

REVOCABLE PERMIT 15-03

This Revocable Permit is entered into as of this 31 day of August 2015 ("Effective Date"), by and between the HAWAII COMMUNITY DEVELOPMENT AUTHORITY ("HCDA"), a body corporate and a public instrumentality of the State of Hawaii, whose business address is 547 Queen Street, Honolulu, Hawaii 96813, and ProPark, Inc. ("PROPARK"), whose business address is 771 Amana Street, Third Floor, Honolulu, Hawaii 96814 (collectively, "the Parties").

1. **Grant of Revocable Permit.** HCDA hereby grants to PROPARK and all of its employees, officers, directors, representatives, agents, invitees, guests, and independent contractors (collectively, "Permitted Persons") a nonexclusive Revocable Permit to enter upon the premises (defined below) for the purpose set forth below (hereinafter, "RP"). PROPARK is responsible for communicating and explaining the terms and conditions of this RP to all Permitted Persons.

2. **Premises.** The RP shall pertain to approximately 5.5 acre paved lot located at the Ewa end of Ilalo Street, Honolulu, Hawaii 96813, identified as Tax Map Key (1) 2-1-015: 052 ("Premises"). There are three distinct area lots in the Premises: 439 striped parking stalls in an approximately 3.25 acre paved enclosed lot referenced as "Lot C", approximately 14,920 sf enclosed lot referenced as "CEM Small Lot" and approximately 43,086 sf enclosed lot referenced as "CEM Large Lot". The Premises is depicted on the map attached to this RP as Exhibit "A" and made a part hereof.

3. **Term and Duration.** The term of this RP granted hereby shall be applicable from 12:01 a.m. on September 1, 2015 ("Commencement Date") through 11:59 p.m. on August 31, 2016 ("Termination Date"). This RP shall automatically terminate on the Termination Date, unless earlier terminated as provided herein.

4. **Use of Premises.** PROPARK's use of the Premises shall be for access to the parking areas within the Premises ("Parking Areas"), conducting parking concessions. PROPARK shall not permit the Premises to be used for any illegal purpose, immoral, or indecent activity, or lodging or sleeping purposes, nor shall PROPARK's use of the Premises be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, or age.

5. **Rent.** Without notice of demand, PROPARK shall pay to HCDA a monthly rental fee of an amount equal to ninety-nine percent (99.0%) of the gross sales collected by PROPARK for the prior month ("Rent"). Payment of Rent shall occur no later than the twentieth (20th) day of the following month, and shall be accompanied by a written statement signed by PROPARK, or by a person duly authorized by PROPARK, which contains a detailed accounting of the gross sales for Lot C, CEM Small Lot and CEM Large Lot respectively (UH Permits, Other Permits, Commercial Vehicles, Daily Parking, Violations, Special Events, etc.) ("Accounting"). The Accounting provided by PROPARK shall be in such form and contain such details as HCDA may reasonably determine. The Accounting shall be conducted in accordance with generally accepted accounting principles and shall be maintained and made available for

inspection by HCDA up to three (3) years from the Termination Date. If the twentieth (20th) day falls on a weekend or State holiday, PROPARK shall tender payment of the Rent on the business day immediately preceding the weekend or State holiday. Without prejudice to any other remedy available to HCDA, PROPARK shall, without further notice or demand, pay to HCDA: (a) interest at the rate of one percent (1%) per month, compounded monthly, on any amount due and unpaid from the date payment is due to the date of payment; and (b) a service charge of \$200.00 for each calendar month in which payment is due and remains unpaid.

6. **Acknowledgement of Use By Other Persons.** PROPARK acknowledges that other persons or entities have the right to enter and/or use the Premises with the approval of HCDA and with written notice to PROPARK, and with the exception of the uses specified in Paragraph 4 above, shall not otherwise interfere with their use and enjoyment of the Premises.

7. **Due Care and Diligence.** PROPARK shall exercise due care and diligence in entering upon and occupying the Premises and shall exercise due care for public safety. Neither PROPARK nor any Permitted Person shall make or cause any waste, strip, nuisance or any other unlawful, improper or offensive use of the Premises. At all times during the term of this RP and upon the termination of this RP, PROPARK shall be responsible for: (a) removing any debris or trash deposited by Permitted Persons on the Premises; (b) repairing any damage to the Premises caused by its use by Permitted Persons; and (c) restoring the Premises to its original. This provision shall survive the termination of this RP.

8. **Indemnity.** PROPARK shall defend, indemnify, and hold harmless HCDA and the State of Hawaii, and their respective officials, directors, members, employees, representatives, and agents from and against any and all claims, actions, penalties, damages, liabilities, costs and expenses for loss or damage, including property damage, personal injury and wrongful death, based upon or arising out of or in connection with: (a) PROPARK's breach of this RP; (b) a Permitted Person's tortious conduct or violation of law while on the Premises; (c) any injury sustained or suffered by a Permitted Person while on the Premises; and (d) any other act or omission in any way relating to or arising out of this RP (collectively, "Covered Claims"). PROPARK shall reimburse HCDA for all its costs and expenses, including reasonable attorneys' fees, incurred in connection with HCDA's defense of any Covered Claims. This provision shall survive the termination of this RP.

9. **Insurance.** (a) PROPARK shall obtain and maintain at all times at its own expense insurance coverage of the kinds and in amounts greater than or equal to those set forth below:

Commercial General Liability:

\$1,000,000 per occurrence and \$2,000,000 in the aggregate
\$1,000,000 Completed Operations Aggregate Limit
\$1,000,000 Each Occurrence Limit
\$1,000,000 Personal & Advertising Limit

Umbrella Liability: \$2,000,000 Aggregate

Worker's Compensation:

Coverage A: As required by Hawaii Laws
Coverage B: Employer's Liability
\$1,000,000 Bodily Injury by Accident Each Accident
\$1,000,000 Bodily Injury by Disease
\$1,000,000 Policy Limit and \$1,000,000 Each Employee

Automobile: \$1,000,000 per occurrence and \$2,000,000 in aggregate

- (b) PROPARK's insurance shall be issued by an insurance company authorized to do business in the State of Hawaii.
- (c) Prior to first entry onto the Premises, PROPARK shall provide to HCDA an insurance binder to show compliance with subsection (a) above.
- (d) The insurance obtained by PROPARK in accordance with subsection (a) above shall name the HCDA and the State of Hawaii and their respective officials, directors, officers, members, employees and agents as additional insureds.
- (e) HCDA shall be notified at least fifteen (15) days prior to the termination, cancellation or material change in PROPARK's insurance coverage.
- (f) PROPARK shall cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of PROPARK in connection with PROPARK's use or occupancy of the Premises.
- (g) The procuring of such required policy or policies of insurance shall not be construed to limit PROPARK's liability under this RP or to fulfill the indemnification provisions and requirements of this RP. Notwithstanding said policy or policies of insurance, PROPARK shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this RP.
- (h) PROPARK shall keep such insurance in effect and the certificate(s) on deposit with HCDA during the entire term of this RP. Upon request by the HCDA, PROPARK shall furnish a copy of the policy or policies.
- (i) Failure of PROPARK to provide and keep in force such insurance shall be regarded as a material default under this RP and HCDA shall be entitled to exercise any or all of the remedies provided in this RP for default of PROPARK.
- (j) HCDA is a self insured State agency. PROPARK's insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute with insurance provided by PROPARK.

HCDA reserves the right to inspect and review all coverage, form, and amount of the insurance required by the above. If, in HCDA's sole discretion, the above insurance does not provide adequate protection for HCDA, it may require PROPARK to obtain insurance sufficient in coverage, form, and amount to provide adequate protection.

10. **Condition of Premises/Assumption of Risk.** PROPARK warrants that it has inspected the Premises and all improvements thereon and knows the condition thereof, accepts the Premises, including soil, water, structures and any hazardous materials or substances which may be found to exist, and fully assumes all risks incident to the use and enjoyment of the Premises. PROPARK hereby agrees and acknowledges that HCDA has not made any representation or warranty, implied or otherwise, with respect to the condition of the Premises,

including any dangerous or defective conditions existing in or on the Premises, whether or not such conditions are known to HCDA or reasonably discoverable by PROPARK. PROPARK agrees that HCDA shall not be held responsible for any injury or damage to PROPARK due to the presence of hazardous materials on or in the Premises. PROPARK further agrees that any property left on the Premises during the term of this RP shall be left there at the sole risk of PROPARK.

11. **Hazardous Materials.** Neither PROPARK nor any Permitted Person shall release any hazardous materials at, onto, or from the Premises, store or use at the Premises 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, or bring onto the Premises any such materials, unless PROPARK obtains HCDA's prior written consent, which HCDA may withhold in its sole and absolute discretion. PROPARK shall be responsible for the cost of any testing required by any governmental agency to ascertain whether PROPARK or any person acting on PROPARK's behalf has released any hazardous materials at, onto, or from the Premises. At HCDA's request, PROPARK shall execute affidavits, representations and the like concerning PROPARK's knowledge and belief regarding the presence of any hazardous materials that PROPARK or any person acting on its behalf has brought onto or directly released at, onto, or from the Premises. PROPARK shall indemnify, defend and hold HCDA harmless from any damages and claims resulting from any direct release by PROPARK or any person acting on PROPARK's behalf, during the term of this RP, of hazardous materials at, onto, or from the Premises or elsewhere. For purposes of this RP, "hazardous material" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act of 1976, as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Federal Water Pollution Control Act of 1972 (commonly known as the Clean Water Act), or any other Federal, state or local environmental law, ordinance, rule, or regulation, whether existing as of the date hereof, previously in force, or subsequently adopted. For purposes of this paragraph, to "release" hazardous material means to (a) release, spill, emit, pump, inject, deposit, dump, dispose of, discharge, or disperse hazardous material in or into the indoor or outdoor environment (including ambient air, soil, surface water, ground water, wetlands, land or subsurface strata) or (b) cause the leaking, leaching, escape, migration, or movement of hazardous material into or through such environment. This provision shall survive the termination of this RP.

12. **Compliance with Laws and Regulations.** PROPARK shall, at all times during the term of this RP, observe and comply with all applicable laws, rules and regulations, whether County, State or federal, including but not limited to, the laws applicable to the use of the Premises and the securing of any and all necessary governmental and other approvals and permits for use of the Premises.

13. **Prohibited Use.** Any use of the Premises not authorized in Paragraph 4 above shall constitute a material breach of this RP and upon such breach, HCDA may terminate this RP forthwith without notice and pursue any other remedies to which HCDA is entitled to by law or under this RP.

14. **Improvements:** PROPARK shall not construct any improvements of any kind or nature upon the Premises without HCDA's express prior written consent, which consent may be

granted or withheld in HCDA's sole discretion. If PROPARK obtains HCDA's express prior written consent to construct improvements on the Premises, any improvements, including but not limited to permanent structures, erected on or moved onto the Premises by PROPARK shall remain the property of PROPARK and PROPARK shall have the right, prior to the termination or revocation of this RP, or within an additional period HCDA in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the PROPARK shall fail to remove the improvements prior to the termination or revocation of this Permit or within an additional period HCDA may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to PROPARK. Any improvements, alterations, or additions shall be accomplished at the sole risk and responsibility of PROPARK and shall comply with all applicable laws. HCDA shall not be responsible for any destruction or damage to any such improvements, alterations, additions, or any personal property erected, constructed, or left on the Premises by PROPARK. This provision shall survive the termination of this RP.

15. **No Lien.** PROPARK shall not create, incur, or assume any attachment, judgment, lien, charge, or other encumbrance on the Premises or any improvements thereon. PROPARK shall defend, indemnify, and hold harmless HCDA from and against any and all such encumbrances and all resulting expenses, including without limitation, all reasonable attorneys' fees and costs incurred by HCDA in attempting to clear or clearing the Premises of such encumbrances.

16. **Non-transferrable.** This RP or any rights hereunder shall not be sold, transferred, assigned, conveyed, released, mortgaged, sublet, alienated, encumbered or otherwise disposed of without HCDA's express prior written consent. Any disposition in contravention of this provision shall be void and shall constitute a material breach of this RP. Any change in ownership or control of forty (40) percent or more of the equity or voting interest in PROPARK from the Effective Date through any time during the term of this RP shall be considered a disposition, and HCDA, in its sole discretion, may either withhold its consent to the disposition or condition HCDA's consent on an adjustment of the Rent or other terms in this RP.

17. **Special Conditions.**

A. PROPARK shall not park any vehicles in the driveways without HCDA's prior written consent, and in any such instance only in compliance with law.

B. An attendant shall be stationed at Lot C every day for at least 3 hours to patrol, monitor and enforce parking permits, handicap parking, noncommercial parking, etc.

C. PROPARK shall keep on file with HCDA a schedule of the parking operation hours and a schedule of the parking rates charged.

D. PROPARK shall conduct parking operations on the Premises with due diligence and efficiency, unless prevented from doing so by causes beyond PROPARK's control.

E. PROPARK shall set-aside in Lot C for the University of Hawaii ("UH") three hundred and eighty (380) parking stalls at the monthly rent of fifty dollars (\$50.00) per stall

pursuant to that certain parking agreement between the HCDA and the UH dated August 30, 2013.

F. PROPARK shall set-aside in Lot C for Kupu five (5) parking stalls at the monthly rent of (\$50.00) per stall.

G. Lot C shall be use for parking permits, daily parking and special events parking only. No commercial parking shall be allowed in Lot C.

H. CEM Small and Large Lots may be used for light vehicle storage and construction base yard rental.

I. Should PROPARK or any Permitted Person tow or cause a vehicle to be towed from the Premises, PROPARK shall provide notice of a right to post tow hearing to all persons seeking to recover possession of a towed vehicle. A blank notice template is attached hereto as Exhibit "B." PROPARK shall document the receipt of the notice to the owner and provide HCDA with a copy of the notice. If a person requests a post tow hearing to contest the validity of the tow, HCDA shall appoint a hearings officer and PROPARK shall provide documentation (including video and photographs) concerning the tows to the HCDA and be available to testify at the hearing. Photos shall show date and time of the tow. PROPARK shall be bound by the decision of HCDA hearings officer. If the HCDA hearings officer determines that there is an insufficient factual or legal basis for the tow, PROPARK shall cause the release of the vehicle to the person without the person having to pay the towing and storage fees (if the vehicle has not already been recovered) or refund to the person all towing and storage fees already paid (as well as any fines or penalties the person may have paid).

18. **Termination.** This RP may be terminated by either party following at least thirty (30) days prior written notice to the other party.

19. **Notices.** Any notice, request, demand, or other communication required or permitted to be given or made under this RP by either party hereto shall be in writing and shall be deemed to have been duly given or served if: (a) personally delivered; (b) sent by mail, postage prepaid and certified with return receipt requested; (c) transmitted by facsimile, or (d) sent by e-mail with request for delivery confirmation, at the address, facsimile number, or e-mail address given below:

HCDA:
Aedward Los Banos
Acting Executive Director
Hawaii Community Development Authority
547 Queen Street
Honolulu, Hawaii 96813

PROPARK:
Allen D. Alana
General Manager
ProPark, Inc.
771 Amana Street, 3rd Floor
Honolulu, Hawaii 96814

20. **Headings/Captions.** The headings and captions of paragraphs or other parts hereof are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which the respective headings and captions may pertain.


21. **Governing Law.** This RP shall be governed by and construed under the laws of the State of Hawaii.


22. **Counterparts.** This RP may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

23. **Entire Agreement.** This RP constitutes the entire agreement and understanding between the Parties and shall supersede any and all prior communications, representations, or agreements, both verbal and written, between the Parties regarding the use of the Premises. This RP cannot be modified except by a written instrument signed by both Parties.

IN WITNESS WHEREOF, HCDA and PROPARK have caused this RP to be executed as of the day and year first above written.

Hawaii Community Development Authority

By: 
Aedward Los Banos
Acting Executive Director

ProPark, Inc.
By: 
Allen D. Alana
General Manager

APPROVED AS TO FORM:


Deputy Attorney General

TMK (1) 2-1-15:052

Lot C - 439 striped parking stalls in an approximately 3.25 acre paved enclosed lot.

CEM Small Lot - 14,920 sf enclosed lot.

CEM Large Lot - 43,086 sf enclosed lot



EXHIBIT "B"

NOTICE OF RIGHT TO POST TOW HEARING

Your vehicle, license number _____ was towed from the Ilalo Street Lot C at _____m. on _____, 20__, by PROPARK Parking Services (through its authorized towing company contractor, _____, _____, Honolulu, Hawaii 96____, Phone _____ - _____) acting on behalf of the Hawaii Community Development Authority, State of Hawaii.

The reason your vehicle was towed is:

As vehicle owners or other persons entitled to possession of impounded vehicles, you have the following options:

(A) You may recover possession of your vehicle by paying the towing and any storage fees that may have accrued.

(B) If you take issue with the impoundment of your vehicle, you may:

(i) Recover possession of the vehicle by paying the towing and storage fees that have accrued and file a lawsuit for damages with any court but only to the extent already allowed by law (all defenses are reserved including sovereign immunity); or

(ii) Either before or after you have recovered possession of the vehicle by paying the towing and storage fees that have accrued, demand an administrative hearing to determine whether there was a sufficient factual and legal basis for impounding your vehicle. To be entitled to such hearing, your written demand must be filed with the

Hawaii Community Development Authority
547 Queen Street
Honolulu, Hawaii 96813
Attn: Asset Management

within 5 working days after you learned that your vehicle was impounded or was missing. Your demand should include your name, vehicle license plate number, date your vehicle was towed, a brief explanation of why you believe the impounding of your vehicle was not warranted, and the best way to contact you to notify you of the hearing date, time, and location. If you have not already recovered possession of your vehicle, the hearing will be held within 48 hours after the filing of your written demand (excluding weekends and state holidays). Otherwise, the hearing will be held within a reasonable time. A determination that there was an insufficient factual or legal basis for impounding your vehicle will require PROPARK Parking Services to cause the release of the vehicle to you without your having to pay the towing and storage fees (if you have not already recovered possession) or refund to you all towing and storage fees already paid (as well as any fines or penalties you may have paid).