

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii

August 8, 2014

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

MAUI

REQUEST APPROVAL FOR TERMINATION OF HARBOR LEASE NO. H-86-9 (C)
ISSUED TO BRAUN MANAGEMENT CO., LTD. LOCATED AT MAALAEA
SMALL BOAT HARBOR, KEALALOA, UKUMEHAME, WAILUKU, MAUI,
HAWAII, TAX MAP KEY NO. (2) 3-6-01:34.

REMARKS:

The Braun Management Co., Ltd. (Braun) operates Buzz's Wharf Restaurant located at the Maalaea small boat harbor, Maui, under harbor lease No. H-86-9 (C). Due to the down turn in the economy, Braun has suffered substantial losses for several years which has resulted in the closure of the restaurant.

The Division of Boating and Ocean Recreation (DOBOR) contacted Ms. Sandra Braun-Ortega, Vice President of Braun, to discuss the situation and inform her that they were three months in the arrears on monthly rental payments. Ms. Braun-Ortega confirmed that the restaurant was closed and that they would vacate the premises by July 31, 2014. Ms. Braun-Ortega requested to be released from the remaining term of the lease that expires on July 16, 2017.

According to Hawaii Revised Statutes, §171-20, Notice of breach or default, the Board of Land and Natural Resources (Board) is required to issue a notice of the breach or default of the lease. The Notice of Default for failure to pay rent was dated on July 23, 2014 (See Exhibit A).

Section 7.4, Termination of Contract, of harbor lease H-86-9 (C), states in part, "The State may terminate this contract by giving the Lessee at least ten (10) days written notice, such termination to be effective upon the date specified in such notice, if any of the following events shall occur: (7) The Lessee shall fail to punctually pay the rent or any other payments required hereunder to the State when due;" (See Exhibit B).

DOBOR informed Ms. Braun-Ortega that it was inclined to recommend to the Board that they be released from the remaining term of the lease as long as they agreed to pay the rents due up until the time they vacated the premises on July 31, 2014. Ms. Braun-Ortega indicated that they intended to pay half of the past due rent, \$7,450, by the end of July 2014 and the remaining balance of \$7,450 by August 22, 2014 (See Exhibit C).

Item J-1

Request Approval for Termination of Harbor Lease
No. H-86-9 (C) Issued to Braun Management Co., Ltd.
Located at Maalaea Small Boat Harbor, Kealahoa,
Ukumehame, Wailuku, Maui, Hawaii,
Tax Map Key No. (2) 3-6-01:34

August 8, 2014

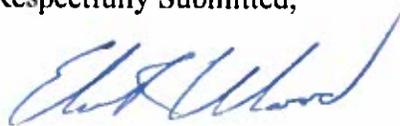
Item J-1

RECOMMENDATION:

That the Board:

1. Approve the termination of harbor lease No. H-86-9 (C) issued to the Braun Management Co., Ltd.;
2. Release the Braun Management Co. Ltd. from the remaining term of the lease subject to the past due rent being paid in full in the amount of \$14,900.

Respectfully Submitted,



Edward R. Underwood
Administrator

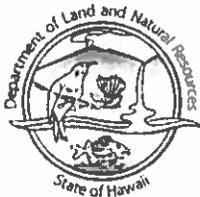
Attachments: Exhibit A – Notice of Default letter
Exhibit B – Harbor Lease H-86-9 (C)
Exhibit C – Letter from Sandra Braun-Ortega

APPROVED FOR SUBMITTAL:



William J. Aila, Jr.
Chairperson

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 23, 2014

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKOLA WEI INLAND RESERVE COMMISSION
LAND
STATE PARKS

BOR-015.15

Certified Mail/Return Receipt

Ms. Sandra Braun-Ortega, VP
Braun Management Co., Ltd.
dba: Buzz's Wharf Restaurant
433 Hokiokio Place
Lahaina, Hawaii 96761

Dear Ms. Braun-Ortega:

NOTICE OF DEFAULT

Pursuant to the authority granted me by the Board of Land and Natural Resources, under Haw. Rev. Stat. sections 171-20 and 171-21, and the breach provision contained in **Boating Lease No. H-86-9 (c)**, you are hereby served this Notice of Default and Demand for Cure on said lease for failure to do the following:

- Keep lease rental payments current
- Post required Performance Bond
- Post required Fire Insurance Policy
- Post required Liability Insurance Policy

Please see attached copy of Section 8.4(7) of the lease, "Payment of Rent and Annual Adjustment". "The lessee shall pay rent monthly in advance, without notice or demand, to the State....."

Our Fiscal Office informs us that as the Lessee, Braun Management Co., LTD. is in arrears in lease rental payments in the amount of \$14,900 covering the period May 1, 2014 to July 31, 2014.

The total past due is in the amount of \$14,900

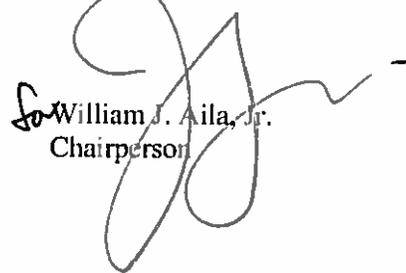
Your failure to act on the above matter may result in the following:

1. Cancellation of Boating Lease No. H-86-9(c).
2. Termination of all your rights and obligations under Boating Lease No. H-86-9(c), except surviving obligations otherwise provided in the lease.
3. Initiation of legal action to collect the delinquent lease rental owing the State of Hawaii under Boating Lease No. H-86-9(c).

EXHIBIT A

We, therefore, urge your fullest cooperation. Should you have any questions, please contact the Division of Boating and Ocean Recreation at (808) 587-1966.

Sincerely,



William J. Aila, Jr.
Chairperson

Attachment

c: BOR-PM
DOBOR Fiscal Office

B,M 7-16-86 7-20-87
ULNR — 7-20-87

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION

HARBOR LEASE NO. H-86-9(C)

PINEAPPLE HILL RESORTS, LTD.

EXHIBIT B

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PROPOSAL FOR THE RESTAURANT AND BEVERAGE CONCESSION

BID PROPOSAL

Minimum Annual Guaranty

CONTRACT

CONCESSION BOND

GENERAL TERMS AND CONDITION

ARTICLE 1 - DEFINITION

As used in the Notice to Bidders, Instructions to Bidders, General Terms and Conditions, Proposal, Proposal Guaranty, Contract, and Concession Bond, unless it is clearly intended otherwise, the following definitions shall apply.

1.1 BIDDER - Any individual, partnership, corporation or other legal entity, or combination thereof, duly authorized to operate a prepared food retailing business in the State, submitting a proposal for the concession contemplated, acting either directly or through a duly authorized representative.

1.2 CONCESSION - The privilege to operate a Restaurant and Beverage Concession, together with the use of the adjacent parking lot on the premises, subject to the terms of the contract documents.

1.3 CONCESSION BOND - The approved form of security furnished by the Lessee and its surety to guarantee full and faithful performance of the contract.

1.4 CONTRACT - The written agreement between the State and the Lessee setting forth the obligations of the parties thereunder. The contract documents shall include the Notice to Bidders, the Instruction to Bidders, the General Terms and Conditions, the Proposal, the Proposal Guaranty, the Contract, the Concession Bond and the Performance Bond.

1.5 DEPARTMENT - The Department of Transportation, State of Hawaii.

1.6 DIRECTOR - The Director of Transportation, State of Hawaii, either acting directly or through his duly authorized representatives.

1.7 FIXTURES - Fixtures shall consist of those trade fixtures and equipment (such as stoves, refrigerators, lamps, kitchen equipment, furniture, furnishings, etc.) which are not

indicated as leasehold improvements.

1.8 H.R.S. - Hawaii Revised Statutes.

1.9 LEASEHOLD IMPROVEMENTS - The term "leasehold improvements" shall, in addition to its general usage, include the plumbing and electrical systems, walk-in coolers, walls, partitions, ceilings and other built-in items.

1.10 LESSEE - The successful bidder who has been awarded the concession.

1.11 PREMISES: - The second floor of the existing two story building known as the Commercial Building containing an area of 2,485 square feet, more or less, together with a open yard space containing an area of 15,149 square feet, more or less, situated at Maalaea Boat Harbor, Maalaea, Maui, Hawaii. Further identified as Parcel 34 of Tax Map Key No. 3-6-01 and a portion of Governor's Executive Order No. 2605. The second floor of the building will be used for a Restaurant and Beverage Concession and the nonexclusive yard shall be used for vehicular parking delineated in red and green respectfully on Exhibit "A."

The yard space shall be used jointly with the Lessee of the first floor of existing structure.

The premises are more particularly discribed in Exhibit "B." Both exhibits, "A" and "B," attached hereto and made a part hereof.

1.12 STATE - The State of Hawaii.

1.13 SURETY - The individual, firm or corporation which is bound with and for the Lessee to insure the Lessee's acceptable performance of the contract and the payment of all debts pertaining to the contract.

ARTICLE 2 - BID REQUIREMENTS AND CONDITIONS

2.1 QUALIFICATIONS OF BIDDERS - Bidders must be capable of performing all of the terms and conditions of the contract documents as the same are completed by the proposal.

Pursuant to Section 102-3, H.R.S., each bidder shall file a written notice of its Intention to Bid on or before the date and in the manner prescribed in the Instructions to Bidders.

All bidders shall complete the Qualification Questionnaire. Whenever it appears to the Director, from the answers to the Questionnaire or otherwise, that the bidder is not fully qualified nor able to carry out the terms and conditions of the contract that may be awarded, the Director shall afford such bidder an opportunity to be heard and if still of the opinion that the bidder is not fully qualified to carry out the terms and conditions of the contract that may be awarded, the Director shall refuse to receive or consider any bid by such bidder. All information contained in the answers to the Questionnaire shall remain confidential. The questionnaires so submitted shall be returned to the bidders after having served their purpose.

Failure to complete the Qualification Questionnaire will be sufficient cause for the State to reject the bid. Submission of a bid in itself does not mean that the bidder is qualified under Chapter 102, H.R.S.

2.2 PROPOSAL FORMS - All proposals shall be made upon the forms furnished by the Department. All blanks in the Proposal shall be completely filled out and signed by the bidder. In case of discrepancy between words and figures, the words shall govern.

2.3 REJECTION OF PROPOSALS - Proposals may be rejected if they show any alterations, erasures, irregularities of any kind or additions not called for; if they are conditional or incomplete; or if they fail to comply with any of the conditions herein.

The State shall reject the Proposal of any person, firm or corporation (whether subsidiary or parent corporation)

that is in arrears or is in default in the payment of taxes, rents or other obligations owing the State or any of its political subdivisions.

2.4 PROPOSAL GUARANTY - All Proposals shall be accompanied by a deposit of legal tender, cashier's check, certified check or a certificate of deposit on a bank insured by the Federal Deposit Insurance Corporation, for or in a sum equal to five percent of the total guaranteed rental bid, payable, at sight, to the Director; provided, that when the amount bid exceeds \$50,000, the certificate of deposit or certified check shall be for \$2,500 plus two percent of the amount bid in excess of \$50,000. A certificate of deposit, cashier's check or certified check may be utilized only to a maximum of \$40,000. A surety bond may be substituted for the deposit of legal tender, certificate of deposit or certified check.

A bid deposit for a bid requiring a deposit in excess of \$40,000 shall only be in the form of legal tender or a surety bond conforming to the requirements of Section 103-31, H.R.S. No Proposal shall be considered unless it is accompanied by the deposit required by Section 102-6, H.R.S., or by a surety bond in accordance with Section 102-8, H.R.S.

2.5 DELIVERY OF PROPOSAL - A Proposal shall be submitted in a sealed envelope bearing on the outside the identity of the concession, and the name and address of the bidder. A Proposal shall be submitted prior to the time and at the place specified in the Notice to Bidders. Proposals received after the time for opening of Proposals will be returned to the bidder unopened.

2.6 WITHDRAWAL OF PROPOSALS - Any Proposal may be withdrawn at any time prior to the hour fixed in the public notice for the opening of Proposals, if a request, in writing, is made to the Director by the bidder for the withdrawal of his Proposal. The withdrawal of a Proposal shall not amount to a prohibition

against a new Proposal being filed by the bidder prior to the time set for the opening of Proposals.

2.7 PUBLIC OPENING OF PROPOSALS - Proposals will be opened and read publicly at the time and place indicated in the Notice to Bidders. Bidders or their authorized agents are invited to be present.

2.8 DISQUALIFICATION OF BIDDERS - A bidder may be disqualified if he submits more than one Proposal or if he has a pecuniary interest in more than one Proposal from an individual, a partnership, a corporation or an association under the same or different names.

ARTICLE 3 - AWARD AND EXECUTION OF CONTRACT

3.1 AWARD OF CONTRACT - The State may reject any and all Proposals and waive any defects as may be deemed best for the interest of the State.

The contract, if it is awarded, will be awarded to the highest responsible bidder within ninety (90) days after the opening of Proposals; except that, by mutual agreement, the time within which the award is to be made may be extended.

The highest responsible bidder shall be the bidder who submits the Proposal with the highest total minimum annual guaranteed rentals (total of the guaranteed rentals for the 15-year term) and whose Proposal is in conformity with all of the terms, conditions and prerequisites set forth in the contract documents.

3.2 EXECUTION OF CONTRACT - The contract shall be signed by the successful bidder and returned to the Department, together with a Concession Bond satisfactory to the Department, within fourteen (14) days after receipt of the contract for execution.

3.3 CONCESSION BOND - Pursuant to Section 102-11, H.R.S., the successful bidder shall file a good and sufficient Concession Bond, conditioned on the full and faithful performance of the contract, in an amount equal to one-sixth (1/6th) of the highest

minimum annual guaranteed rental. The bond shall be executed in the form prescribed and furnished by the Department. The bond shall also be subject to the conditions as presented in Section 9.6 Justification of Sureties.

3.4 FAILURE TO EXECUTE CONTRACT - Failure to execute the contract or to file an acceptable Concession Bond as provided in Section 3.3 herein within fourteen (14) days after the bidder has received his contract for execution shall be just cause for the annulment of the award and the forfeiture of the Proposal Guaranty. If the successful bidder refuses or fails to execute the contract, the State may award the contract to the next highest responsible bidder. If the next highest responsible bidder, to whom any such contract is so awarded, fails or refuses to execute the same, his Proposal Guaranty shall likewise be forfeited. The concession may then be readvertised.

3.5 RETURN OF PROPOSAL GUARANTY - If a contract is entered into and the Concession Bond furnished within the required time, the Proposal Guaranty shall be returned to the successful bidder. The Proposal Guaranties made by unsuccessful bidders shall be returned after the contract has been properly executed or after the Director decides to publish another call for tenders.

ARTICLE 4 - INSTALLATION, MAINTENANCE AND REPAIR
OF FIXTURES AND IMPROVEMENTS ON THE PREMISES

4.1 EQUIPMENT AND FIXTURES - The Lessee shall, at its own cost and expense, install or provide all equipment, fixtures, shelves, cabinets, signs, plumbing fixtures, grease traps, hot water heaters, sinks, coolers, electrical fixtures, flooring, furniture, ranges, refrigerators, freezers, dishwashers, counters and all other equipment and fixtures necessary to the operation of the concession.

4.2 REHABILITATION OF PREMISES - The Lessee shall, at his own cost and expense, within one (1) year from the commencement date of the lease, expend no less than TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) to rehabilitate, alter and improve the existing premises and improvements thereon.

The Lessee shall, at his own expense prior to construction, installation or alteration, obtain all permits necessary to rehabilitate, alter and improve the existing premises and improvements thereon.

During the term of this concession lease, no improvements, alterations or additions will be constructed on or under the demised premises unless the Lessee first submits its plans and specifications to the State for its approval and approval is granted by the State in writing.

The Lessee shall notify the first floor lessee at least thirty (30) days prior to the construction of any improvements and such construction shall not disrupt, interfere or disturb the use of the ground floor by the respective lessee of said floor.

4.3 IMPROVEMENT BOND - The Lessee will, within thirty (30) days after issuance of this concession lease, procure and deposit with the State a surety bond in the amount of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) which bond shall (1) name the State as obligee, (2) be conditioned upon the faithful observance and performance of the building requirement contained in Article 4.2 and (3) save and hold the State harmless from all liens, suits, actions or damages arising out of, caused by or attributable to such work performed pursuant to building requirements.

4.4 MAINTENANCE AND REPAIR - The Lessee shall at all times during the term of the contract keep and maintain all portions of the second floor of the Commercial Building including the

outer walls, stairway, floor and roof and other improvements in good repair and in a clean, orderly, and sanitary condition and appearance. The Lessee shall use the same degree of care as a reasonably prudent owner would use in a similar situation and will keep and maintain the premises and improvements so that at the expiration or sooner termination of the contract, the premises will be in as good condition as at the commencement of the contract, reasonable wear and tear excepted.

The Lessee shall suffer no strip or waste, nor permit the unlawful, improper or offensive use of the premises and improvements or any part thereof.

The Lessee shall, at its own cost, repair, replace, rebuild, and paint all or any part of the premises and improvements which may be damaged or destroyed by the acts or omissions of the Lessee, its officers, employees, or other persons legally on or at the premises.

Any and all repairs, alterations and additions to the premises and improvements costing \$1,000 or more, shall be subject to the prior written approval of the State and shall be of a quality equal to or better than the original material and workmanship. The Lessee shall promptly pay the cost of such repair and maintenance.

The Lessee shall provide and maintain, or cause to be provided and maintained, all obstruction lights and similar devices, fire protection, safety and all other equipment required by any law, ordinance, rules or regulations applicable to the premises.

Lessee shall be responsible in maintaining the floor and shall enforce all necessary measures in preventing any water leakage into the first floor of the Commercial Building. Should leakage occur and cause damages to the property belonging to the first floor lessee, Lessee shall be responsible for all cost needed to repair, replace or clean

such water damages. The Lessee shall maintain the open yard space and the cesspool including sewer lines jointly with the first floor Lessee at no cost to the LESSOR. Should the existing utilities require upgrading to meet current requirements of the County of Maui, all costs incurred to perform the upgrading work shall be borne by the LESSEE.

4.5 UTILITY SERVICES - The Lessee shall be responsible for the payment of all charges for utility services furnished to Lessee.

The failure, delay or interruption in any utility service or services, whether such are supplied by the State or others, shall not relieve or be construed to relieve the Lessee of any of its obligations under the contract. Such failure, delay or interruption shall not constitute grounds for (a) diminution or abatement of the rentals, fees and charges provided for herein; or (b) any claim by the Lessee against the State for damages, consequential or otherwise.

In the event that damage to any utility service lines is caused by the Lessee, its employees, contractors, suppliers, agents or invitees, the Lessee shall be responsible for the cost of repairs thereto.

4.6 SIGNS - The Lessee may, at its own expense, install and operate upon the premises signs to advertise its business. The number, general type, size, design and locations of such signs shall be subject to the written approval of the State and any municipal ordinances.

Upon the expiration or sooner termination of the Contract, the Lessee shall, unless otherwise ordered by the State, remove, obliterate, or paint out any and all advertising, signs, posters and similar devices placed by it on the premises. If the Lessee fails to so perform, the State may perform such work as may be necessary and the Lessee shall pay the costs thereof immediately upon demand by the State.

ARTICLE 5 - USE OF THE PREMISES

5.1 USE OF THE PREMISES

A. Permitted Uses - The Lessee shall have the right to use the premises for any of the following purposes:

(1) Restaurant - To operate a general restaurant business or dining room for the sale, service and dispensing of food and beverages to the general public.

(2) Alcoholic Beverages - The exclusive right to sell, serve and dispense alcoholic beverages by the drink only to the general public either in the restaurant, cocktail lounge or bar. The Lessee shall, at its own cost and expense, procure the necessary County license to dispense alcoholic beverages.

(3) Sundry Sales - To sell at the cashier's counter such items as are approved by the State.

(4) Vending Machines - To install, maintain and/or operate any coin-operated vending machines or devices for the vending within the premises of any product or service approved by the State.

(5) Yard Area To be restricted to only vehicular parking in conformance with the operation of the restaurant and shared jointly with the first floor lessee.

B. Prohibited Uses - The Lessee shall not use the premises, or any part thereof, or permit the same to be used by any of its employees, officers, agents, invitees or guests for any purpose except those listed in Section 5.1A, nor for any of the following:

(1) For any illegal purpose.

(2) For lodging or sleeping purposes.

(3) For any other prohibited uses or uses not contemplated under this contract.

5.2 PROHIBITED ACTS - The Lessee shall not nor shall the Lessee permit any of its employees, officers, agents, invitees or guests to do any act which may:

(1) Result in the creation, commission or maintenance of a nuisance on the premises.

(2) Result in the disturbance, disruption and interference with the occupancy and use of the ground floor by the respective Lessee.

(3) Cause or produce or permit to be caused or produced upon the premises, or to emanate therefrom any unusual or objectionable noises, or noxious smoke, gases, vapors or odors.

(4) Overload the premises.

(5) Invalidate any fire or other insurance policies either required herein or carried by the State, covering the premises or restaurant building. The Lessee shall, in connection herewith, obey, observe and adhere to any and all present and future rules and regulations, requirements, orders, and directives of casualty underwriters, which may pertain or apply to the operation of the concession upon the premises.

5.3 HOURS OF OPERATIONS - The Lessee shall operate the concession during those hours approved by the State from time to time.

5.4 PERSONNEL - The Lessee's employees, officers, and agents shall be courteous, efficient and neat in appearance. The services furnished by such individuals shall be prompt, courteous, and efficient. The Lessee shall not employ or permit any person or persons in or about the premises who use improper language or act in a loud, boisterous or otherwise improper manner.

If any person employed by the Lessee shall appear to the Director to be incompetent or to act in a disorderly or improper manner, he shall be removed immediately upon request of the State, and such person shall not again be employed by the Lessee on the premises.

5.5 QUALITY AND PRICE CONTROL - It is the intention of the parties that the Lessee shall provide the public with food and beverage service of high quality. The Lessee shall maintain and operate the concession in a manner acceptable to the State and shall keep the premises in a safe, clean, orderly and inviting condition at all times.

All food, beverages, confections and other approved items, sold or kept for sale on the premises, shall be of high quality, wholesome and pure, and shall be subject to inspection to determine conformity with all governmental laws, ordinances, rules and regulations.

5.6 GARBAGE, RUBBISH AND OTHER REFUSE - The Lessee shall arrange for adequate, sanitary handling and disposal from the premises of all garbage, rubbish and other refuse caused by or resulting from the operation of the concession. The Lessee may, subject to approval of the State, use garbage grinders for disposal of said garbage. The Lessee shall provide and use sanitary and suitable covered metal receptacles for all garbage, rubbish and other refuse. Piling of boxes, cartons, barrels, or other similar items, in an unsightly or unsafe manner, on or about the premises, is forbidden. The Lessee shall arrange to have all refuse removed from the premises at least once daily so as to maintain the area in a clean, orderly and sanitary condition and appearance.

5.7 OPERATING EXPENSES - The Lessee shall bear any and all costs of the operation of the concession, and shall pay in addition to the rental set forth in the Proposal any and all other costs and expenses connected with the Lessee's use of the premises, facilities, and rights granted, including, but without limiting the generality of the foregoing, maintenance, insurance as provided in Section 6.5(B) herein, utilities, business licenses and permits, and all taxes, assessments and similar charges as shall become due and payable during the said term.

ARTICLE 6 - LEGAL RELATIONS AND RESPONSIBILITIES

6.1 LAWS TO BE OBSERVED - The Lessee shall comply or require compliance with all governmental laws, ordinances, rules and regulations which in any manner affect those engaged or employed by the Lessee in installing the equipment and fixtures on the premises or operating and maintaining the concession. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto.

6.2 PERMITS AND LICENSES - The Lessee shall procure and keep current all permits and licenses; pay promptly all charges and fees; and give all notices necessary and incident to the due and lawful operation of the concession.

6.3 PATENTS AND COPYRIGHTS - The Lessee shall assume all costs arising from the use of copyrights, patented materials, equipment, devices, or processes used in the operation of or incorporated in the concession, and shall indemnify and hold harmless the State from all suits at law or actions of every nature for or on account of the use of any patented or copyrighted materials, equipment, devices or processes.

6.4 RESPONSIBILITY FOR INJURY AND DAMAGE (INDEMNITY) - The use of the premises by Lessee, its agents, employees and guests shall be at their risk. The State shall not be liable for, and the Lessee shall indemnify and hold harmless the State, its officers, employees and agents from all claims, costs, and liabilities for injury to or the death of any person or damage to any property, arising out of or in any way connected with the installation of equipment and fixtures and the use or occupancy of the premises by the Lessee, its agents, employees and guests (including invitees and licensees), except any such claims, costs, and liabilities which occur due to the negligence of the officers, employees and agents of the State, while acting in an official capacity.

6.5 INSURANCE

A. Installation - Before commencing any installation of any leasehold improvements, equipment and fixtures on the premises, the Lessee shall require that all contractors and subcontractors employed on the premises by the Lessee, procure and maintain in full force and effect during the course of installation the following insurance:

(1) Workmen's Compensation as required by law.

(2) Contractor's Comprehensive General Liability and Property Damage with a combined single minimum limit of \$500,000 for bodily injury and property damage per occurrence.

(3) Contractor's Automobile Public Liability and Protective Property with a combined single minimum limit of \$300,000 for bodily injury and property damage per occurrence.

B. Operation - The Lessee shall at its own expense maintain and keep in force during the term of the contract the following insurance:

(1) Comprehensive General Liability with minimum limits as follows:

(a) Property damage per occurrence \$ 500,000

(b) Personal injury or death:

Per person per occurrence 1,000,000

Per occurrence 5,000,000

(c) Products liability:

Per person per occurrence 1,000,000

Per occurrence 5,000,000

(2) Workmen's Compensation as required by law.

(3) Fire and Extended Coverage Insurance to cover the replacement value of the State's improvements and to include vandalism and malicious mischief insurance on the equipment and fixtures on the premises in an amount at least equal to the replacement value of such equipment and fixtures. Said replacement value of State-owned improvements shall be

established by appraisal from an independent appraiser or through the insurance company.

C. Evidence - All required insurance policies, or certificates in lieu thereof, shall be issued by an insurance company or companies approved by the State.

The Lessee shall deposit with the State a copy of all insurance policies together with appropriate evidence that the premiums thereupon have been paid.

All such insurance policies of the Lessee shall name the State as an additional insured and provide that the State shall be notified, in writing, at least thirty (30) days prior to any termination, cancellation, or material change in such insurance coverage.

6.6 DAMAGE OR DESTRUCTION

A. State - In the event the second floor of the commercial building is structurally damaged in part by fire, explosion, the elements, the public enemy, or other casualty caused by a person other than Lessee, its employees, agents, invitees, guests or licensees, but not rendered untenable, the State may, but shall not be obliged to repair the structure to the extent that proceeds of insurance are available, without any reduction in rent to the Lessee. If such structural damage shall be so extensive as to render the premises untenable, but capable of being repaired, the State may, but shall not be obliged to, repair the same to the extent that proceeds of insurance are available, and the rent payable hereunder shall be paid up to the time of such damage and thereafter abate and cease until such time as the premises are again tenantable.

If the building structure is completely destroyed by fire, explosion, the elements, public enemy or other casualty or so damaged that it is untenable for more than thirty (30) days, the State shall be under no obligation to repair or reconstruct the premises. If the State elects to restore the

structure, the rental obligations of the Lessee hereunder shall be paid up to the time of the damage or destruction and thereafter shall abate until such time as the premises are fully restored. The State shall, within sixty (60) days after said damage or destruction, give written notice of its intentions with respect to the repair or reconstruction of the premises. If the State gives no notice of its intention within sixty (60) days, or if the premises shall not be tenantable within twelve (12) months after such damage or destruction, the Lessee may cancel this contract by giving written notice thereof to the State.

B. Lessee - In the event the destruction of or damage to the premises or any improvements is caused by the Lessee, its employees, agents, invitees, guests or licensees, the Lessee shall repair or restore the same with due diligence at its own cost and expense. Such replacements or repairs shall be equivalent to or better in quality than that destroyed or damaged. Plans and specifications for replacement or repairs shall be approved in writing by the State.

6.7 LITIGATION - In the event the State shall, without any fault, be made a party to any litigation commenced by or against the Lessee arising out of the Lessee's use or occupancy of the premises or attributable to any structure or objects placed thereupon or therein by the Lessee then the Lessee shall pay all costs and reasonable attorney's fees incurred by or imposed upon the State in connection with such litigation.

The Lessee shall also pay all costs and reasonable attorneys' fees which may be incurred or paid by the State in enforcing the covenants and agreements of this contract, including the costs of collection of delinquent rentals, taxes and other charges.

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

ARTICLE 7 - RIGHTS AND REMEDIES OF STATE AND LESSEE

7.1 TRANSFER OF LESSEE'S INTERESTS - The Lessee shall not at any time sell, convey, transfer, mortgage, pledge, or assign this contract, either in whole or in part, nor any right, title, interest or privilege hereunder, nor sublet the premises or any part thereof, without the prior written consent of the State.

7.2 INGRESS AND EGRESS - The Lessee, its employees, customers, guests, contractors, suppliers of material, furnishers of services, and invitees, shall in common with others have the right of ingress to and egress from the premises which are reasonably required.

The use of any avenue of ingress and egress shall be subject to the rules and regulations of the State now in effect or which may hereafter be promulgated. 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 Maalaea Harbor presently or hereafter used as such, so long as a reasonable alternative means of ingress and egress remains available to the Lessee. The Lessee hereby releases and discharges the State, its successors and assigns, of and from any and all claims, demands or causes of action which the Lessee may now or at any time hereafter have, arising or allegedly arising out of the closing of any street, roadway, or other access area, whether within or outside Maalaea Harbor.

7.3 RIGHTS OF ENTRY RESERVED - The State, by its officers, employees, agents, representatives, and contractors shall have the right, at all reasonable times, to enter upon all portions of the premises for the purpose of inspecting the same; for observing the performance by the Lessee of its obligations

under the contract; to serve or post or keep posted thereon, notices provided by any law or rules or regulations of the State which the State deems to be for the protection of the Lessee, the premises or both; and to do any act or thing which the State may be obligated or have the right to do under the contract or otherwise.

Without limiting the generality of the foregoing, the State, its officers, employees, agents, representatives, contractors, and furnishers of utilities and other services, shall have the right to maintain existing and future utility, mechanical, electrical, and other systems and to enter upon said premises at all reasonable times to make such repairs, replacements or alterations as may, in the opinion of the State, be necessary or desirable.

Nothing in this section shall be construed to impose upon the State any obligation or create any liability for any failure on the part of the State, to maintain or make repairs, replacements, alterations or additions.

At any time, and from time to time, during ordinary business hours during the three (3) months prior to the expiration of the term of the contract, the State, its agents, and employees, whether or not accompanied by prospective lessees, or by a representative of the Lessee, shall have the right to enter upon all portions of the premises for the purpose of exhibiting and viewing all parts of the same.

No abatement of rental shall be claimed by or allowed to the Lessee by reason of the exercise by the State or any or all of the rights contained in this section; provided that nothing contained in this section shall be construed to permit the State to exercise any right of access or entry for any of the purposes denoted hereinabove except in such a manner as not to unreasonably interfere with or hinder the use, occupancy, and enjoyment of the premises by the Lessee.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed the day and year first above written.

STATE OF HAWAII

By *Edward Y. Hirata*
Edward Y. Hirata
Director of Transportation

LESSEE

PINEAPPLE HILL RESORTS, LTD.

By *Arnold Macdonald*
its PRES.

By *Arif Sumbary*
its Arif Sumbary

APPROVED AS TO FORM:

Keith Y. Tanaka
Deputy Attorney General

APPROVED:
BOARD OF LAND AND NATURAL RESOURCES

By *[Signature]*
Chairman and Member

By *[Signature]*
Member

Approved by the Board
at its meeting held on
3/14/86, J-12 *[Signature]*

STATE OF HAWAII)
) SS.
)

On this _____ day of _____, 19____,
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 Hawaii

My Commission expires: _____

STATE OF HAWAII)
) SS.
)

On this 22nd day of April, 1987,
before me appeared Jerrold MacDonald, to me
personally known, who, being by me duly sworn, did say that he
is the President respectively,
of Pineapple Hill Resorts, Ltd. and that the seal affixed to
the foregoing instrument is the corporate seal of said
corporation, and that said instrument was signed and sealed on
behalf of said corporation by authority of its Board of
Directors, and the said Jerrold MacDonald
acknowledged that he executed said instrument as the free act
and deed of said corporation.

Ligh J. Walsh
Notary Public, 1st Judicial
Circuit, State of Hawaii

My Commission expires: 5-19-89

CS

July 17, 14

Sandra Braun-Ortega, VP
Braun Management Co., Ltd. dba Buzz's Wharf Restaurant
433 Hokiokio Pl
Lahaina, HI 96761

Mr. Edward Underwood, Administrator
Dept. of Land and Natural Resources
Division of Boating and Ocean Recreation
333 Queen Street, Suite 300
Honolulu, HI 96813

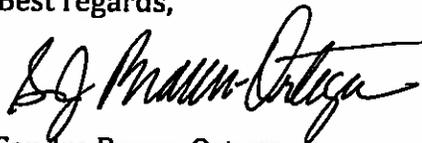
Dear Mr. Underwood,

In accordance with our telephone conversation this morning, I am officially notifying you that we will be vacating the premises of Buzz's Wharf Restaurant, at Maalaea Harbor, by July 31, 2014.

Unfortunately, after operating at a substantial loss for a couple of years, hoping the economy would improve, we are not able to continue. The restaurant is closed and I'm hoping our lease obligation with the State will be nullified. We will make every effort to pay our back rent (from May '14 to July'14, \$14,900.) in a timely manner. If a reasonable payment schedule could be worked out, it would be greatly appreciated. We also have other obligations to our vendors.

I will be contacting you as to what procedures need to be followed before we leave. I can be reached at (808) 661-9088 or 264-7707 cell. Email braunortega@aol.com.

Best regards,



Sandra Braun-Ortega

JUL21'14PM 2:23:08 DIV

EXHIBIT C