

REVOCABLE PERMIT NO. _____

The HAWAII COMMUNITY DEVELOPMENT AUTHORITY (“HCDA”) hereinafter referred to as “**HCDA**,” hereby grants to _____ hereinafter referred to as “**Permittee**” whose mailing address is _____ permission to enter, use and occupy for the Term designated in paragraph 1 of Exhibit B and on a month to month basis, the premises described in item 3 and delineated on Exhibit A, attached hereto and made a part hereof, for the purpose(s) specified in item 5; and the Permittee agrees to pay the rental specified in item 6 and to perform all other obligations imposed upon it by the Terms and Conditions attached hereto as Exhibit “B”.

- 1. PERMITTEE :
- 2. PROJECT SITE:
- 3. PREMISES:
- 4. LOCATION:
- 5. PURPOSE(S):
- 6. RENTAL:
- 7. SECURITY DEPOSIT:
- 8. EFFECTIVE DATE:

Approved as to Form:

Deputy Attorney General

HAWAII COMMUNITY DEVELOPMENT
AUTHORITY

Teney K. Takahashi, Interim Executive Director

“HCDA”

EIN # _____
“PERMITTEE”

TERMS AND CONDITIONS
Exhibit "B"

1. **TERM.** This Revocable Permit is granted from ____ to ____ and on a month-to-month basis thereafter. Liquidated damages in the amount of ____ per day will be assessed if the demised premises is not vacated by ____, unless the parties mutually agree to an alternative arrangement.

2. **METHOD OF PAYMENT OF RENTAL AND SERVICE CHARGE ON DELINQUENT RENTALS AND OTHER CHARGES.** The monthly rental shall be payable in advance, without notice or demand, on the first (1st) day of each and every month during the life of the Revocable Permit. Should the 1st day of the month fall on a non-business day, then payment must be made by the last business day prior to the 1st. In accordance with HAR 15-214-20, the rental specified in paragraph 6 shall be adjusted on the anniversary date by the CPI increase based upon the Honolulu, all items 1982-1984=100 index.

3. Interest; Service Charge: Without prejudice to any other remedy available to the HCDA, the Permittee agrees without further notice or demand as follows: (a) To pay interest at the rate of one percent (1%) per month, compounded monthly on all delinquent payments; (b) To pay a service charge of \$50.00 a month for all delinquent payments, or such other charge as may be prescribed by rules adopted by the HCDA; and (c) That the term "delinquent payments" as used herein means fees, rents, service charges and other charges payable by the Permittee to HCDA, which are not paid when due.

4. **PERMITTEE'S PRIOR INSPECTION.** The Permittee warrants that it has inspected the Premises and all improvements thereon, knows the condition thereof, accepts the Premises, including soil, water, structures and any hazardous substances that may be found to exist, and fully assumes all risks incident to the use and enjoyment of the Premises.

5. **SECURITY DEPOSIT.** The Permittee, upon execution of this Revocable Permit, shall deposit in legal tender or in such other form as may be acceptable to HCDA, an amount equal to two (2) month's rental as security for the faithful performance on its part of all the terms and conditions identified herein. Should the rental rate increase during the term of this revocable Permit, Permittee will deposit such additional amount so that the Security Deposit held will at all times be not less than two (2) month's gross rent. The said deposit will be returned, without interest, to the Permittee upon the termination of this Revocable Permit only if it has faithfully performed said terms and conditions to the satisfaction of HCDA. In the event the Permittee does not so perform, HCDA shall apply the deposit as an offset to any amounts owed by the Permittee to HCDA under this Revocable Permit or to any damages or loss to HCDA caused by the breach by the Permittee of such terms and conditions.

6. **HAZARDOUS MATERIALS.** The Permittee shall not cause or permit the escape, disposal or release of any hazardous materials. The Permittee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards

prevailing in the industry for storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of Permittee's business, and then only after written notice is given to HCDA of the identity of such materials and upon HCDA's consent which consent may be withheld at HCDA's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Permittee, then the Permittee shall be responsible for the reasonable cost thereof. In addition, Permittee shall execute affidavits, representations and the like from time to time at HCDA's request concerning Permittee's best knowledge and belief regarding the presence of hazardous materials on the Premises placed on and previously released by Permittee. Permittee agrees to indemnify, defend and hold HCDA harmless from any damages and claims resulting from the release of hazardous materials on the Premises occurring while Permittee is in possession, or elsewhere, if caused by Permittee, or persons acting under Permittee. These covenants shall include activities by Permittee from the date it takes possession of its portion of the Premises, and survive the expiration or earlier termination of the Permit. For the purposes of this Revocable Permit, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Federal Clean Water Act, or any other Federal, State or local environmental law, ordinance, rule, regulation, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

7. **INSURANCE.** The Permittee shall, concurrently with the recordation of this Revocable Permit, deliver to HCDA, a Comprehensive General Liability Insurance policy or policies, or Certificate of Insurance in lieu thereof, evidencing that such policy has been issued and is in force, with a combined single limit of not less than \$100,000 for vessels not authorized to carry passengers and for those authorized to carry not more than six passengers; not less than \$300,000 for vessels authorized to carry more than six passengers, but less than twenty-six passengers; and not less than \$500,000 for vessels authorized to carry more than twenty-five passengers for bodily injury and damage to property per occurrence. In lieu of a comprehensive general liability insurance policy or policies, a vessel owner may have P & I (protection and indemnity) insurance as defined in section 431:1-207(2), Hawaii Revised Statutes, for the vessel naming state of Hawaii, HCDA and harbor agent as additional insureds. Such insurance shall:

- a. Be issued by an insurance company or surety company authorized to do business in the State of Hawaii;
- b. Name HCDA, the State of Hawaii and harbor Agent as additional insured;
- c. Provide that HCDA shall be notified at least thirty (30) days prior to termination, cancellation or material change in its insurance coverage;
- d. Cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of the Permittee, its officers, agents, employees, invitees or licensees, in connection with the Permittee's use or occupancy of the Premises;

- e. Be maintained and kept in effect at the Permittee's own expense throughout the life of this Revocable Permit, evidenced by furnishing HCDA without notice or demand a like certificate upon each renewal thereof;
- f. HCDA shall reserve the right to inspect and review all coverage, form, and amount of the insurance required by this Permit;
- g. If, in the opinion of HCDA, the insurance provision in this Permit does not provide adequate protection for HCDA, HCDA may require the Permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. HCDA's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks that exist at the time a change of insurance is required.

8. **INDEMNITY.** The Permittee shall at all times with respect to the Premises use due care for public safety and shall defend, hold harmless and indemnify HCDA, its officers, agents and employees from and against all claims or demands for damages, including claims for property damage, personal injury or death, arising on the Premises, or by reason of any fire or explosion thereon arising from, growing out of, or caused by any act or omission on the part of the Permittee, its officers, agents, employees, invitees, or licensees, in connection with the Permittee's use or occupancy of the Premises.

9. **ACCEPTANCE OF RENT NOT A WAIVER.** The acceptance of rent by HCDA shall not constitute a waiver of any breach by the Permittee of any of the terms and conditions upon which this Revocable Permit is granted and to which the Permittee agrees, or HCDA's right to terminate or revoke this Revocable Permit. Failure by HCDA to insist upon strict performance hereof by the Permittee, or to exercise any option herein reserved, shall not be construed as a waiver or as a relinquishment of any of its rights under this Revocable Permit.

10. **PROPERTY TAXES.** The Permittee shall pay all real property taxes lawfully assessed against the Premises.

11. **WASTE, STRIP, NUISANCE; MAINTENANCE.** The Permittee shall not make, permit or suffer any waste, strip, nuisance or any other unlawful, improper or offensive use of the Premises. The Permittee shall maintain the Premises, improvements thereon, all equipment and other personal improvements thereon, all equipment and other personal property of the Permittee upon the Premises in a strictly clean, neat, safe, orderly and sanitary condition, free of waste, rubbish and debris. Permittee shall provide for the safe and sanitary handling and disposal of all trash, garbage and other refuse from the Premises.

12. **ENTRY BY HCDA.** HCDA or its agents and employees may enter the Premises at all reasonable hours to inspect the Premises and determine if the Permittee is complying with the terms and conditions of this Revocable Permit or for any other proper purpose. The Permittee shall not make any claim for damages or set off of rent, service charge or other charges by reason or on account of such entry.

13. **REPAIRS.** The Permittee shall, at its own expense, keep and maintain the Premises and all improvements in a condition similar to that which existed on the effective date of this Revocable Permit, ordinary wear and tear and damage by acts of God excepted.

14. **STRUCTURAL IMPROVEMENTS, ALTERATIONS OR ADDITIONS.** No substantial improvement, alteration or addition of a structural nature shall be made, installed, or constructed on, under or within the Premises by the Permittee unless it first submits its plans and specifications for them to HCDA for its approval and unless said plans and specifications are in fact approved in writing by HCDA. Such plans and specifications shall not be submitted unless they are in full compliance with all applicable statutes and rules and regulations. Any improvements, alterations or additions shall be accomplished at the sole cost and risk of the Permittee and HCDA shall not be responsible for any damage to or destruction of any such improvements, alterations or additions or any personal property on the Premises. The Permittee shall also provide notice to the responsible agencies, including the Office of Environmental Quality, and otherwise comply with H.R.S. Chapter 343 to determine if such improvements, alteration or addition requires environmental assessments or statements.

15. **REMOVAL OF IMPROVEMENTS OR ADDITIONS.** The Permittee may remove, at its own cost and risk, any and all improvements or additions or any portions thereof, constructed or installed by it upon the Premises, at any time during the life of this Revocable Permit or within thirty (30) days after the termination or revocation hereof; provided that, the Permittee shall give, prior to said termination or revocation, written notice of its intent to remove the same, provided further that, until such removal and restoration has been completed to the satisfaction of HCDA, the Permittee shall continue to pay the rent set forth in item 6 herein. Failure of the Permittee to give notice of intention to remove prior to termination or revocation shall be deemed to be an abandonment of said improvements or additions.

16. **LIENS.** The Permittee shall not commit or suffer any act or neglect which results in the Premises, any improvement, or the leasehold estate of the Permittee becoming subject to any attachment, lien, charge or encumbrance, and shall indemnify, defend, and hold HCDA harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

17. **COMPLIANCE WITH LAWS; DISCRIMINATION PROHIBITED.** The Permittee shall comply with all laws, statutes, ordinances, rules and regulations of all governmental agencies, applicable to the Premises or relating to and affecting any business or other commercial activity conducted on the Premises. Failure to comply shall be considered a breach of the Revocable Permit.

The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex or national origin.

18. **AMERICAN WITH DISABILITIES ACT.** The Permittee shall comply with the rules and regulations relating to the Americans with Disabilities Act (ADA) 28 C.F.R. Part

36 entitled, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities." The ADA Title III Regulation prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with the accessibility standards established by 28 C.F.R Part 36. Plans to construct or alter the existing improvements shall be reviewed and pre-approved by the HCDA prior to any construction commencing. Permittee's failure to comply with this provision shall be considered a breach of the terms and conditions of this agreement which may result in the revocation of this permit and termination of Permittee's occupancy.

19. **TRANSFERABILITY AND MORTGAGE.** This Revocable Permit and Premises or any part thereof, inclusive of any and all rights or obligations accruing or arising under it, shall not be sold, transferred, assigned, leased, mortgaged, sublet or otherwise alienated or encumbered in any manner whatsoever without the written consent of HCDA. If Permittee is a corporation or partnership, and at any time during the term of this Permit any part or all of the corporate shares or partnership interest of Permittee shall be transferred by sale, assignment, bequest, inheritance, operation of law or other disposition, Permittee shall promptly notify HCDA in writing of such. If this Permit is assigned, HCDA may collect rent from the assigns and apply the net amount collected to the rent herein reserved, but no such assignment shall be construed as a release of Permittee from further performance by Permittee of covenants on the part of Permittee herein contained. Notwithstanding any assignment or sublease, Permittee shall remain fully liable on this Permit and shall not be released from performing any of the terms, covenants and conditions of this Permit.

At the time of requesting HCDA's approval or notifying HCDA of change in stock ownership, Permittee shall include information requested by HCDA, including but not limited to: assignee's name and address; consideration paid for assignment, transfer, lease or sublet; copy of all contracts effectuating transfer; appraisal of vessel; and, appraisal of business or other property transferred

20. **TERMINATION AND REVOCATION.** After the original term, this Permit may be terminated by HCDA or Permittee without cause upon thirty (30) days advance written notice; provided that, in the event the Permittee fails to pay any rental, service charge, fees or charges when due or otherwise breaches any of the terms and conditions, HCDA may revoke this Revocable Permit upon five (5) working days written notice.

21. **RIGHT TO RE-ENTER AND ASSUME POSSESSION.** HCDA reserves the right and Permittee agrees that, upon breach of any one or more of the terms and conditions of this Revocable Permit and/or termination thereof under paragraph 19 herein, HCDA may without necessity of court action, enter upon and administratively take possession of the Premises from Permittee.

22. **REMOVAL OF PERSONAL PROPERTY.** Should the Permittee fail to remove any or all of Permittee's personal property from the Premises, after reasonable notice thereof, HCDA may remove any and all personal property from the Premises and either deem the property abandoned or dispose of the property or place the property in storage at the cost and

expense of the Permittee, and the Permittee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of this Revocable Permit.

23. **COURT COSTS AND ATTORNEY'S FEES.** The Permittee shall pay any and all court costs and attorney's fees incurred or paid by HCDA in collecting any damages, charges, penalties due from or payable by the Permittee under this Revocable Permit in removing from the Premises the Permittee and any improvements or additions constructed or installed thereon, or in recovering damages or losses caused by the Permittee's breach of any terms or conditions of the Revocable Permit, or in the collection of delinquent rental, taxes and any and all other charges.

24. **INTERPRETATION.** The use of any gender shall include all genders, the use of the singular shall include the plural and the use of the plural shall include the singular, as the context may require.

25. **CONFLICTING TERMS AND CONDITIONS.** When an inconsistency exists between these Terms and Conditions and the Special Terms and Conditions (if applicable), the Special Conditions shall govern.

26. **PARTIAL INVALIDITY.** If any term, provision, covenant or condition of this Revocable Permit should be invalid, void or unenforceable, the remainder of this Revocable Permit shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

27. **KEWALO BASIN ADMINISTRATIVE RULES.** Permittee acknowledges that anything to the contrary notwithstanding, this Permit shall be subject to and Permittee agrees to abide by all the conditions, rights, restrictions and responsibilities contained in HAR Title 15 Chapters 211, 212, 213 & 214 being the Administrative Rules for Kewalo Basin.

28. **SPECIAL CONDITIONS.**

Possible topics:

- Possession as is
- Condition of premises at the beginning of term
- Personal guarantors
- Improvements by Permittee
- Permission for ticket booth
- Requirement for sales reports
- Multiple vessels using berths
- Percentage rents
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