any further obligation hereunder except with respect to such other obligations of the Concessionaire which are intended to survive the termination of this Concession Agreement, including, without limitation, those obligations set forth in Article XLIII (Survival of Obligations) herein.

F. Potential Concession Fee Reduction. If such withdrawal or recapture causes any portion of the Premises to become unusable for the operation of the Concession, as authorized under this Concession Agreement, and the STATE does not provide an alternate location for such operation, the Concession Fee shall be reduced as follows:

1. Non-sales Space. For all non-Sales space comprising the Premises that are withdrawn or recaptured, the Concession Fee paid by the Concessionaire will be reduced by a factor comprising the square footage of the space so withdrawn or recaptured multiplied by the applicable rates and charges established by the STATE for the applicable category of space.

2. Sales Space. For the Sales spaces of the Premises that are withdrawn or recaptured, the Concession Fee paid by the Concessionaire shall be reduced as follows:

a. Percentage of Gross Receipts. Of the total gross receipts generated by the Premises for the twelve (12) months immediately preceding the date the STATE requests withdrawal or recapture, determine the percentage whose numerator is the gross receipts attributable to the Sales space of which the portion of the Premises to be withdrawn or recaptured is a part (hereafter the “Target Sales Space”) and whose denominator is the total gross receipts.

b. Greater of MAG or Percentage Fee. Multiply the percentage derived in Article XX.F.2.a. (Percentage of Gross Receipts) by the greater of the MAG or the Percentage Fee.

c. Target Sales Space Area. Divide the product derived in Article XX.F.2.b. (Greater of MAG or Percentage Fee) by the square footage of the Target Sales Space.

d. Value of Withdrawn Sales Space. Multiply the square foot value derived in Article XX.F.2.c. (Target Sales Space Area) with the square footage of the portion of the Target Sales Space being withdrawn or recaptured. The resulting product is the amount by which the Concession Fee payable for the remainder portion of the Target Sales Space not withdrawn or recaptured shall be reduced.

ARTICLE XXI. TERMINATION BY CONCESSIONAIRE

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

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

2. Assumption. The lawful assumption by the United States 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 Concessionaire from operating the Concession there at for a period of at least sixty (60) consecutive days.

3. 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.

4. 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, 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.

5. Damage. The damage or destruction of the Premises of the nature described in Article XVII.C (Complete Destruction) herein.

ARTICLE XXII. SUSPENSION OR ABATEMENT

Upon the occurrence or maturity of any of the termination events contained in Article XXI (Termination by Concessionaire) herein, the Concessionaire 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 concession fee obligations of the Concessionaire hereunder, as may be mutually agreed upon, in writing, by and between the STATE and the Concessionaire, 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 XXII (Suspension or Abatement) shall be construed as prohibiting the STATE from exercising its rights under Article XX (Withdrawal) to withdraw or recapture all or any portion of the Premises.

ARTICLE XXIII. 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 United States 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 agreement(s) and the occupancy by the Concessionaire of the Premises, and its use thereof pursuant to Article V (Use of Premises) herein, this Concession' Agreement or the particular terms and conditions affected thereby shall be suspended or terminated without the STATE being liable for any damages.

This Concession Agreement shall be subordinate in all respects to the provisions of any existing or future Joint-Use Agreement between the STATE and the United States Navy, the United States Army or the United States Air Force. In the event of any such inconsistency described in the preceding section between this Concession Agreement and any existing or future Joint-Use Agreement, this Concession Agreement or the particular terms and conditions affected thereby 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 shall have the right to enter into any agreement with the

United States 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 agreement is executed, the provisions of this Concession Agreement, insofar as they are inconsistent with the provisions of the agreement with the United States Government, shall be suspended without the STATE being liable for any damages.

C. Rights of Concessionaire. Nothing in this Article XXIII (Subordination) contained shall detract from or limit, nor be construed to detract from or limit, the rights of the Concessionaire set forth in Articles XXI (Termination by Concessionaire) and XXII (Suspension or Abatement) herein, to seek damages or compensation from other than the STATE in the event of the execution of any such agreement described above, the terms of which are or may be inconsistent with the rights of the Concessionaire under this Concession Agreement.

ARTICLE XXIV. CONDEMNATION

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

1. "**Award**" means all compensation, sums or value paid, awarded or received for 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 taken passes to and vests in the condemnor, and (b) the date on which the Concessionaire is dispossessed.

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, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

B. General. If during this Concession Agreement term, any Taking of all or any part of the Premises or any interest in this Concession Agreement occurs, the rights and obligations of the parties hereunder shall be determined pursuant to this Article XXIV (Condemnation). The STATE and the Concessionaire 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 occurs (all of the Premises 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 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 untenable or unsuitable for continued use by the Concessionaire for the operation of the Concession; (b) the condition rendering the Premises 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. If an alternate location is made available by the STATE, in its sole discretion, the STATE may permit the Concessionaire, without rent adjustment and by appropriate amendment to this Concession Agreement, to relocate the portion of its Concession business affected by the Taking to the alternate location, all at no cost to the STATE. In such event, the Concessionaire shall not be entitled to any other payment for the partial Taking.

2. Material Portion Taken. If a partial Taking of a material portion of the Premises or the Airport terminal structure within which a portion of the Premises 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 XXIV (Condemnation) shall be exercised by the STATE giving notice to the Concessionaire on or before the date that is one hundred twenty (120) days after the Date of Taking, and thereafter this Concession Agreement shall terminate upon the thirtieth (30th) day after such notice is given.

E. Award. Upon termination of this Concession Agreement pursuant to a Total Taking under Article XXIV.C (Total Taking; Automatic Termination) or an election under Article XXIV.D. (Partial Taking; Election to Terminate) herein then:

1. Concessionaire.

a. Rent/Fees. The Concessionaire'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 Concessionaire 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 XLIII (Survival of Obligations) herein.

c. Concession Improvements. The Concessionaire shall be entitled to recover the unamortized value of the Concession Improvements constructed and installed on the Premises by the Concessionaire. The unamortized value of the Concession Improvements shall be determined to be the balance after the depreciation taken on the most accelerated basis allowed under the Internal Revenue Code, regardless if such accelerated method is used by the Concessionaire.

d. No Claim Against the STATE. The Concessionaire shall have no claim against the STATE or others for (i) compensation or indemnity for the Concessionaire's leasehold interest and (ii) compensation and damages payable for or on account of land

(including access rights) or improvements thereon (except as provided in Article XXIV.E.1.c. (Concession Improvements) herein).

e. Separate Claim Against Condemning Authority. The Concessionaire may make a separate claim for compensation from the condemning authority for the Concessionaire's relocation expenses, or the interruption of or damage to the Concessionaire's business or damage to the Concessionaire's personal property. If the condemning authority or a court of competent jurisdiction concurs that said claim exists and is justified, the Concessionaire may receive any Award made specifically to the Concessionaire 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 leasehold estate created by this Concession Agreement), except for the unamortized value of the Concession Improvements as set forth in Article XXIV.E.1.c. (Concession Improvements) herein.

F. Partial Taking: Continuation of Concession Agreement. If a Partial Taking of the Premises occurs and this Concession Agreement is not terminated in its entirety under Article XXIV.D (Partial Taking; Election to Terminate) herein, and the STATE does not provide an alternate location for the portion of the Concession business affected by the Taking, then this Concession Agreement shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion of the Premises not taken, and the rights and obligations of the STATE and the Concessionaire shall be modified as follows:

1. Potential Concession Fee Reduction. If the Taking causes any portion of the Premises to become unusable for the operation of the Concession, as authorized under this Concession Agreement, the Concession Fee shall be reduced as follows:

a. Non-sales Space. For all non-sales space comprising the Premises that are part of the Taking, the Concession Fee paid by the Concessionaire will be reduced by a factor comprising the square footage of the space comprising the Taking multiplied by the applicable rates and charges established by the STATE for the applicable category of space.

b. Sales Space. For the Sales spaces of the Premises that are part of the Taking, the Concession fee paid by the Concessionaire shall be reduced as follows:

(1) Percentage of Gross Receipts. Of the total gross receipts generated by the Premises for the twelve (12) months immediately preceding the Date of Taking, determine the percentage whose numerator is the gross receipts attributable to the Sales space of which the area of the Taking is a part (hereafter the "**Taking Sales Space**") and whose denominator is the total gross receipts.

(2) Greater of MAG or Percentage Fee. Multiply the percentage derived in Article XXIV F.1.b.(1) (Percentage of Gross Receipts) by the greater of the MAG or the Percentage Fee.

(3) Taking Sales Space Area. Divide the product derived in Article XXIV.F.1.b. (2) (Greater of MAG or Percentage Fee) by the square footage of the Taking Sales Space.

(4) Value of area of the Taking. Multiply the square foot value derived in Article XXIV.F.1.b.(3) (Taking Sales Space Area) with the square footage of the portion of the area of the Taking Sales Space which is part of the Taking. The resulting product is the amount by which the Concession Fee payable for the remainder portion of the Taking Sales Space not part of the Taking shall be reduced.

2. Concession improvements. The Concessionaire shall be entitled to recover the unamortized value of the Concession Improvements constructed and installed on the Premises by the Concessionaire, the unamortized value of the Concession Improvements shall be determined to be the balance after the depreciation taken on the most accelerated basis allowed under the Internal Revenue Code, regardless if such accelerated method is used by the Concessionaire.

3. No Claim Against the STATE. The Concessionaire shall have no claim against the STATE or others for (i) compensation or indemnity for the Concessionaire's leasehold interest and (ii) compensation and damages payable for or on account of land (including access rights) or improvements thereon (except as provided in Article XXIV.F.2 (Concession Improvements) herein).

4. Separate Claim Against Condemning Authority. The Concessionaire may make a separate claim for compensation from the condemning authority for the interruption of or damage to the Concessionaire's business or damage to the Concessionaire's personal property. If the condemning authority or a court of competent jurisdiction concurs that said claim exists and is justified, the Concessionaire may receive any Award made specifically to the Concessionaire 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 leasehold estate created by this Concession Agreement), except for the unamortized value of the Concession Improvements as set forth in Article XXIV.F.2. (Concession Improvements) herein.

6. Prompt Use. Any portion of the Award received by the Concessionaire shall be used promptly by the Concessionaire to the extent necessary to restore or replace the Concession Improvements on the remaining Premises, 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 the Concessionaire from the Concessionaire's full performance of all covenants, obligations, terms and conditions under this Concession Agreement as to the part of the Premises not part of the Taking and the Concessionaire shall remain responsible for paying to the STATE all fees and charges required under this Concession Agreement.

G. Temporary Takings. Notwithstanding anything to contrary in this Article XXIV (Condemnation), if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Concession Agreement shall remain unaffected thereby, and the Concessionaire shall continue to pay the fees and 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 Concessionaire shall be entitled to receive any Award.

ARTICLE XXV. CONCESSION BOND

A. Requirements. Within thirty (30) days after award of this Concession Agreement or prior to the commencement date of this Concession Agreement, whichever first occurs, and throughout the term of this Concession Agreement and including no less than ninety (90) days after the expiration or sooner termination of this Concession Agreement, the Concessionaire shall deliver to the STATE, and keep and maintain in force and effect at all times a concession bond acceptable to the STATE, in accordance with the terms specified in this Article XXV (Concession Bond), and in the amount equal to six (6) months of the minimum annual guaranteed rent for the appropriate year of the Concession Agreement term, as specified in the Concessionaire's proposal hereof (hereafter 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 Hawaii (hereafter 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's Attorney Approval. Be in a form approved by an authorized representative of the Department of the Attorney General of the State of Hawaii;
4. Guarantee Full Performance. Require the Surety to guarantee to the STATE that the Concessionaire 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 which the Concessionaire is required to perform;
5. Concessionaire's Cost. Be maintained by the Concessionaire, at the Concessionaire's sole cost and expense; and
6. Cover All Concession Operations. Cover all of the Concessionaire's Concession operations during and throughout the term of this Concession Agreement; provided

that suits or actions thereon by the STATE, the State of Hawaii or anyone else entitled to do so may be commenced within the applicable period of limitation for contract claims unless otherwise specifically provided.

B. Surety. If the STATE, in its sole discretion, permits the Concessionaire to use on the Concession Bond sureties other than a surety company licensed and authorized to do business under the laws of the State of Hawaii, such sureties must meet the requirements of all applicable 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 Concessionaire, 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 canceled, the Concessionaire 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 so 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 this Article XXV (Concession Bond) and be forwarded to and received by the STATE at least twenty (20) days prior to the effective date and time of the bond cancellation.

E. Concession Agreement 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 Concessionaire shall be deemed in default of this Concession Agreement, and the full value shown on the face of the Concession Bond and the additional charge of \$250.00 per day that there is no bond coverage shall be payable by the Concessionaire 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.G. (Additional Charges) and Article XVIII (Termination by STATE), respectively, herein.

ARTICLE XXVI. LITIGATION

A. Concessionaire Responsible. Except to the extent caused by the gross negligence and/or willful misconduct of the STATE, if the STATE shall be made a party to any litigation commenced by or against the Concessionaire arising out of the Concessionaire's occupancy or use of the Premises, or attributable to the construction, installation, or use of the Concession

Improvements or the Concessionaire's FFE (other than condemnation proceedings), the Concessionaire shall indemnify, defend with legal counsel acceptable to the STATE, and keep and hold harmless and if appropriate or necessary, 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 with the equivalent number of years of experience in the subject matter area of law for which the STATE's attorneys' services were rendered who practice in the County.

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 Concessionaire 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 XXVII. LIENS

A. STATE's Lien. The STATE shall have a lien upon all the Concessionaire's FFE upon the Premises, to the extent permitted by law, for the purpose of securing to the STATE the payment of all sums, including rents, fees, and other charges, which may be due from the Concessionaire under this Concession Agreement. In the event that past-due rents, fees, or charges are not paid by the Concessionaire within five (5) days after a notice of default is given by the STATE to the Concessionaire, the STATE may take possession of and sell such portion of the Concessionaire's FFE as may be sufficient to pay the delinquent rents, fees, and charges owed by the Concessionaire to the STATE. A sale of the Concessionaire's personal property pursuant to this Article XXVII (Liens) may be made either publicly or privately, upon the notice given to the Concessionaire as herein provided.

B. Other Liens Prohibited. The Concessionaire shall not commit or suffer any act or neglect whereby the Premises, or any portion thereof, including any portion of the Airport or the Concession Improvements thereupon or therein, or the estate or interest of the Concessionaire 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 Concessionaire shall indemnify, defend with legal counsel acceptable to the STATE, save and hold the STATE harmless, and if or when appropriate or necessary, 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 Concessionaire shall have no authority, express or implied, to create any attachment, lien, charge, or encumbrance upon or affecting the Premises, or any portion thereof, except as otherwise authorized in writing by the STATE under this Concession Agreement.

ARTICLE XXVIII. ASSIGNMENT AND SUBLETTING

A. Assignment or Other Transfers.

1. Assignment. The Concessionaire shall not assign, sublet, encumber or otherwise transfer, whether voluntary or involuntary or by operation of law, the Premises or any part thereof or any interest herein, or permit any other person to occupy or use the Premises 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 voidable at the STATE's election. With prior written approval of the STATE, and the prior approval of the Land Board, where necessary and/or where otherwise required by the STATE in its sole discretion, 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, where necessary and/or where otherwise required by the STATE in its sole discretion, pursuant to Section 171-36, HRS; provided further, that prior to the written approval of the STATE of any assignment of this Concession Agreement, the Concessionaire shall deliver to the STATE all information and documentation requested by the STATE with regard to such proposed transfer or assignment, including but not limited to information regarding the terms and consideration. The State's consent may be withheld until all such information and documentation is provided. The STATE shall have the right to review and approve, in writing, the terms including the consideration paid and/or otherwise provided by the assignee, and may condition the STATE's consent to the transfer or assignment of this Concession Agreement on payment by the Concessionaire to the STATE of a premium of 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 Concession Improvements and trade fixtures constructed or installed upon the Premises by the Concessionaire during the term of this Concession Agreement, and being transferred to the assignee, as further explained in the Department of Transportation Assignment of Lease Evaluation Policy, attached hereto as Appendix C, Attachment 4 (hereafter the "**Assignment Policy**"). The Concessionaire shall pay the assignment premium to the STATE as calculated by the STATE based on the Assignment Policy.

2. Changes in Concessionaire.

a. Controlling Interest. The merger of the Concessionaire with any other entity or the transfer of any controlling ownership interest in the Concessionaire, or the assignment or transfer of a substantial portion of the assets of the Concessionaire, whether or not located on the Premises, shall constitute an assignment.

Without limiting the generality of the foregoing, if the Concessionaire 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 Concessionaire, shall be deemed an assignment.

If the Concessionaire is a corporation or limited liability company, any dissolution, merger, consolidation or other reorganization of the Concessionaire or the sale or other transfer of a controlling percentage of the capital stock or membership interests of the Concessionaire or the sale or transfer of at least fifty-one percent (51%) of the value of the assets of the Concessionaire, 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 Concessionaire) of the total combined voting power of all classes of the Concessionaire'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 Concessionaire, or the transfer of Concessionaire'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 XXVIII (Assignment and Subletting).

3. STATE Shall Approve Each Assignment. The consent of the STATE to any one assignment shall not constitute a waiver of the STATE's right to approve subsequent assignments, nor shall consent of the STATE to any one assignment relieve or release any party previously liable as the Concessionaire from any obligation under this Concession Agreement. The acceptance by the STATE of the payment of rent or concession fee 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 Concessionaire as the primary obligor hereunder. Concessionaire shall remain jointly and severally liable with any assignee or transferee for payment of the Concession Fees and for the performance of the obligations under this Concession Agreement. Nor shall the acceptance of rent or concession fee by the STATE constitute a release or waiver of the STATE's rights against the Concessionaire, or as a consent

to any assignment or transfer, nor shall any other act of the STATE in relation to said assignee be so construed. Nor shall any assignment or transfer confer any rights not provided in this Concession Agreement.

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 any other transaction which violates Articles XXVIII.A (Assignment and Other Transfers) or XXVIII.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, 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 Concessionaire shall not rent or sublet the whole or any portion of the Premises without the prior written approval of the STATE in the STATE's sole discretion. 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 subconcessionaire, subtenant, or sublessee and revise the rent and rent structure charged to the proposed subconcessionaire, subtenant, or sublessee by the Concessionaire (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, further, that the rent or concession fee payable by the Concessionaire to the STATE may not be revised downward.

a. Percentage of Gross. In the case where the Concessionaire is required to pay a Concession Fee based on a percentage of its gross receipts, all of the receipts of the subconcessionaire, subtenant, or sublessee or any subsequent subconcessionaires, subtenants, or sublessees, including such person's gross receipts, shall be included as part of the Concessionaire's gross receipts, and the STATE shall have the right to revise the Concession Fee and/or rent of the Premises based upon the rent and rent structure charged to the subconcessionaire, subtenant, or sublessee, including the percentage fee, if applicable, and provided, further, that the rent or Concession Fee may not be revised downward.

b. Combination Sublease/Assignment. If the proposed subconcessionaire, subtenant, or sublessee pays the Concessionaire any consideration other than said rent, whether by cash, credit or otherwise, or the term of the proposed subconcession or subtenant agreement or sublease is for substantially the same term as this Concession Agreement or if it otherwise appears to the STATE that the proposed subconcession or subtenant agreement or sublease is actually an assignment, the STATE may treat the proposed subconcession or subtenant agreement or sublease as an assignment under Article XXVIII.A (Assignment and Other Transfers) herein. If it appears to the STATE that the proposed subconcession or subtenant agreement or sublease is actually a combination of an assignment and a subconcession or subtenant agreement or sublease, then the STATE may treat the proposed subconcession or

subtenant agreement or sublease as both an assignment and a subconcession or subtenant agreement or sublease and apply the applicable portions of Articles XXVIII.A (Assignment and Other Transfers) and XXVIII.B (Subletting), respectively. The gross receipts of all subconcessionaires, subtenants, and sublessees shall be included as part of the Concessionaire's gross receipts.

2. Concession Plan. Prior to the execution and delivery of this Concession Agreement, the Concessionaire shall submit to the STATE, for the STATE's review and approval and as part of the Concessionaire's Concession Plan, as described in Article V.A.1 (Concession Plan) herein, the Concessionaire's Tenant Plan, as described in Article V.D.1 (Use by Others) herein.

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

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

5. Sublease Agreement. Promptly after the Concessionaire and the proposed subconcessionaire, subtenant, or sublessee have agreed on a form of the subconcession, subtenant, or sublease agreement that incorporates the business terms set forth in the subconcession, subtenant, or sublease agreement proposal approved by the STATE, the Concessionaire 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 agreement proposal approved by the STATE, (c) is expressly subject to the terms of the STATE's consent, and (d) is not inconsistent with the Concessionaire's rights under this Concession Agreement, and the Concessionaire is not in default of any terms of this Concession Agreement, 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.

6. 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, 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 this 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. The STATE's consent shall not be construed to be a waiver of any of the STATE's rights under this Concession Agreement.

e. State Reservation. The STATE reserves all of its rights under this 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 Concessionaire from any of the Concessionaire's responsibilities, obligations, liabilities and claims arising under or out of this Concession Agreement.

g. Priority of Concession Agreement. This Concession Agreement shall have priority over the subconcession, subtenant, or sublease agreement, which shall be subordinate in all respects to this Concession Agreement.

h. Compliance with Conditions. The Concessionaire and the subconcessionaire, 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 Concessionaire and the subconcessionaire, subtenant, or sublessee shall comply with such other conditions as may be imposed by the STATE related to the STATE's consent to the subconcession, subtenant, or sublease agreement, including, without limitation, conditions relating to governing law (Hawaii), resident appointment, rights of holders of security interest, notice to the STATE, extension notices, recordation, use restrictions, STATE's prior approval, compliance with laws, STATE remedies (including payment of rent, fees, and charges directly to the STATE in the event of Concessionaire's default), and any changes to the STATE's assignment and/or sublease evaluation policies.

7. Delivery to STATE. If the STATE approves a subconcession, subtenant, or sublease agreement, the Concessionaire and the proposed subconcessionaire, subtenant, or sublessee must deliver an original, fully-executed counterpart 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 Concessionaire must submit the proposed subconcession, subtenant, or sublease agreement again for the STATE's approval. If the STATE rejects a proposed subconcession, subtenant, or sublease agreement, then the Concessionaire may not enter into the subconcession, subtenant, or sublease agreement.

8. No Impairment. Each and every covenant, condition or obligation imposed upon the Concessionaire 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.

9. Excessive Sublease Rent. No subconcessionaire, subtenant, or sublessee shall be obligated to pay to the Concessionaire, and the Concessionaire shall not be permitted to charge any rent, percentage rent, bonus rent, key money, administration fee, or the like, which exceeds, in the aggregate, the total sums that the Concessionaire pays to the STATE under this Concession Agreement for the portion of the Premises used by the subconcessionaire, subtenant, or sublessee under its subconcession, subtenant, or sublease agreement.

10. Rents Assigned. The Concessionaire assigns to the STATE all rent and other payments due from all subconcessionaires, subtenants, and sublessees under any subconcession, subtenant, and sublease agreements; provided however, the Concessionaire is hereby granted a license to collect rents and other payments due from the subconcessionaire, subtenants, and sublessees under their subconcession, subtenant, or sublease agreements until the occurrence of a Default, regardless of whether a notice of that default has been given to the Concessionaire. At any time, the STATE may notify a subconcessionaire, subtenant, or sublessee of this assignment and upon such notice, the subconcessionaire, subtenant, or sublessee will pay its rent and other payments directly to the STATE. The STATE will credit the Concessionaire with any rent received by the STATE under such assignment, but the acceptance of any payment on account of rent from any subconcessionaires, subtenants, or sublessees as a result of a Default will in no manner whatsoever serve to release the Concessionaire from any liability under this Concession Agreement. No payment of rent or any other payment by a subconcessionaire, 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 subconcessionaires, subtenants, or sublessees to the STATE in the absence of a specific written agreement signed by the STATE to such an effect. The subconcession, subtenant, or sublease agreement, shall provide for such assignment of rents as set forth herein.

11. Reports. The Concessionaire must, at the Concessionaire's sole cost and expense, prepare and submit the following reports and statements, the forms of which will be subject to the reasonable 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 Concessionaire from each subconcessionaire, subtenant, and sublessee during that month; (2) subconcession, subtenant, and sublease agreements executed; and (3) current and projected vacancies, and indicating all rights respecting such space pursuant to existing subconcession, 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 term year, an annual report summarizing the subconcession, subtenant, and sublessee activities for the preceding calendar year and the total rents, fees, charges, and all other sums received by the Concessionaire from each subconcession, subtenant, and sublessee during that year.

c. Other Reports. Such other reports and such other information concerning the use of the Premises by the subconcessionaires, 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. Concession Agreement Termination. Except for meeting the DBE requirements of this Concession Agreement by subconcession, subtenant, or sublease agreement, any attempt by the Concessionaire to assign, transfer, hypothecate, mortgage, and/or encumber the Concessionaire's interest or rights under this Concession Agreement, or any attempt by the Concessionaire to permit a portion of the Premises to be used by a subconcessionaire, subtenant, or sublessee, without first obtaining the STATE's written consent, shall be deemed a violation of this Article XXVIII (Assignment and Subletting). Any such attempted action or transaction on the part of the Concessionaire 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, upon any such purported assignee, mortgagee, encumbrancer, pledgee, subconcessionaire, 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 XVIII (Termination by STATE) and Article VI.G. (Additional Charges), respectively, herein.

2. Assignor or Transferor. If the transferor or the Concessionaire defaults in the performance of any of the terms of this Concession Agreement, the STATE may proceed directly against the Concessionaire, the transferor or each transferor if there has been more than

one assignment, subletting, encumbrance or transfer (hereafter collectively "**Transfer**") without the necessity of exhausting remedies against the Concessionaire. The STATE may consent to subsequent Transfers or amendments or modifications to this Concession Agreement with transferees, without notifying the 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 any transferor of liability under this Concession Agreement as amended.

D. Procedure and Conditions.

1. Procedure. The Concessionaire must provide the STATE in writing:
 - a. the name and address of the proposed subconcessionaire, subtenant, sublessee, assignee or transferee;
 - b. the nature of the proposed business to be operated by the subtenant, assignee or transferee on the Premises; and
 - c. the terms of the proposed subconcession, sublease, assignment or transfer; and
 - d. reasonable financial information so that the STATE can evaluate the proposed subconcessionaire, subtenant, sublessee, assignee or transferee under this Article XXVIII (Assignment and Subletting).
2. Conditions. Transfers by the Concessionaire are also subject to:
 - a. the terms of this Concession Agreement and any subconcession, subtenant, sublease, assignment or other Transfer agreement shall not and cannot transfer any rights greater than the rights of the Concessionaire under this Concession Agreement;
 - b. the term of any subconcession, subtenant, sublease, assignment or other Transfer agreement shall not extend beyond the Concession Agreement term;
 - c. the Concessionaire shall remain liable for all Concession Agreement obligations;
 - d. consent to one Transfer does not waive the consent requirement for any future Transfers;
 - e. payments to the STATE of all premiums, or other amounts which the Concessionaire may be required to pay under this Article XXVIII (Assignment and Subletting);
 - f. any other conditions that may be imposed by the STATE.

ARTICLE XXIX. SUCCESSORS AND ASSIGNS

Each and all of the expressions, phrases, terms, conditions, provisions, stipulations, promises, covenants, 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 Concessionaire, and the legal representatives, successors, and permitted assigns of either or both of them.

ARTICLE XXX. 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 Concessionaire at the address listed on Page C-1 of this Concession Agreement; or (b) the STATE at the following address: Department of Transportation, Airports, Daniel K. Inouye International Airport, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawaii 96819-1880, or (c) such other address as either the Concessionaire 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 XXX (Notices). Any notice hereunder shall be deemed to have been given and received and effective two (2) days after the date when it is mailed, if sent by first-class, certified mail, one day after the date when it is mailed if sent by overnight courier, or upon the date personal delivery is made.

ARTICLE XXXI. 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 Concessionaire.

C. Fair Meaning. Provisions in this Concession Agreement relating to number of days shall be calendar days. Use of the word "including" shall mean "including, without limitation." References to statutes, sections, ordinances or regulations are to be construed as

including all statutory, ordinance, or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the 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 word "person" shall include corporation, partnership, firm, limited liability company, and association.

ARTICLE XXXII. NO PARTNERSHIP

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

ARTICLE XXXIII. 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) acts of God, federal or state 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, strikes, boycotts, picketing, slow-downs, work stoppages, or labor troubles of any other type, or any other causes of any kind whatsoever which are beyond the control of the STATE, 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, 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 (such as Article VI.I. (Relief Due to Economic Emergency)), no abatement, diminution, or reduction of the rents, fees, or other charges payable by the Concessionaire shall be claimed by or allowed to the Concessionaire 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 United States of America, or of the State of Hawaii, or any county or municipal governments, or of any other 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, 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 Concessionaire, 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 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. Concessionaire Enforcement. Nothing in this Article contained shall preclude nor be construed to preclude the enforcement by the Concessionaire of any of its rights contained in Article XXI (Termination by Concessionaire) and Article XXII (Suspension or Abatement) hereof.

ARTICLE XXXIV. ENTIRE AGREEMENT

The parties intend that this Concession Agreement (including all of the exhibits and attachments which are made a part of this Concession Agreement) shall be the final expression of their entire agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Concession Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding including this Concession Agreement.

ARTICLE XXXV. AMENDMENTS

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

ARTICLE XXXVI. 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 as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Concession Agreement shall be valid and be enforceable to the full extent permitted by law.

ARTICLE XXXVII. NON-LIABILITY OF INDIVIDUALS

Neither the STATE, the Director nor any governmental agency of the State of Hawaii (including any as may succeed to the duties, powers or functions of the Department), nor any of them, nor any agency, officer or employee thereof, shall be charged personally by the Concessionaire with any liability, or be held liable to the Concessionaire 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, thereof.

ARTICLE XXXVIII. NONDISCRIMINATION

A. Construction. The Concessionaire, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the Premises, that in the event facilities are constructed, maintained, or otherwise operated on the Premises described in this Concession Agreement for a purpose for which a United States Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations (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.

B. Operation. The Concessionaire, 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 or a physical handicap or disability, as defined in the Americans with Disabilities Act of 1990, 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 on, over or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, national origin, sex or a physical handicap or disability, as defined in the Americans with Disabilities Act of 1990, 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 the Concessionaire shall not discriminate against any business owner because of race, creed, color, national origin, sex or a physical handicap or disability, as defined in the Americans with Disabilities Act of 1990, in connection with operating and maintaining the Concession at the Airport or in connection with the award and performance of any Concession Agreement covered by Title 49, CFR Parts 23 and 26;

5. That the Concessionaire shall use the Premises, and operate and maintain the Concession thereon 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 Concessionaire will include the foregoing statements in any subsequent Concession Agreement or other agreements it enters and cause those businesses to similarly include the statements in further agreements.

C. Breach. In the event of breach of any of the foregoing nondiscrimination covenants, the STATE may terminate this Concession Agreement and re-enter and repossess the Premises, together with all Concession Improvements and the Concessionaire's FFE thereon, and hold the same as if this Concession Agreement had never been made or issued.

ARTICLE XXXIX. CIVIL RIGHTS PROVISION

The Concessionaire 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 upon the Airport by the Federal Aviation Administration, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered by Title 14, CFR Part 152, Subpart E. The Concessionaire 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 Concessionaire further assures that it will require that its covered suborganizations provide assurances to the STATE that they similarly will undertake affirmative action programs, and that they will require assurances from their suborganizations, as required by Title 14, CFR Part 152, Subpart E, to the same effect.

ARTICLE XL. [RESERVED]

ARTICLE XLI. BROKERS

The Concessionaire warrants and represents to the STATE that the Concessionaire has not had any contact or dealings regarding the renting of the Premises, or any communication in connection therewith, 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 Concessionaire shall be responsible for such commission or fee and shall indemnify, defend with legal counsel acceptable to the STATE, 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 Concessionaire'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 this Article XLI (Brokers) shall survive any termination or expiration of this Concession Agreement.

ARTICLE XLII. STATE RESERVATIONS

The STATE may (a) at any time, upon reasonable advance written or oral notice, enter the Premises to show the Premises to interested parties, to post notices of non-responsibility, to re-measure the Premises, to repair any part of the Premises or adjoining areas, to install equipment for adjoining areas, to conduct a financial audit, and for any other lawful purpose; (b) without advance notice, enter the Premises 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 Concessionaire's Concession operation. Such entry shall not constitute a forcible or unlawful entry into or a detainer of the Premises, or an eviction, actual or constructive, of the Concessionaire from the Premises. The STATE reserves the exclusive right to use all areas of the Airport not comprising the Premises, and the exterior walls and roofs of the Premises. 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 Airports in and through the Premises. This reservation in no way affects the Concessionaire's maintenance obligations contained in this Concession Agreement.

ARTICLE XLIII. 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 and representations and warranties given or made by the Concessionaire 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, including, without limitation, Articles XI (Liability and Indemnity), XIII.B (Americans With Disabilities Act), XIII.C (Compliance with Environmental Matters), XXIV (Condemnation), XXV (Concession Bond), XXVI (Litigation), XXVII (Liens) and XLH (Brokers). The Concessionaire specifically acknowledges and agrees that, with respect to each of the Concessionaire's indemnities contained in this Concession Agreement the Concessionaire has an immediate and independent obligation to defend (with legal counsel acceptable to the STATE) the STATE from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the Concessionaire by the STATE.

B. Accrued Obligations. The Concessionaire's obligation to make payments to the STATE in respect of accrued charges (including those which have not yet been billed) and to make repairs (including those relating to the return of the Premises to the STATE) 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 XLIV. QUIET ENJOYMENT

The Concessionaire, upon paying all of the rent, fees and charges required under this Concession Agreement and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Concession Agreement term as against all persons or entities claiming by and through the STATE. The Concessionaire expressly acknowledges that the Concessionaire's right to quiet possession of the Premises does not preclude the STATE's right to make changes and additions to the Airports, including the Premises, and to do work in the Premises as permitted by this Concession Agreement, including, without limitation, the STATE's right to relocate the Concessionaire as described in this Concession Agreement.

ARTICLE XLV. ACCORD AND SATISFACTION

A. Concessionaire's Instructions Void. The payment by the Concessionaire or the receipt by the STATE of a lesser amount than the concession fee or rent stipulated in this Concession Agreement may be, at the STATE's sole option, deemed to be on account of the earliest due of first (1) any interest, service charges and late fees and second (2) any stipulated concession fee or rent (beginning with earliest owing concession fee or rent), notwithstanding any instruction by or on behalf of the Concessionaire 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 or rent or payment or pursue any other remedy available in this Concession Agreement or at law.

B. Acceptance Does Not Invalidate Notice. The STATE may accept any partial payment from the Concessionaire 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 XLVI. JOINT AND SEVERAL LIABILITY

The obligations, covenants, promises, liabilities, warranties and representations of the Concessionaire under this Concession Agreement shall be joint and several by and among any and all entities and persons comprising the Concessionaire.

ARTICLE XLVII. ESTOPPEL STATEMENTS

A. Concessionaire Must Deliver. Within ten (10) days after request therefor by the STATE, the Concessionaire shall deliver, in recordable form, an estoppel statement certifying that this Concession Agreement is in full force and effect, the date of the Concessionaire's most recent payment of rent or concession fee, and that the Concessionaire has no defenses or offsets outstanding, or stating those claimed, and any other information reasonably requested by the STATE.

B. Failure to Deliver. If the Concessionaire 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 Concessionaire has no right of offset, counterclaim or deduction against the rents or concession fee payable under this Concession Agreement; and, (3) no more than one month's rent or concession fee has been paid in advance. Such conclusions shall be binding upon the Concessionaire. Notwithstanding these conclusions, the Concessionaire's failure to deliver the requested estoppel statement shall constitute a breach of this Concession Agreement.

ARTICLE XLVIII. AUTHORITY

If the Concessionaire signs as a corporation, a limited liability company, or a partnership, each of the persons executing this Concession Agreement on behalf of the Concessionaire does hereby covenant and warrant that the Concessionaire is a duly authorized and existing entity, that the Concessionaire has and is duly qualified to do business in Hawaii, that the Concessionaire

has full right and authority to enter into this Concession Agreement, and that each and all of the persons signing on behalf of the Concessionaire are authorized to do so. Upon the STATE's request, the Concessionaire shall provide the STATE evidence reasonably satisfactory to the STATE confirming the foregoing representations and warranties.

ARTICLE XLIX. CONSENTS

If the STATE is required to be reasonable in granting or withholding consent or approval, but fails to do so, the Concessionaire's sole and exclusive remedy is to seek specific performance, and in no event will the STATE be liable for any monetary damages. All approvals by the STATE shall be in writing.

ARTICLE L. COUNTERPARTS

This Concession Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same document, binding all of the parties hereto notwithstanding 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 LI. GOVERNING LAW

This Concession Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of Hawaii. Any action arising out of this Concession Agreement will be filed and maintained in the Circuit Courts of the First Circuit Court of the State of Hawaii.

(Remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties have duly executed this Concession Agreement on the day and year first written above.

APPROVED AS TO FORM:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

MARJORIE A. LAU
Deputy Attorney General

By _____
EDWIN H. SNIFFEN
Its Director of Transportation

STATE

(_____)

By _____
Print Name _____
Its _____

CONCESSIONAIRE

Approved by the Board of Land and Natural Resources at its meeting held on

_____ June 14, 2024, Item M-1 _____

STATE OF _____)
) SS.
COUNTY OF _____)

On this _____ day of _____, 202_, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii
Print Name _____
My commission expires: _____

Notary Seal Affixed:

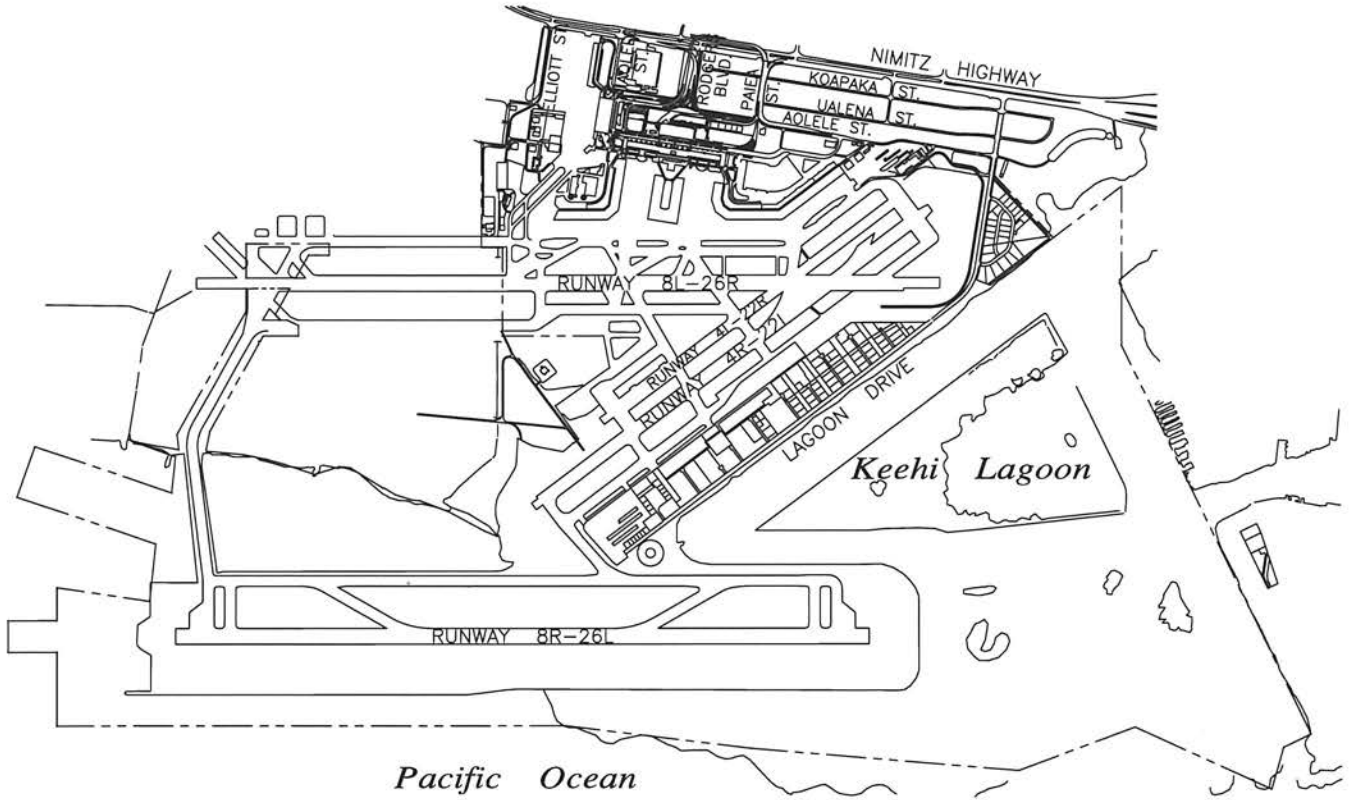
Date of the Notarized Document: _____

Number of Pages: _____

Identification or Description of the Document being Notarized:

Printed Name of Notary: _____ Circuit

Notary's Signature and Notary's Official Stamp or Seal Date



STATE LEASE NO. DOT-A-24-0005

DATE : MARCH 2024

EXHIBIT: **A**



Airports

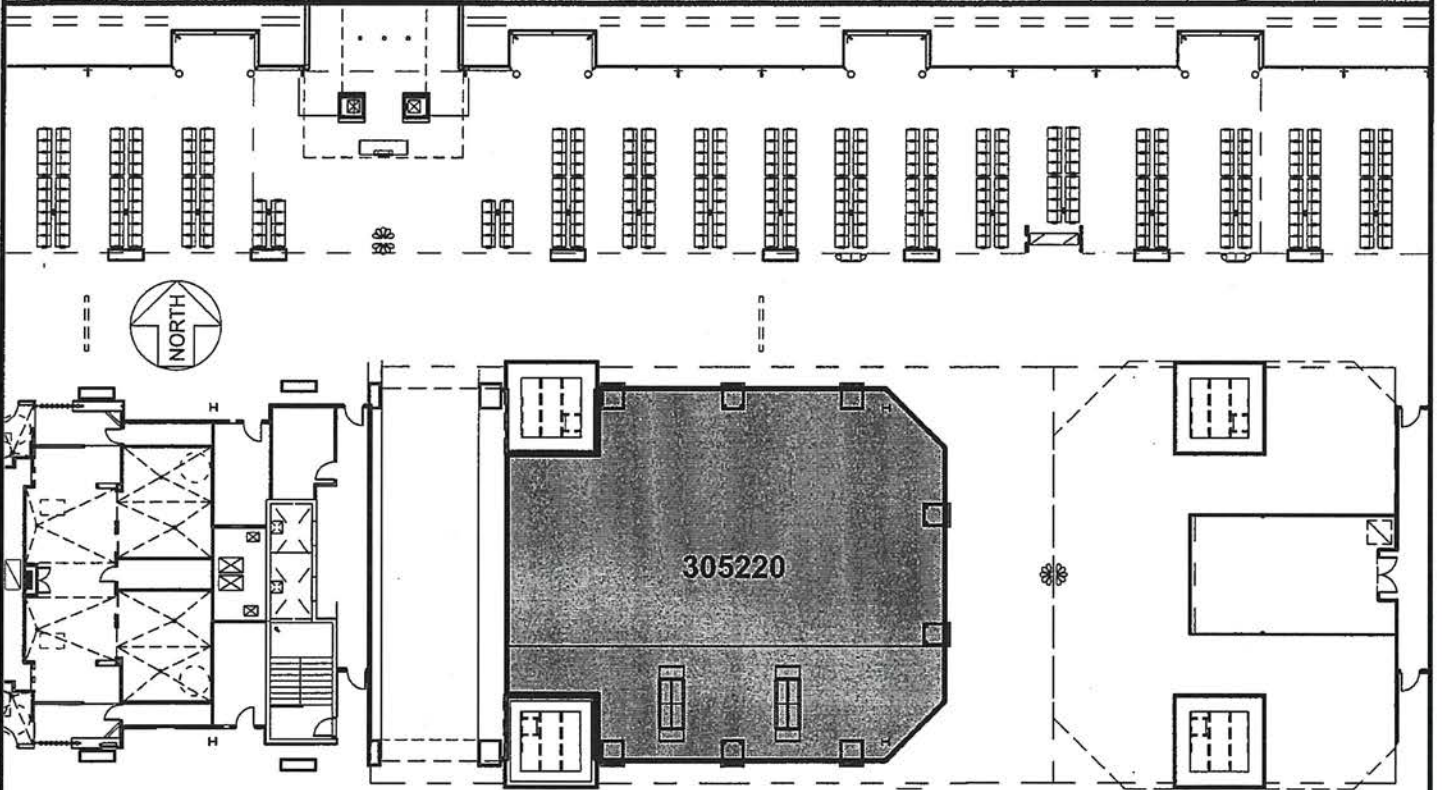
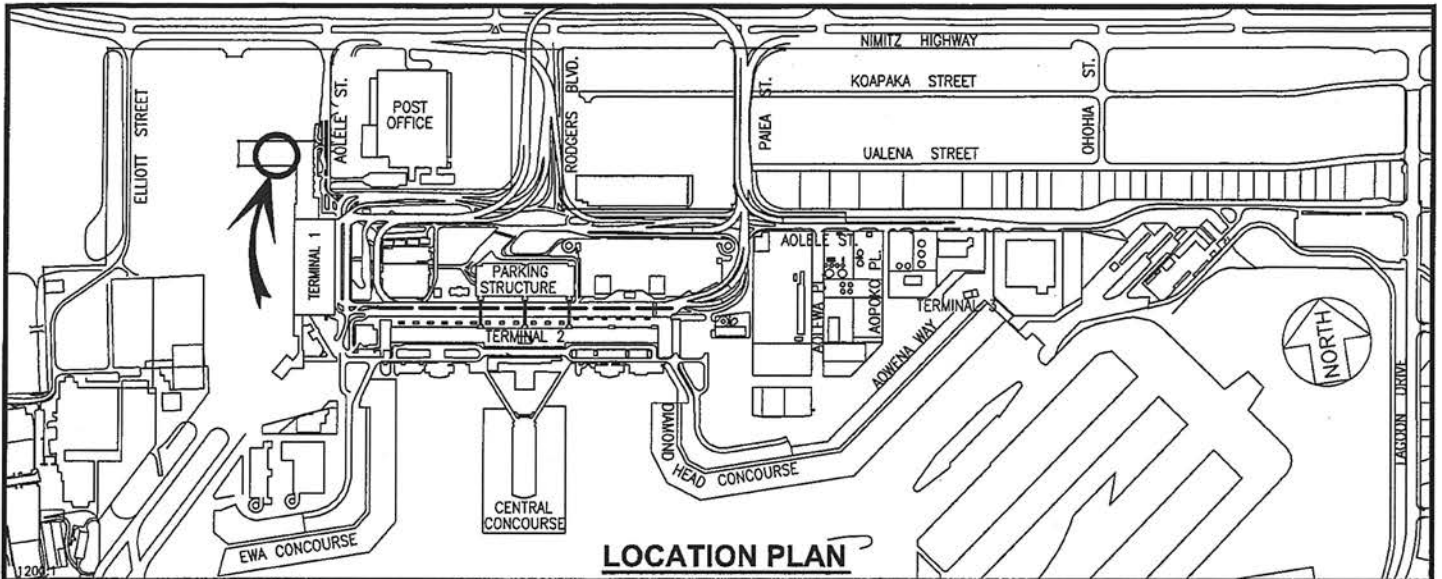
RETAIL CONCESSION

"AIRPORT"

PLAT 01

N:\AIRPORTS\HNL_HONOLULU\CAD\PM\HNL_AIRPORT-01.DWG

DANIEL K. INOUE INTERNATIONAL AIRPORT



BLDG 305

SCALE: 1" = 30'

BLDG/ROOM	SQ. FT.
305 220	4,140

STATE LEASE NO. DOT-A-24-0005

DATE : MARCH 2024

EXHIBIT: **C**



AIRPORTS

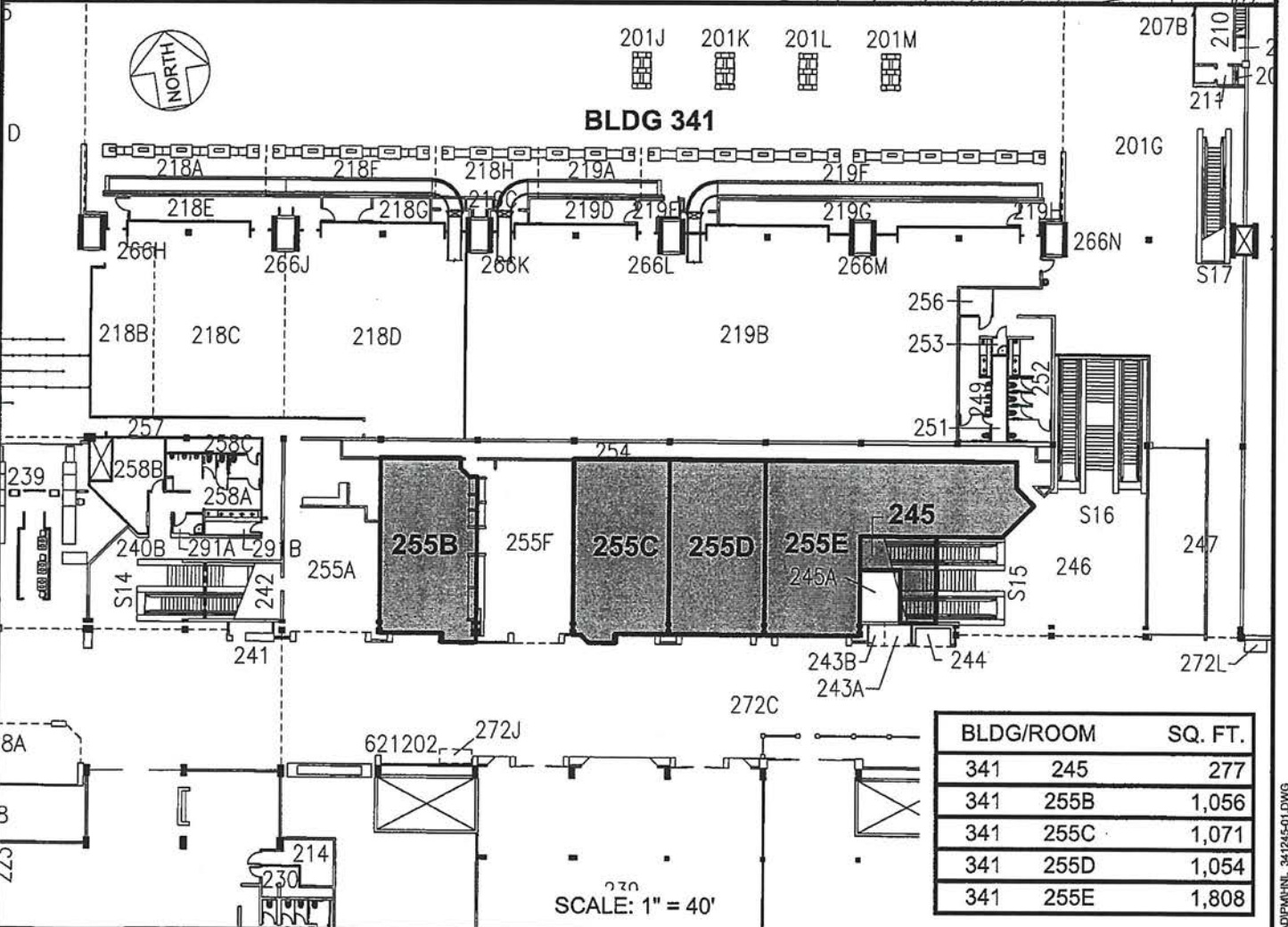
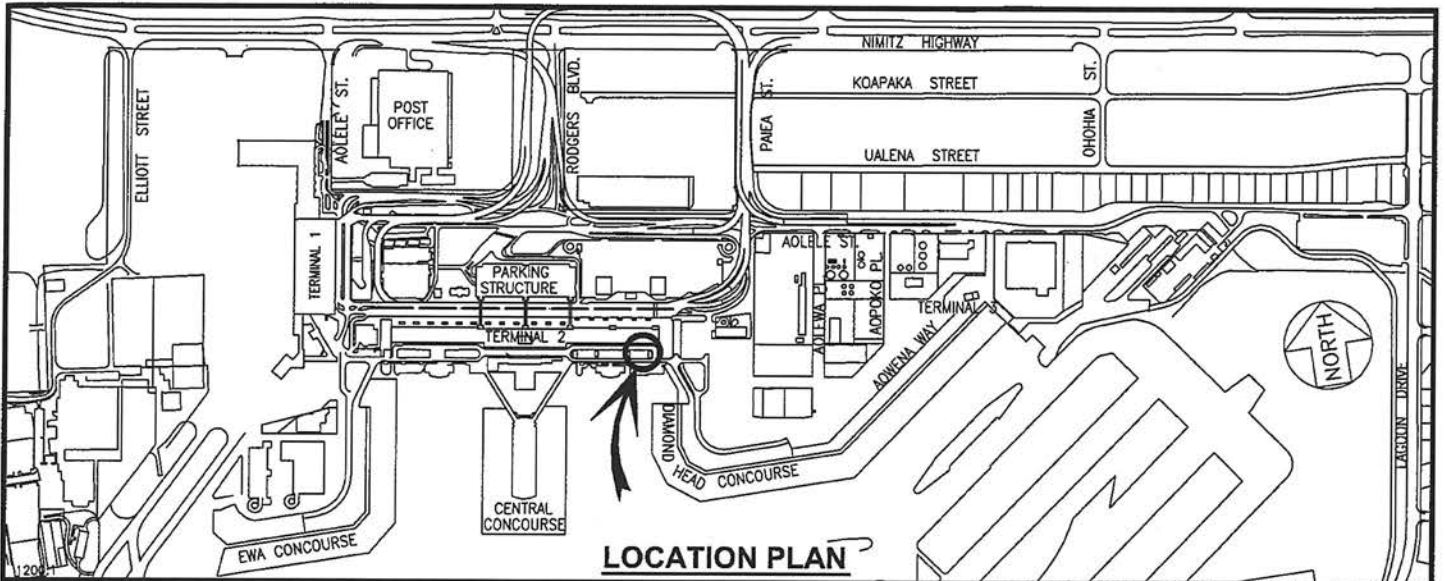
RETAIL CONCESSION

**BUILDING 305
MAUKA EXTENSION
SECOND LEVEL**

305220

DANIEL K. INOUE INTERNATIONAL AIRPORT

N:\AIRPORTS\HNL_HONOLULU\CAD\PAHNL_305220-02DRAFT.DWG



BLDG/ROOM	SQ. FT.
341 245	277
341 255B	1,056
341 255C	1,071
341 255D	1,054
341 255E	1,808

STATE LEASE NO. DOT-A-24-0005

DATE : MARCH 2024

EXHIBIT: **D**



AIRPORTS

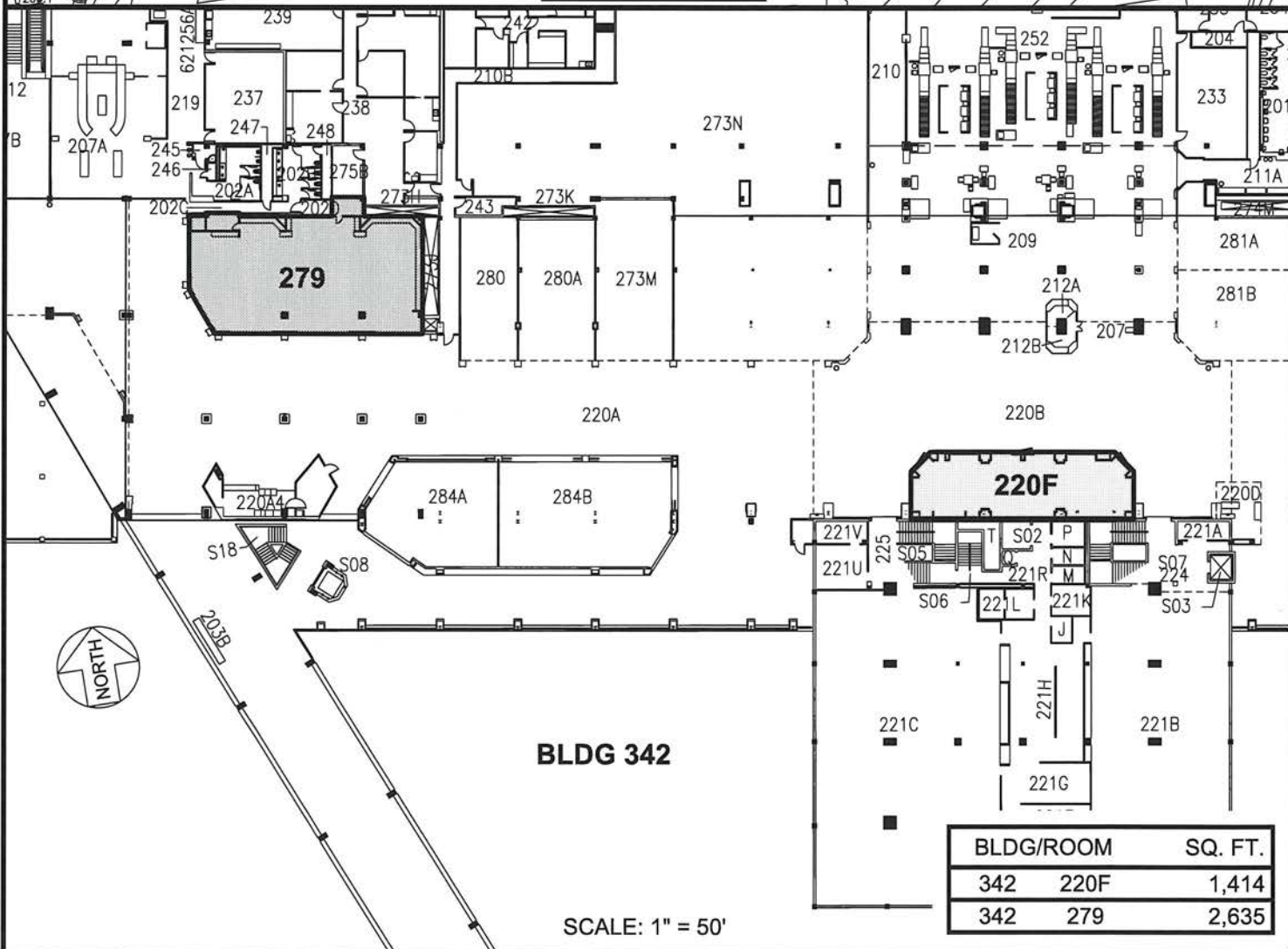
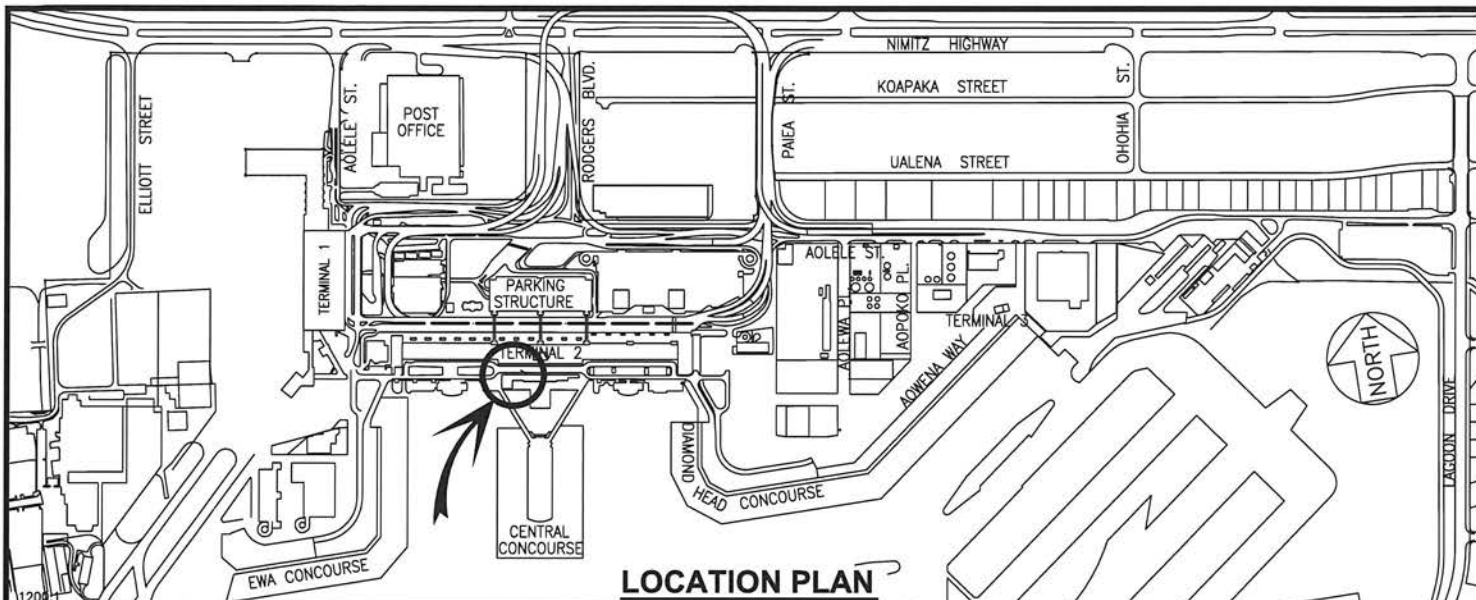
RETAIL CONCESSION

**BUILDING 341
D. H. DOMESTIC EXTN.
SECOND LEVEL**

**341245
341255B-E**

DANIEL K. INOUE INTERNATIONAL AIRPORT

N:\AIRPORTS\HNL_HONOLULU\CAD\DRAWING\341245-01.DWG



STATE LEASE NO. DOT-A-24-0005

DATE : MARCH 2024

EXHIBIT: **E-1**



AIRPORTS

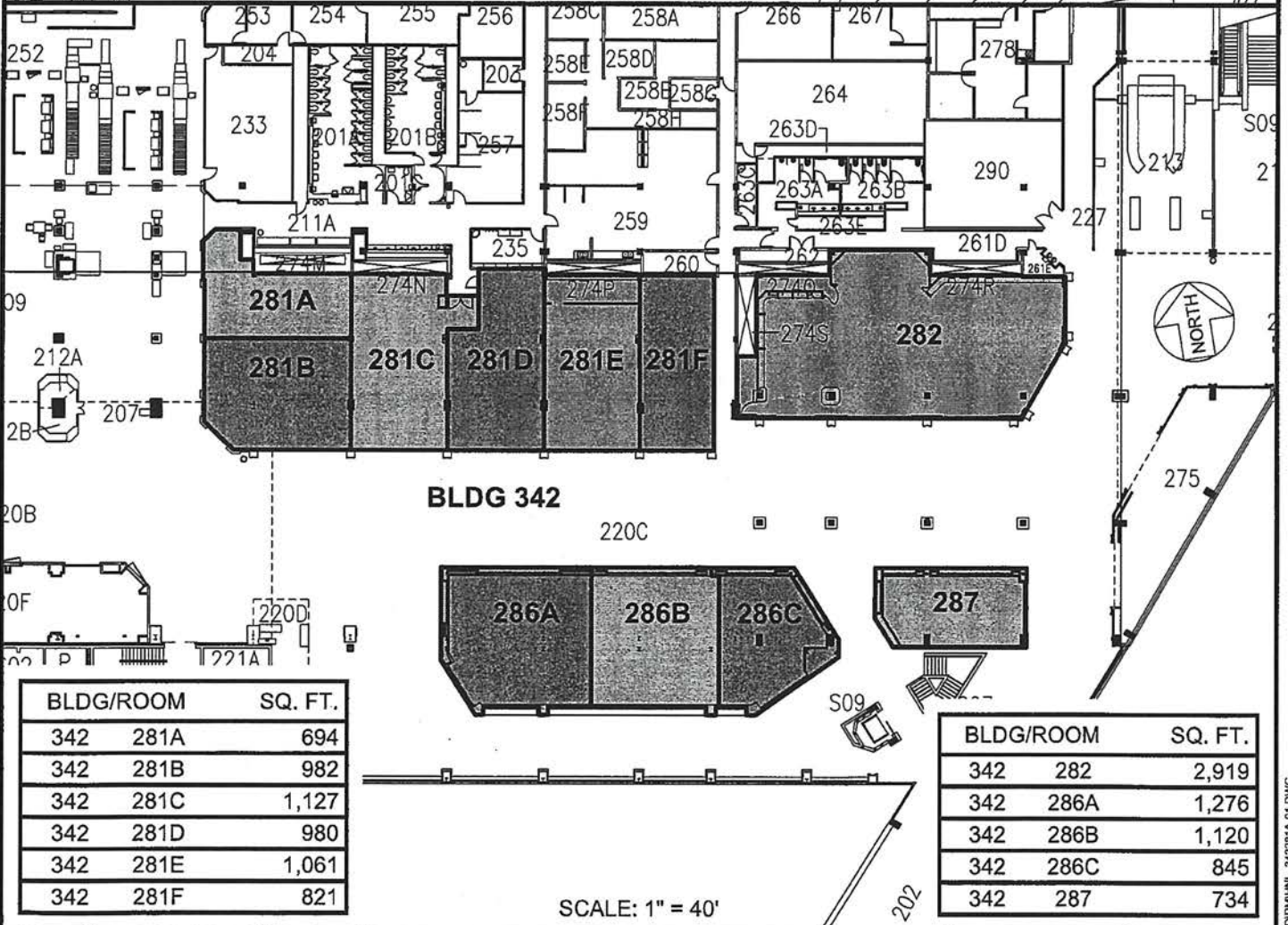
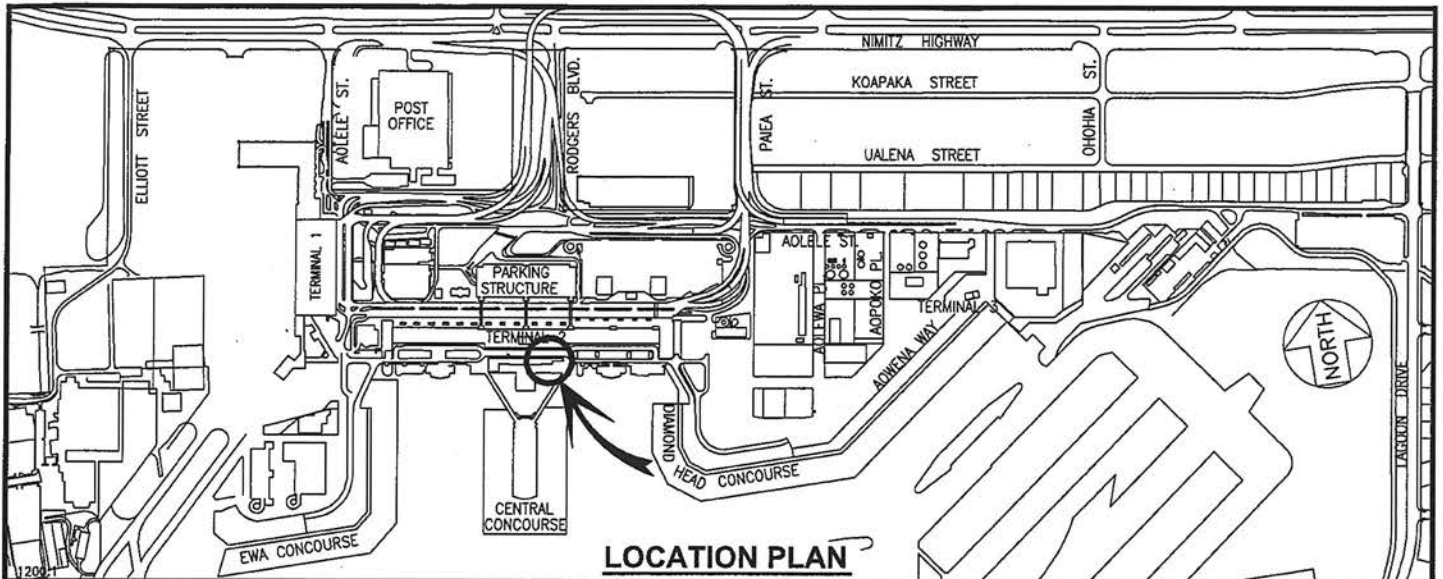
RETAIL CONCESSION

**BUILDING 342
WAITING LOBBY
SECOND LEVEL**

**342220F
342279**

DANIEL K. INOUE INTERNATIONAL AIRPORT


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BLDG/ROOM	SQ. FT.
342 281A	694
342 281B	982
342 281C	1,127
342 281D	980
342 281E	1,061
342 281F	821

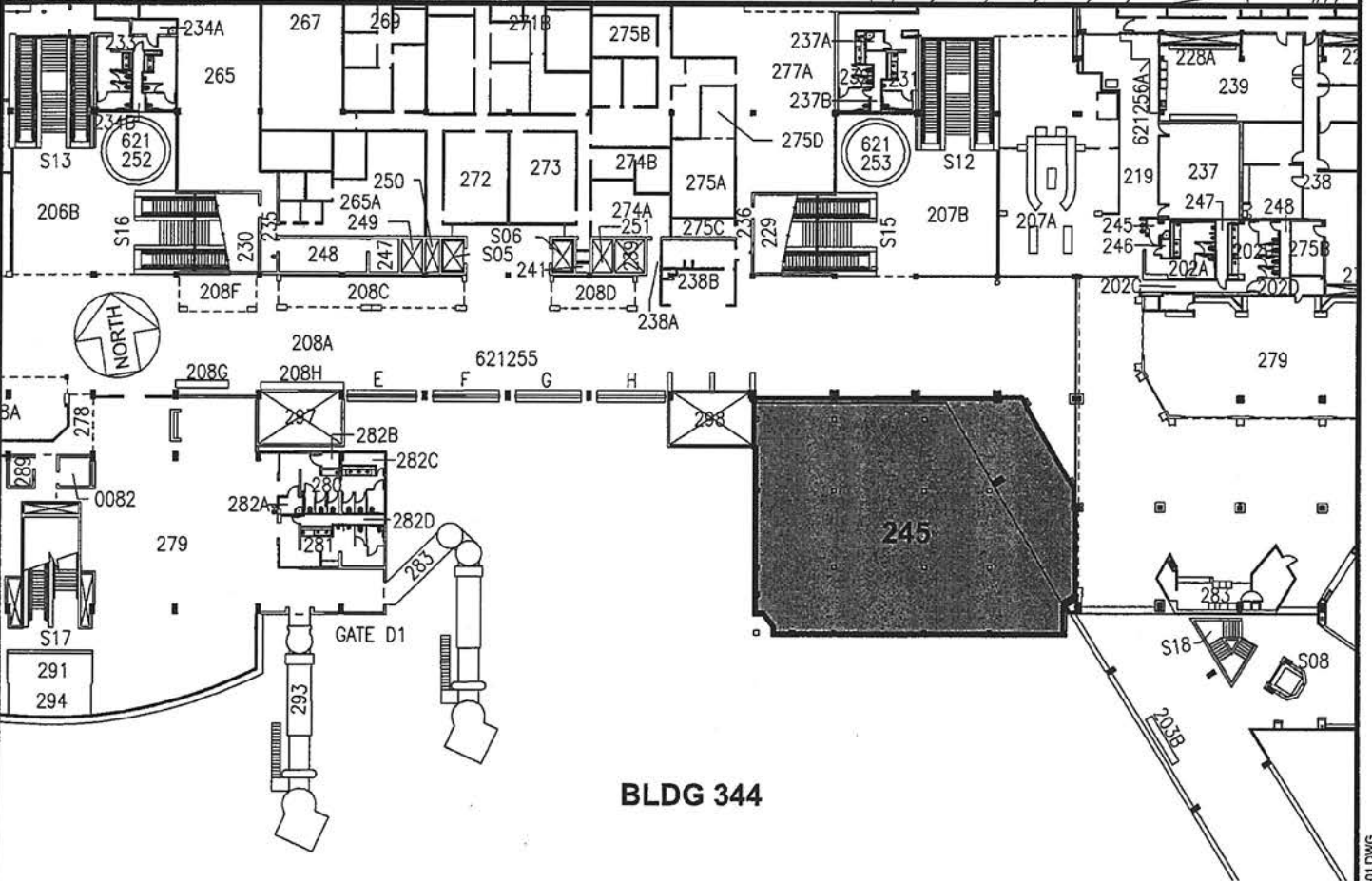
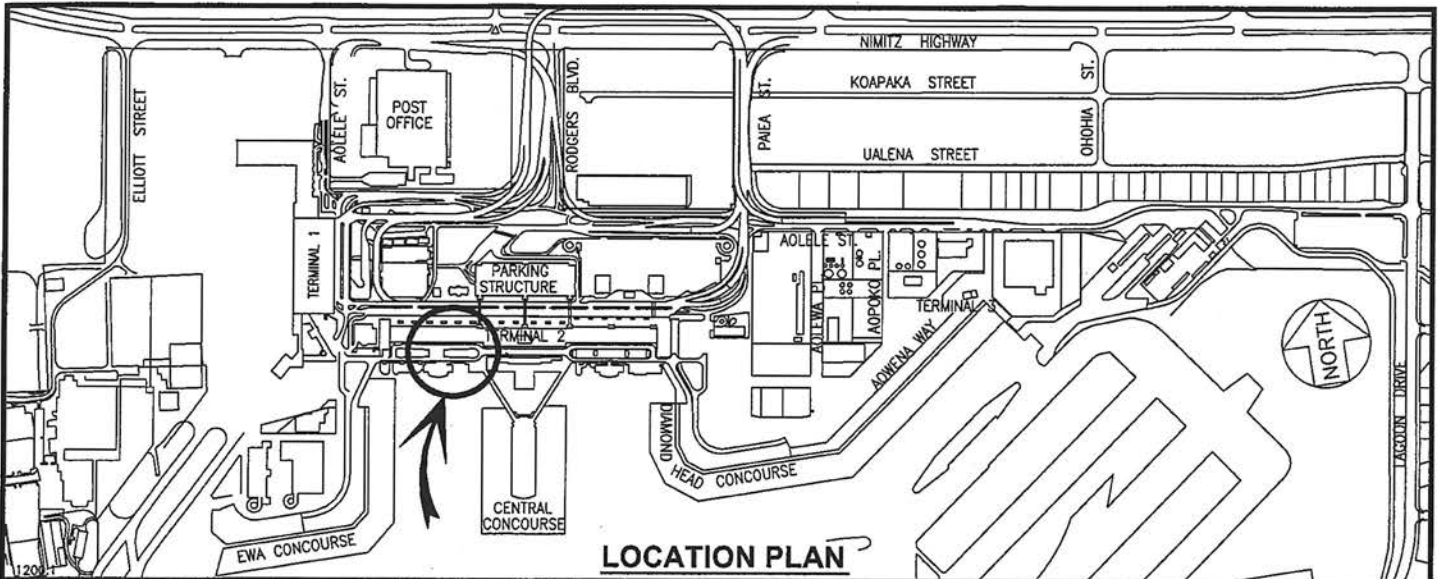
BLDG/ROOM	SQ. FT.
342 282	2,919
342 286A	1,276
342 286B	1,120
342 286C	845
342 287	734

SCALE: 1" = 40'

STATE LEAE NO. DOT-A-24-0005	DATE : MARCH 2024	EXHIBIT: E-2
 AIRPORTS	RETAIL CONCESSION	BUILDING 342 WAITING LOBBY SECOND LEVEL
		342281A-F 342282 342286A-C 342287

DANIEL K. INOUE INTERNATIONAL AIRPORT

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SCALE: 1" = 50'

BLDG/ROOM	SQ. FT.
344 245	6,237

STATE LEASE NO. DOT-A-24-0005

DATE : MARCH 2024

EXHIBIT: **F**



AIRPORTS

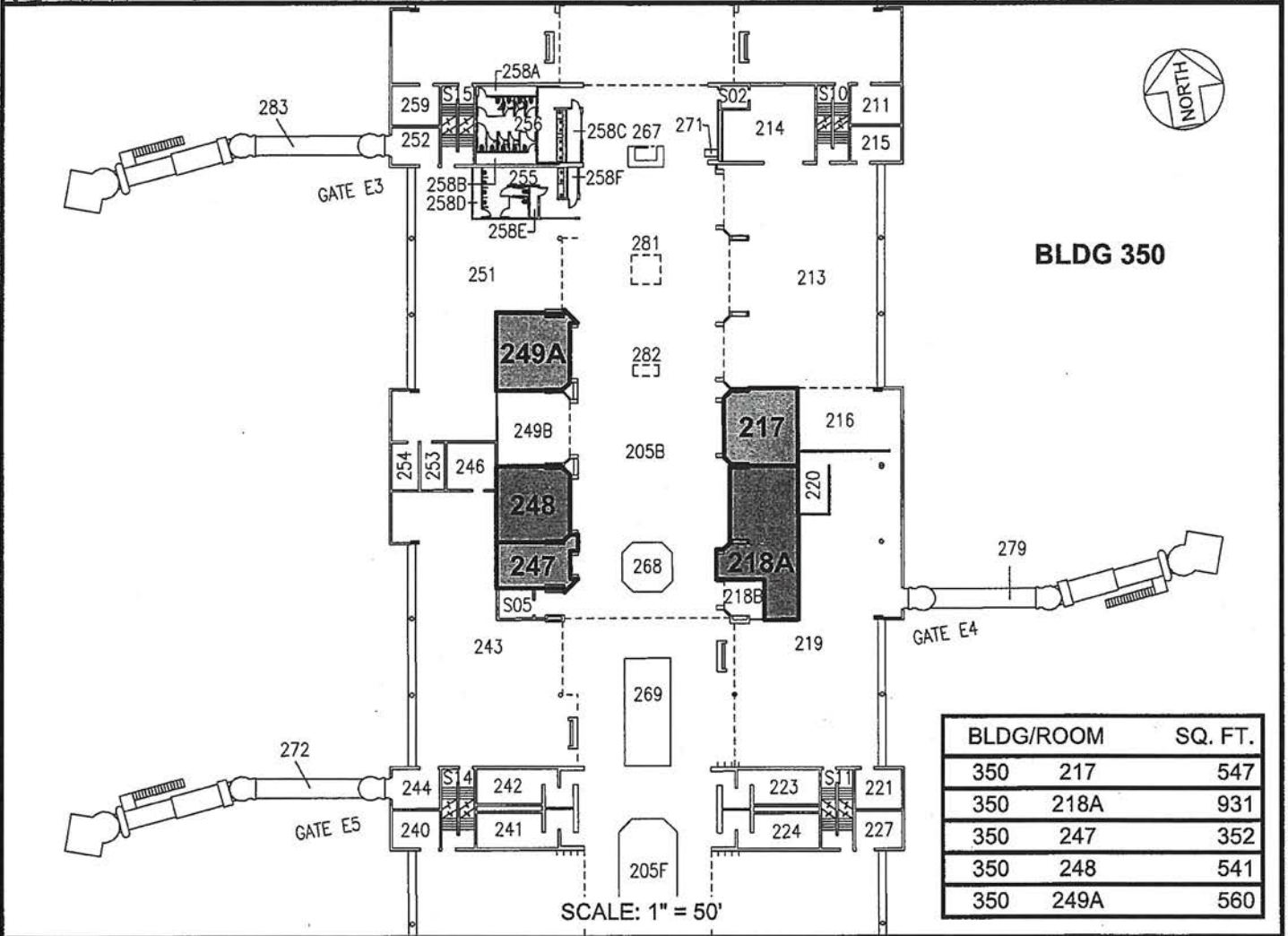
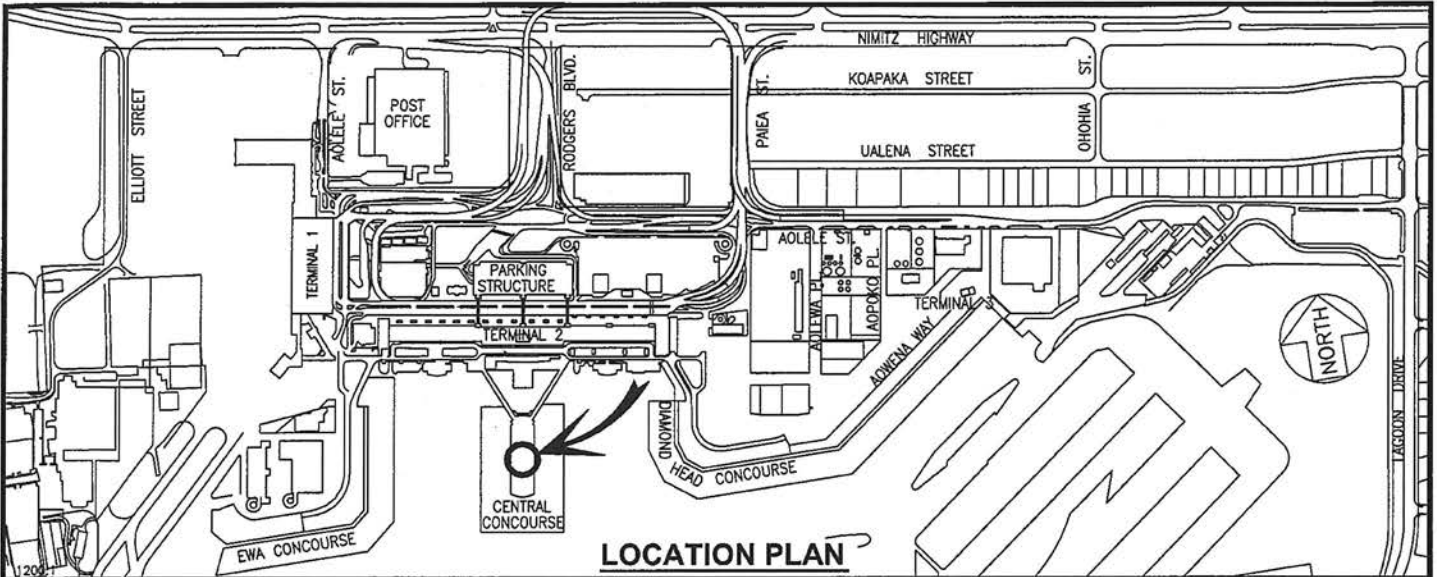
RETAIL CONCESSION

**BUILDING 344
EWA DOMESTIC EXTN.
SECOND LEVEL**

344245

DANIEL K. INOUE INTERNATIONAL AIRPORT

N:\AIRPORTS\SHNL_HONOLULU\CAD\DWG\344245-01.DWG



STATE LEASE NO. DOT-A-24-0005

DATE : MARCH 2024

EXHIBIT: **G**



AIRPORTS

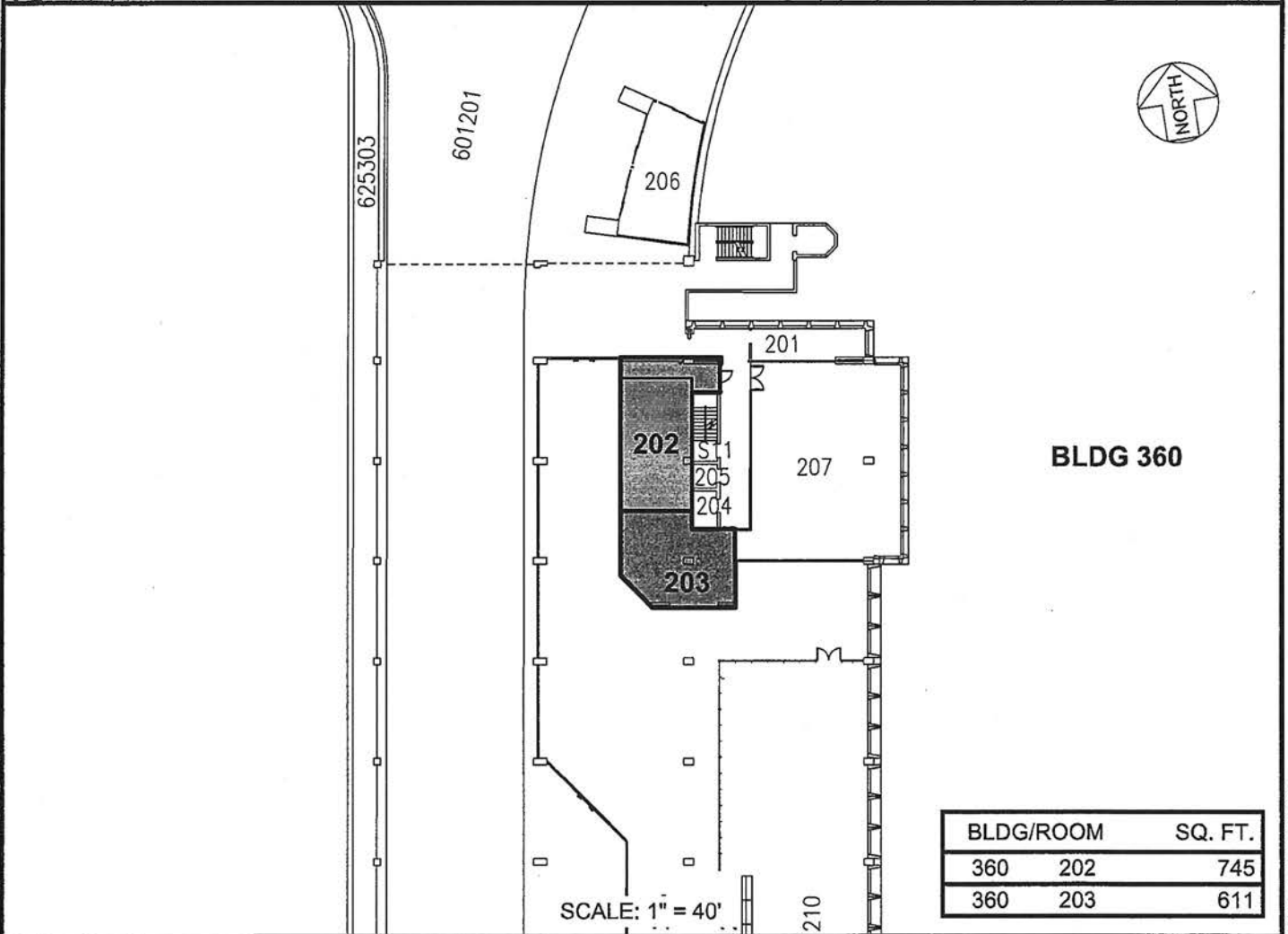
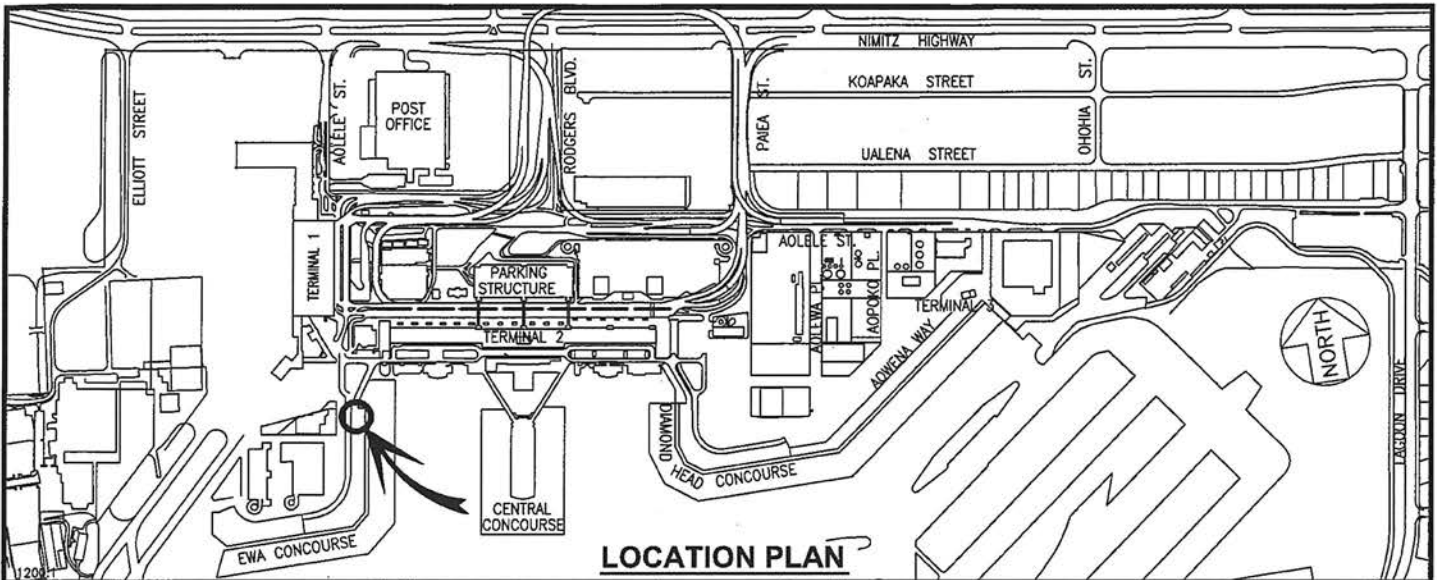
RETAIL CONCESSION

BUILDING 350
CENTRAL CONCOURSE
SECOND LEVEL

350217
350218A
350247-248
350249A

DANIEL K. INOUE INTERNATIONAL AIRPORT

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BLDG/ROOM	SQ. FT.
360 202	745
360 203	611

STATE LEASE NO. DOT-A-24-0005

DATE : MARCH 2024

EXHIBIT: **H-1**

AIRPORTS

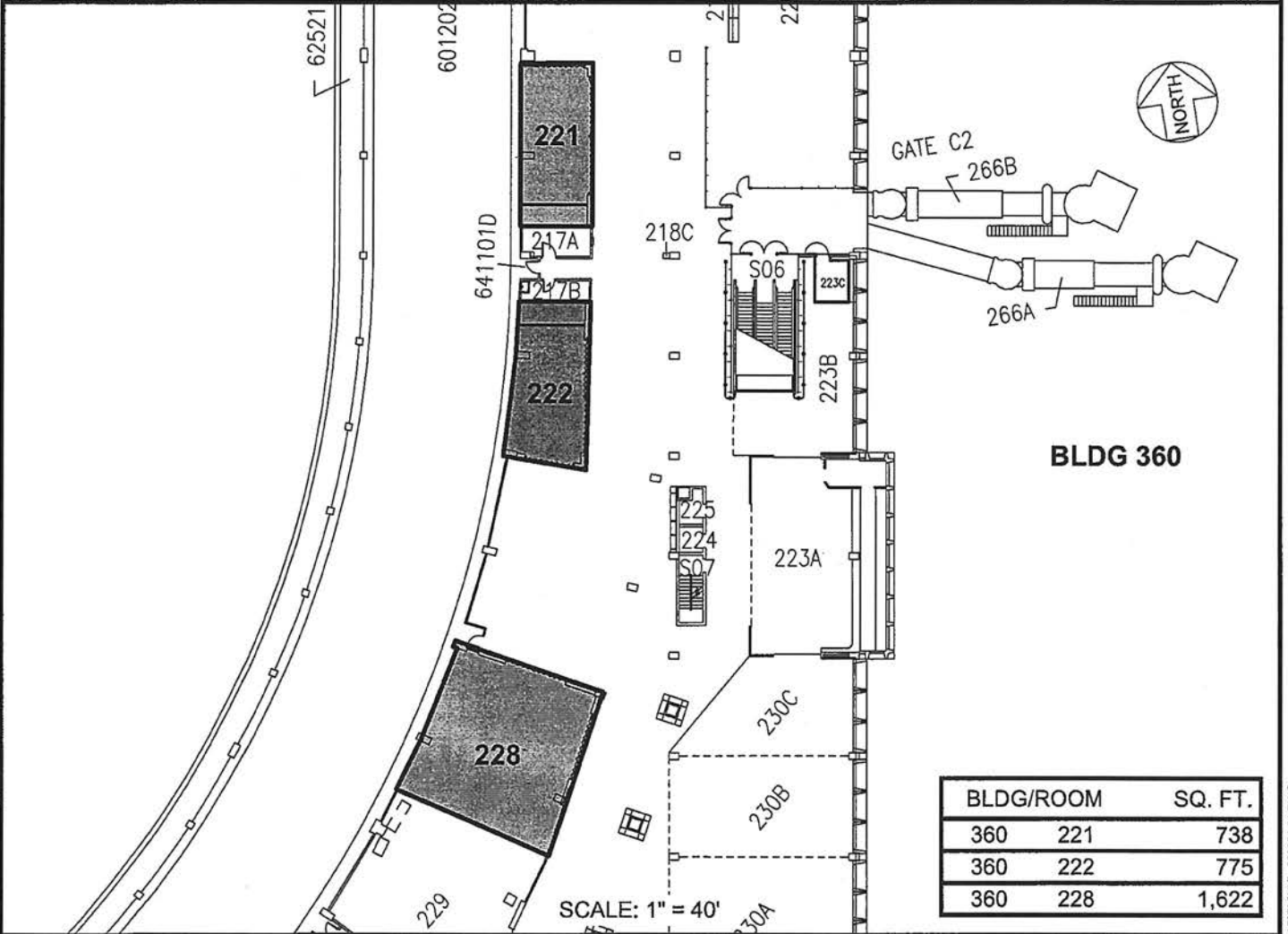
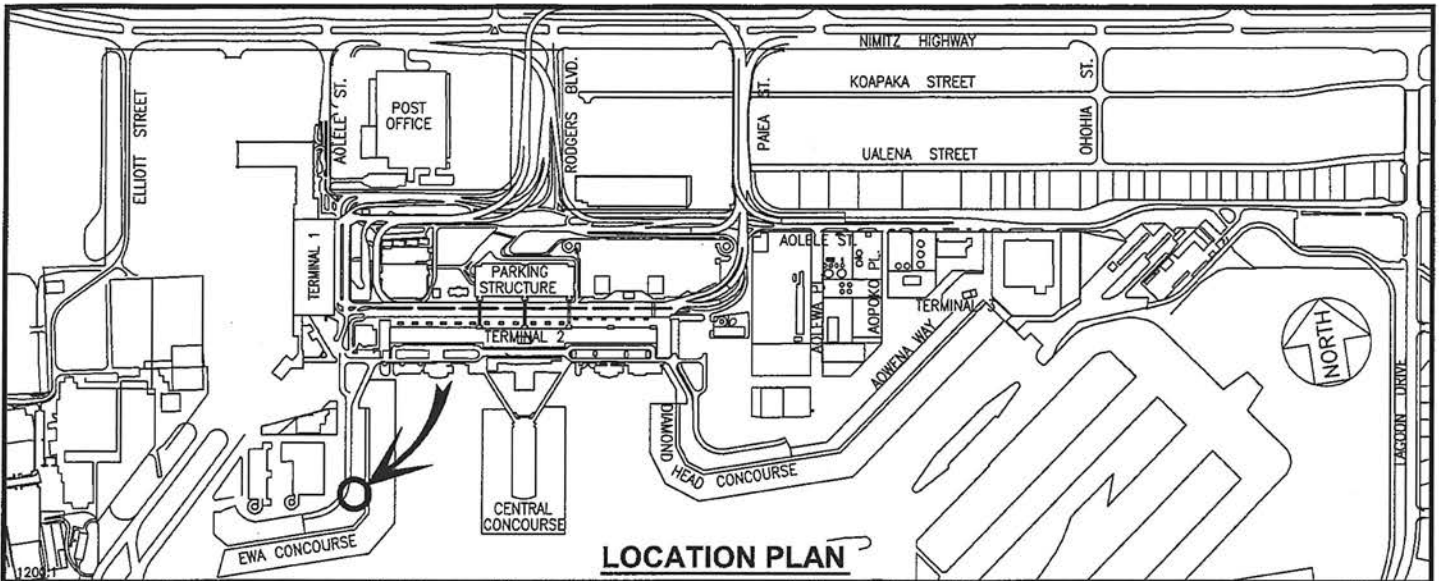
RETAIL CONCESSION

**BUILDING 360
EWA CONCOURSE
SECOND LEVEL**

**360202
360203**

DANIEL K. INOUE INTERNATIONAL AIRPORT

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BLDG/ROOM	SQ. FT.
360 221	738
360 222	775
360 228	1,622

STATE LEASE NO. DOT-A-24-0005

DATE : MARCH 2024

EXHIBIT: **H-2**



AIRPORTS

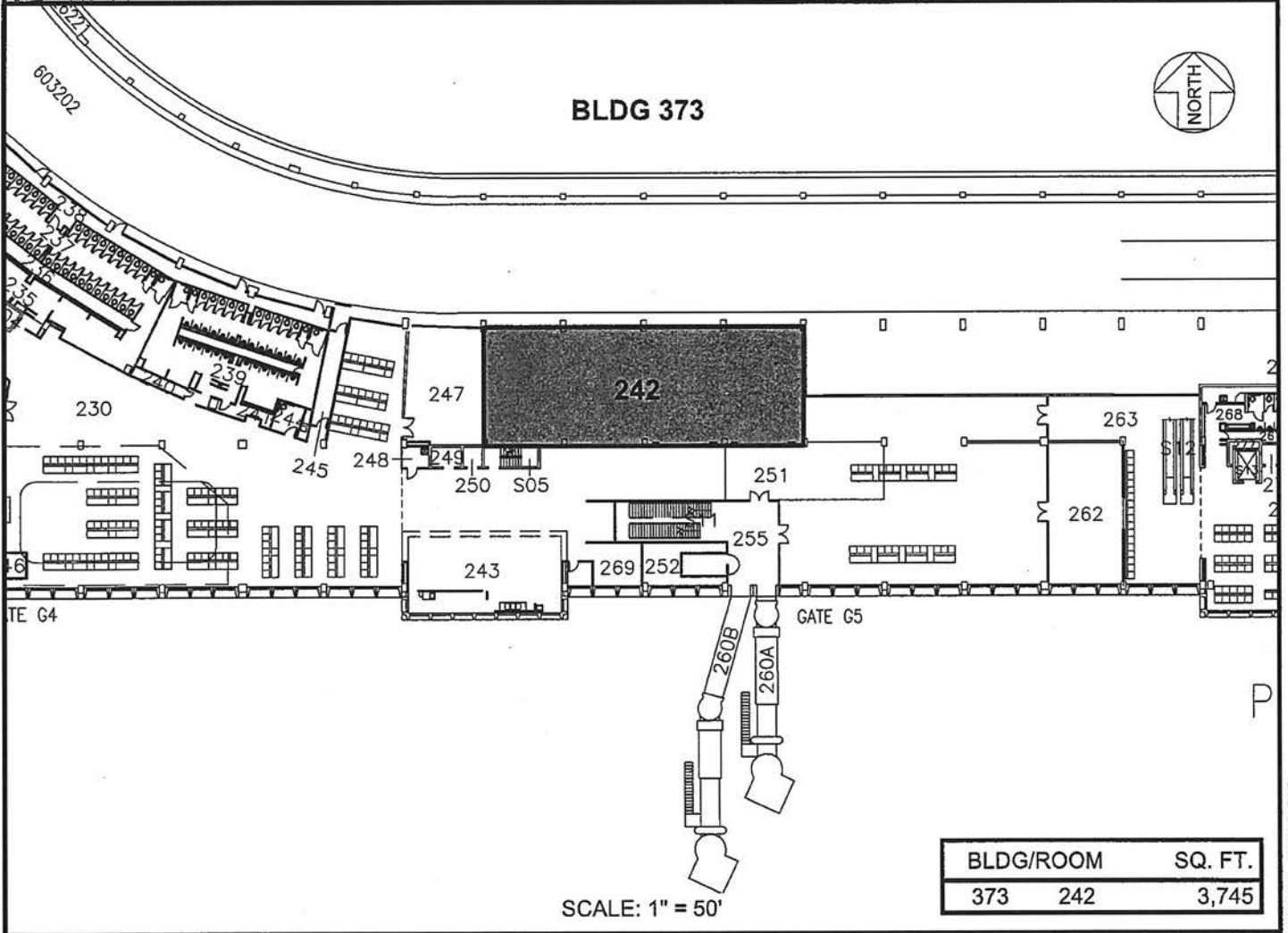
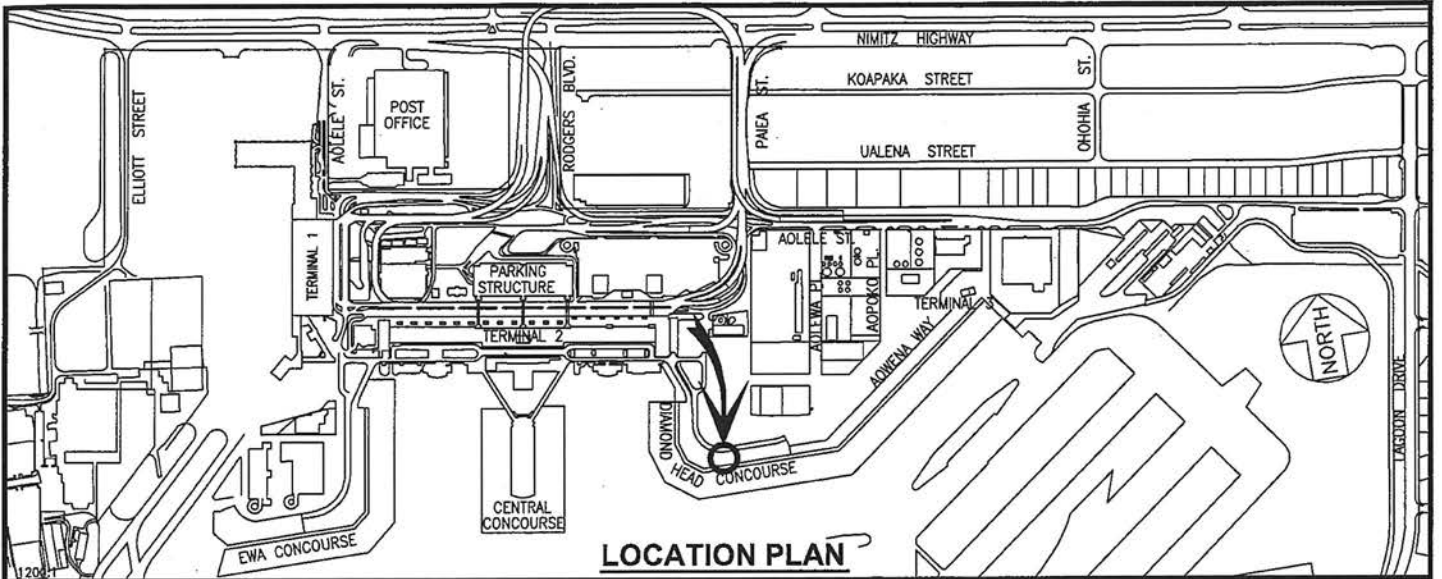
RETAIL CONCESSION

**BUILDING 360
EWA CONCOURSE
SECOND LEVEL**

360221
360222
360228

DANIEL K. INOUE INTERNATIONAL AIRPORT

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STATE LEASE NO. DOT-A-24-0005

DATE: MARCH 2024

EXHIBIT: |



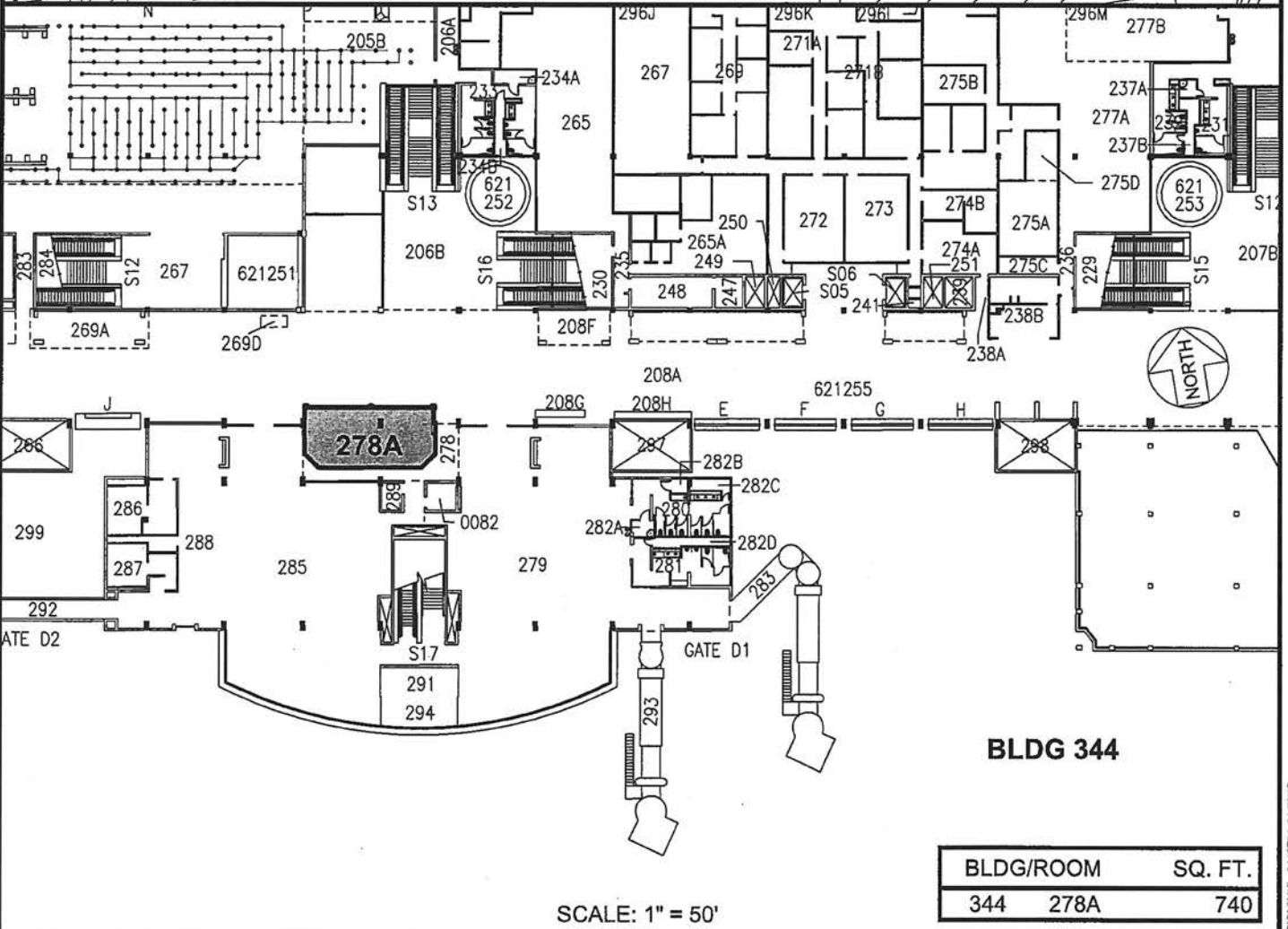
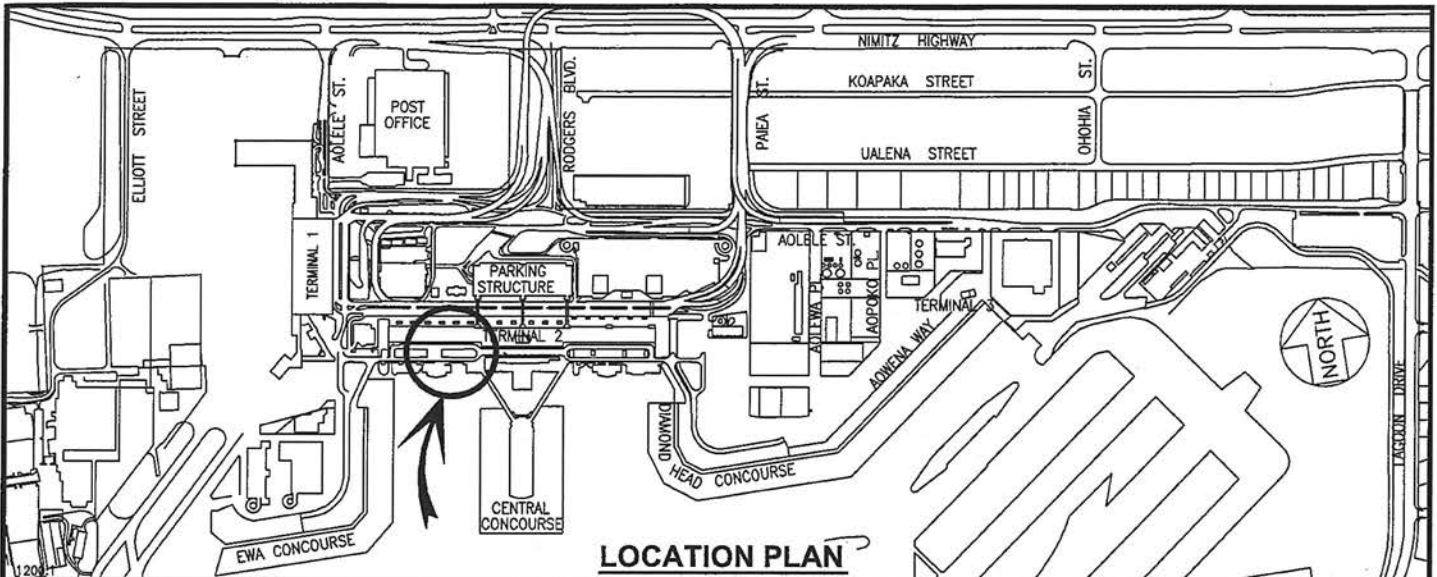
AIRPORTS

RETAIL CONCESSION

**BUILDING 373
D.H. CONCOURSE
SECOND LEVEL**

373242

DANIEL K. INOUE INTERNATIONAL AIRPORT



STATE LEASE NO. DOT-A-24-0005

DATE : MARCH 2024

EXHIBIT: J



AIRPORTS

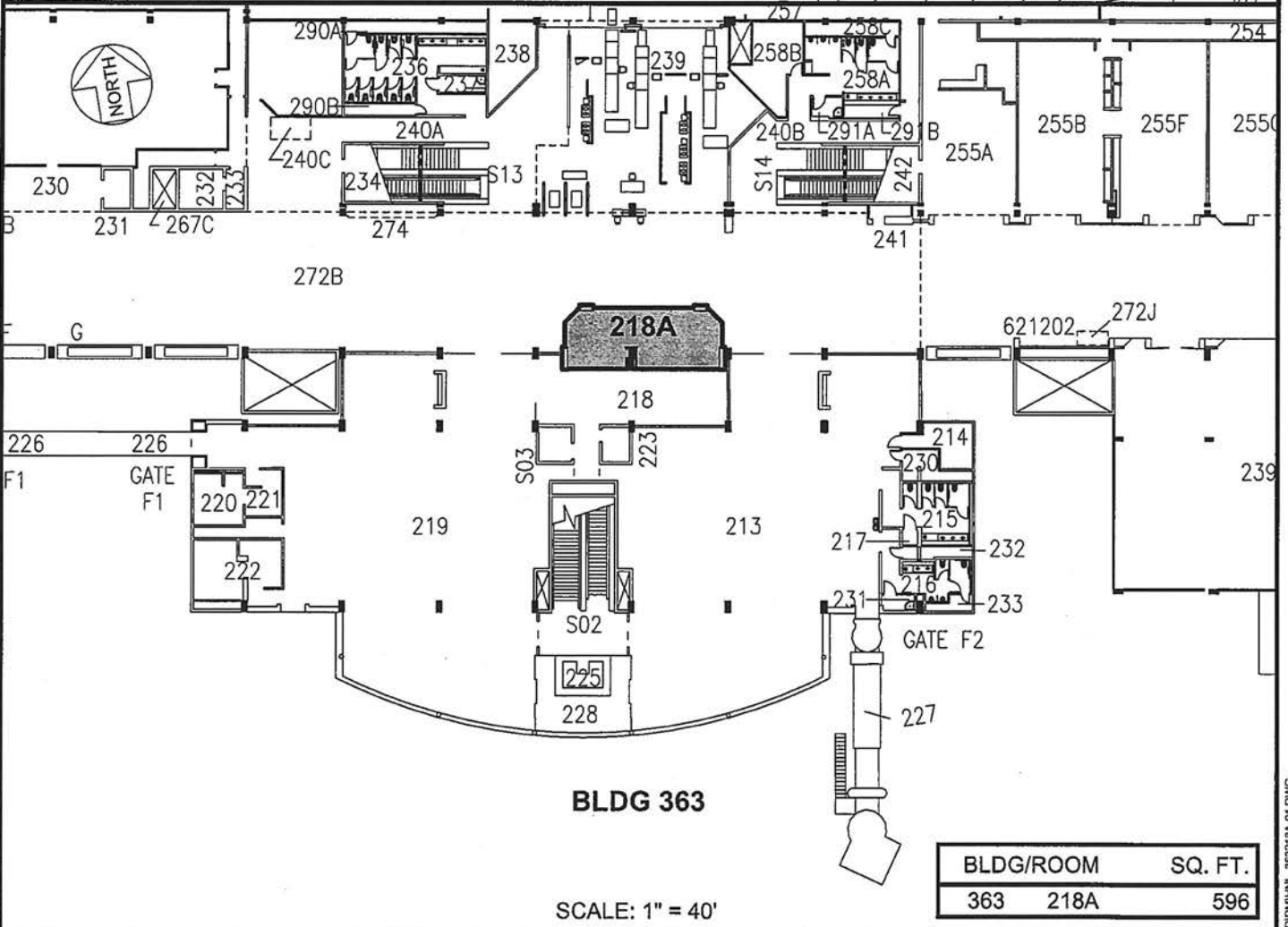
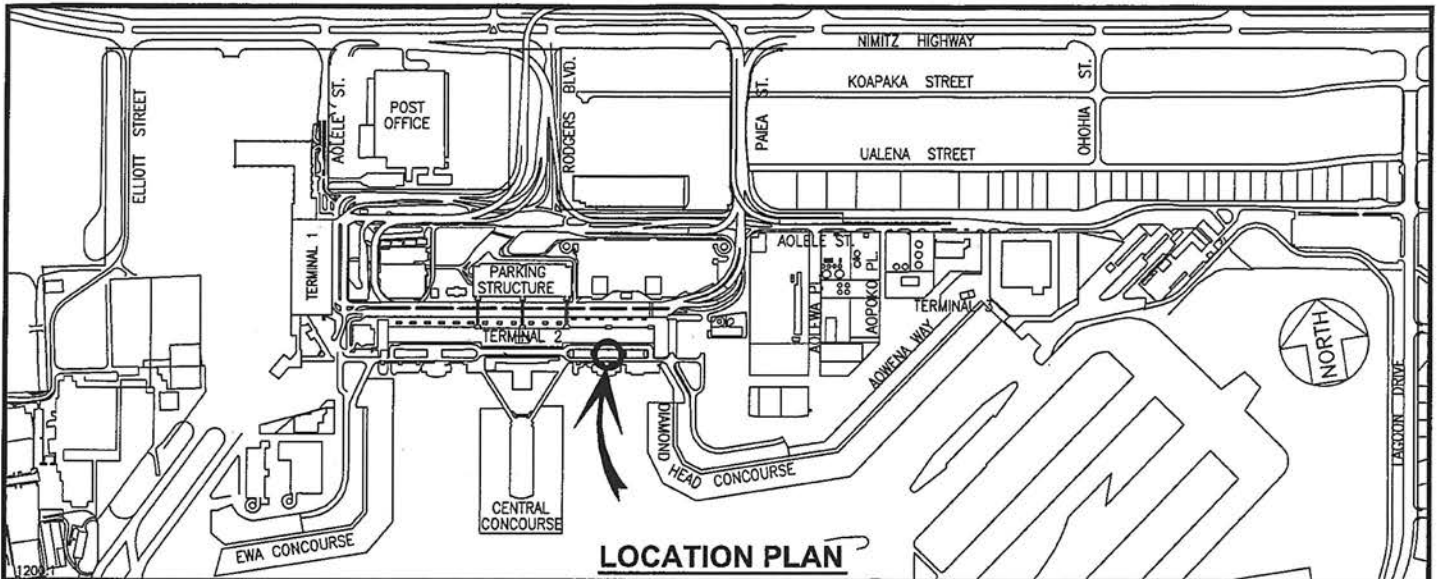
RETAIL CONCESSION

BUILDING 344
EWA DOMESTIC EXTN.
SECOND LEVEL

344278A

DANIEL K. INOUE INTERNATIONAL AIRPORT

H:\AIRPORTS\HAWAII\HONOLULU\CAD\DWG\BLDG_344\278A-01.DWG



STATE LEASE NO. DOT-A-24-0005 DATE : MARCH 2024 EXHIBIT: **K**

	AIRPORTS	RETAIL CONCESSION	BUILDING 363 D.H. CONNECTING LINK SECOND LEVEL	363218A
	<p style="text-align: center;">DANIEL K. INOUE INTERNATIONAL AIRPORT</p>			

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APPENDIX C, ATTACHMENT 1
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. Variiances.
 - 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:	- 82,690
	Adj Dep Cost Imp/Ren:	(509,197)
3.	Adj Cost Trade Fixtures:	1,705
	Depreciation:	- 1,012
	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

ATTACHMENT 5

PERFORMANCE BOND; PAYMENT BOND FORM

CONCESSIONAIRE'S LISTING OF HAZARDOUS SUBSTANCES

CONCESSIONAIRE'S LISTING OF ENVIRONMENTAL PERMITS

APPENDIX D

CONCESSION BOND

KNOW ALL BY THESE PRESENTS, that _____, as Principal, and _____, as Surety, are held and firmly bound unto the State of Hawaii, 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 Hawaii, 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 Agreement, dated _____, entered into by said Principal with the State of Hawaii for the operation and maintenance of the Retail Concession at Daniel K. Inouye International Airport in the State of Hawaii (hereafter the "Concession Agreement"), and shall promptly pay all just claims against the Principal, and shall hold harmless, indemnify and defend the State of Hawaii, its officers and agents, successors or assigns, against loss or damage to property of the State of Hawaii, 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 operation and maintenance of the Retail Concession, 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 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.

Notary Public, _____ Judicial Circuit,
State of _____

My Commission Expires: _____

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 the seal affixed to the foregoing instrument is the corporate seal of said corporation 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.

Notary Public, _____ Judicial Circuit,
State of _____

My Commission Expires: _____