

AGREEMENT BETWEEN
UNIVERSITY OF HAWAI'I AT MANOA AND
FOR THE USE OF STAN SHERIFF CENTER

This Agreement, dated June 12, 2012, is by and between the UNIVERSITY OF HAWAI'I AT MANOA ("UNIVERSITY") and _____ for the use of the Stan Sheriff Center to hold the _____ Concert pursuant to the terms and conditions herein.

The UNIVERSITY specifically and expressly acknowledges and thanks _____ for its intent and agreement to promote the Benefit Concert as a fund-raising benefit for the UNIVERSITY's athletic department.

WITNESSETH

1. Description of Premises. UNIVERSITY, for and in consideration of the covenants and agreements to be performed by _____ as contained in this Agreement, hereby authorizes the use of the specific floor and ground areas within the walls of Stan Sheriff Center ("SSC") by _____ for the purpose of the _____ Benefit Concert ("Event") on the dates and periods hereinafter set forth, with the right of Ingress and egress to the following areas:

- Arena Floor
- Visitor 1,2 and 3 Locker Rooms
- Press Room
- Green Room
- Officials Room
- Ed Wong Hospitality Suite
- East Hospitality Area
- West (or Ewa) Hospitality Area
- Diamond Head (or South) Hospitality Area

shall not have access to the following designated areas:

- Manager's and staff offices

- Training room
- Weight room
- Laundry room
- Equipment room
- Players' lounge
- Unassigned storage areas
- Concession areas and kitchen of SSC
- Ticket and sports information offices.
- Mechanical, electrical and storage rooms
- Areas under construction

Upon request, however, access to the prohibited areas above and other UNIVERSITY premises may be allowed with UNIVERSITY's prior written approval. During the dates and periods of use, authorized representatives of UNIVERSITY shall have access and unrestricted right of ingress, egress and access to any part of SSC, including areas authorized to be used by , for the purpose of performing their duties and otherwise attending to the UNIVERSITY's business or to its interests, but UNIVERSITY shall not unreasonably interfere with use.

Should any construction or remodeling be performed at SSC during the time of the Event, UNIVERSITY will notify of the areas to be affected. UNIVERSITY represents and warrants that any such construction and remodeling shall not interfere with use of the SSC.

shall have the right to cover any existing signage in the SSC in a manner that will leave no marks, holes or other damage to the structure or existing signage upon removal. This right shall not apply to emergency exit signage or other signage required by law or regulation.

2. Use by agrees and warrants that the SSC shall only be used for the Event and for no other purpose, and that said Event will be held as specified herein. understands that the SSC is a facility of the UNIVERSITY, and used for educational, recreational, research, and other related programs of the UNIVERSITY. The following applies to use of the SSC:

A. Personnel, equipment, or materials shall not be moved onto UNIVERSITY's property until approval is granted by UNIVERSITY. UNIVERSITY reserves the right to inspect all equipment and material and shall have the authority to bar the use of any equipment and material it deems to be inappropriate or detrimental to the SSC.

B. All personnel, equipment and materials brought onto UNIVERSITY and/or SSC premises by its contractors, or agents shall be removed from UNIVERSITY property as soon after the Event as possible, and no later than within 48 hours after the end of the Event.

C. If personnel, equipment and materials are not removed within 48 hours after the end of the Event. UNIVERSITY shall have the right to remove and dispose of same at expense. furthermore, shall defend and indemnify UNIVERSITY from any claim for damages or loss incurred in connection with said removal or disposition. agrees that UNIVERSITY shall not be responsible or liable for the loss of any equipment or material, including personal property, left at the SSC by its contractors, or agents.

UNIVERSITY will identify public parking areas that can be used by attendees of the Event, and provide with parking passes for lower campus use by its personnel for the Event. agrees to park only in the areas designated. If necessary, UNIVERSITY will also identify and provide parking areas for loading, unloading and staging of buses in the immediate proximity of the SSC.

3. Dates and Periods of Use. use of the SSC for its Event shall be on Thursday, August 16, 2012, Friday, August 17, 2012 and Saturday, August 18, 2012, during the times specified below. At the present time, the Event is anticipated to take place on the night of Saturday, August 18, 2012. Additional concert dates may be added on Friday, August 17, 2012 and/or Sunday, August 19, 2012. Additional dates shall be memorialized by a separate agreement between the Parties.

shall submit a detailed schedule of its planned use of the SSC to UNIVERSITY for its approval no later than August 1, 2012. shall have

access to the designated areas outlined in Section 1 of this Agreement beginning at 7:00 a.m. on the Wednesday before the Event through and including 10:30 a.m. on the Sunday following the Event.

The hours of the actual Event in the SSC shall take place between the hours of 8:00 a.m. to 10:30 p.m., unless otherwise agreed to in writing by UNIVERSITY. will be allowed access to the SSC from 7:00 a.m. during the periods of use.

4. Event Fee / Fundraising Revenue. The Event is a fund-raising benefit for the UNIVERSITY's athletic department. As such, UNIVERSITY and agree to a rent fee in the amount of 10% of the gross revenues from ticket sales or 75% of the net revenue after expenses, whichever is greater.

5. Assistance by UNIVERSITY. The UNIVERSITY will assist promotion of the fund-raising Event in the following manner:

A. Pre-Sale Tickets shall be made available for purchase by and through UNIVERSITY's athletics fundraising organization, , on or about June 18, 2012.

B. Revenues from Pre-Sale Tickets in the amount of \$225,000.00 will be utilized by to reserve and secure the talents and services of the performer for the Event, prior to Event tickets being made available for purchase by the general public.

C. Revenues from all ticket sales may be utilized by to make additional payments to entertainers and service providers necessary for producing a successful fund-raising Event.

D. UNIVERSITY will use its best efforts to help promote the Event, and encourage ticket sales.

6. Reimbursable and Other Expenses. shall be responsible for any and all expenses to staff and operate the SSC in order to present a successful fund-raising Event, and return the SSC to its pre-Event status and condition. The expenses to include:

A. UNIVERSITY, with _____ Input, will determine and furnish the staff necessary to operate the SSC for the Event, with UNIVERSITY to have the final say. The staffing shall include, but not be limited to, administrative, security, medical and operations staff, including ushers, usher supervisors, support, parking and janitorial personnel. _____ will only be billed actual hours worked by such staff.

B. UNIVERSITY will determine and furnish or rent any equipment it deems necessary for the Event upon consultation and agreement with _____ with UNIVERSITY to have the final say.

C. _____ agrees to discuss the necessity of all other expenses with UNIVERSITY prior to incurring such expenses for the Event.

7. Settlement of Accounts. Within a reasonable time after the conclusion of the Event, UNIVERSITY shall provide _____ with a statement certifying the total amount of all reimbursable expenses and any other fees and charges payable by _____. Within ten (10) days of receipt of said statement, _____ shall make its payment for expenses and fees to the UNIVERSITY and its payment of the rent fee.

8. Disclaimer. _____ acknowledges and agrees that there are no express or implied warranties or representations made by UNIVERSITY with respect to the fitness of the SSC for the Event.

9. Excuse of Performance. The parties shall be excused from the performance of this Agreement, in whole or in part, only for the following causes:

A. When performance is prevented by operation of law.

B. When performance is prevented or materially affected by act of God, earthquake, hurricane, flood, fire, riot, wars, strikes or labor disputes, interruption of supply, law or regulation, governmental action or any other cause beyond the control of that party.

C. When performance is prevented or materially affected by an act of the public enemies of the State of Hawai'i, or of the United States of America, or by strike, mob violence, fire, delay in transportation beyond the reasonable control of _____, or unavoidable casualty, or at any other time UNIVERSITY, in its sole discretion, determines that operation of the SSC would be dangerous to the public health or safety.

If performance is excused and the Event is canceled in accordance with the provisions of this section, _____ agrees to pay to UNIVERSITY any and all costs and expenses, if any, provided for in this Agreement which have been incurred up to the time performance is excused.

10. Insurance and Indemnity (_____). In accordance with the UNIVERSITY's policies pertaining to the Use of University-Owned Facilities:

A. _____ shall indemnify, defend and hold harmless the University of Hawai'i and the State of Hawai'i its officers, agents, employees or any person acting on its behalf (1) from and against any claim or demand for loss, liability or damage, including but not limited to, claims for property damage, personal injury or death, by whomsoever brought, arising from any accident or incident arising out of or connected with the performance of this Agreement, and will reimburse the University of Hawai'i for all attorney's fees, costs, and expenses in connection with the defense of such claims, and (2) from and against all claims, suits, and damages by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

B. _____, during the period of this Agreement, at its own cost and expense, shall maintain commercial general liability insurance covering premises, operations, fire damage, independent contractors, products and completed operations; blanket contractual liability; personal injury, advertising injury and host liquor liability, with a combined single limit of not less than \$2,000,000. Such policy must

be acceptable to the UNIVERSITY and shall name the University of Hawai'i and _____ as additional insureds, and shall cover claims related to the Event. The policy shall not contain any intra-insured exclusions as between Insured persons or organizations, but shall include coverage for liability assumed under this Agreement as an "Insured contract" for the performance of indemnity under this Agreement.

A copy of the above policy shall be deposited with the Director of Risk Management as soon as possible prior to the day of the Event. The above policy shall contain the following three clauses:

1. The insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the University of Hawai'i.
2. It is agreed that any insurance maintained by the University of Hawai'i and _____ will apply in excess of, and not contribute with, insurance provided by this policy.
3. The University of Hawai'i and _____ is added as an additional insured with respect to operations of _____ its officers, employees, contractors and agents on University of Hawai'i premises used on behalf of the Event.

Additionally, although UNIVERSITY agrees to use its best efforts to assist _____ in producing a successful Event, _____ agrees to assume all risks associated with booking, promoting and producing the Event. Specifically, _____ shall indemnify, defend and hold harmless UNIVERSITY, the University of Hawai'i and _____ its officers, agents, employees or any person acting on its behalf from and against any and all claims and demands brought or made on account of the non-performance of _____ at the Event, for any reason whatsoever, represents to UNIVERSITY that it can and will secure insurance to cover this possibility, and identify UNIVERSITY, the University of Hawai'i and

as additional insureds. A copy of this policy shall be provided to the UNIVERSITY's Director of Athletics before Pre-Sale Ticket sales commence.

11. Responsibility (UNIVERSITY). As an agency of UNIVERSITY is self-insured, UNIVERSITY shall be responsible for damages or injury caused by UNIVERSITY's agents, officers, and employees while acting within the course of their employment under this Agreement to the extent that UNIVERSITY's liability for such damage or injury has been determined by a court of competent jurisdiction or otherwise agreed to by UNIVERSITY, and UNIVERSITY shall pay for such damages and injury to the extent permitted by law and subject to funding being properly appropriated, allotted, and otherwise properly made available for such purpose.

12. Observance of Laws. shall observe all laws, ordinances, policies and procedures of , the UNIVERSITY and the agrees that it will not discriminate against any individual or employee because of race, sex, age, religion, color, national origin, ancestry, disability, marital status, arrest and court record, sexual orientation, and status as a covered veteran, and further agrees not to discriminate for the same aforementioned reasons against any person or persons in connection with admission, services, or privileges offered to or enjoyed by its attendees. further agrees to be responsible for securing any license and permits that may be required.

13. Condition of Premises. agrees to accept the SSC in the condition as is at the entry time of the Event.

14. Patented and/or Copyrighted Materials. assumes all fees and/or costs arising from the use of patented and/or copyrighted materials, equipment, devices, processes, or dramatic rights used on or incorporated in the conduct of the Event, and agrees to indemnify and save harmless the University of Hawai'i and and their duly authorized representatives from all damages, costs, and expenses in law or equity, for or on account of the use of any patented and/or copyrighted materials, equipment, devices, processes, or dramatic rights furnished or used by

in connection with the Event. warrants that it has secured all copyrights and similar permissions prior to use during the Event.

15. Alteration of Premises. No additions or alterations of any kind shall be made to or upon the SSC and the appurtenances herein authorized to be used, without the written consent of UNIVERSITY. The use of the SSC and its appurtenances by its contractors or agents in any manner other than that authorized herein shall be at all times subject to the approval of UNIVERSITY.

16. Political Activity Not Permitted. It is understood and agreed by that no political activity or distribution of political materials shall be conducted or permitted on University property or in the SSC during the Event.

17. Rights Non-Assignable. This Agreement and the use herein granted to shall not be assigned.

18. Rules of University. It is expressly understood and agreed that all rules of the UNIVERSITY governing management, operation, and use of its facilities, and of the University of Hawai'i are incorporated herein by reference, and this Agreement is subject to the provisions of those rules whether or not expressly mentioned in this Agreement. These rules can be found and accessed at <http://www.Hawai'i.edu/apis/>.

19. Concessions and Merchandising.

A. All food and beverage concessions and catering services shall be operated by UNIVERSITY's food and beverage provider (hereafter referred to as " ") under contract with the UNIVERSITY on the date of the Event. its contractors, and agents shall contract with for all such services relating to the use of the SSC. All rebates, if any, received from from these concessions shall be the sole property of the UNIVERSITY, and , for itself and on behalf of its contractors and agents, expressly waives any and all claims to any such rebates. Any exceptions to the above must be approved by and UNIVERSITY.

B. Neither its contractors or agents shall sell any merchandise on the premises of the SSC or of the UNIVERSITY, unless specifically agreed to in writing by the UNIVERSITY.

20. Furnished Equipment. The use of UNIVERSITY equipment by or its contractors or agents is prohibited without written authorization from UNIVERSITY.

21. Damage to Premises. agrees not to commit, permit or allow any injury or damage to any part of the SSC and its appurtenances or to any part of the University of Hawai'i at Manoa's campus. If breaches this condition, UNIVERSITY is expressly authorized by to restore the premises or other appurtenances, and to make such repairs as may be necessitated by any such injury or damage, and agrees to pay to UNIVERSITY within ten (10) days after the receipt of a statement of the cost of such repairs, the amount shown on the statement. Inasmuch as UNIVERSITY is not insured against damages to the SSC, it is expressly understood and agreed that shall, at its sole expense, repair all damages to UNIVERSITY premises caused by attendees, patrons, delegates, invitees, and other persons associated with the Event at the SSC, whether or not such damage was occasioned by or through the negligence of Repairs by shall be made to the satisfaction and approval of UNIVERSITY and such approval shall not be unreasonably withheld.

22. Approvals. All approvals required under this Agreement, whether written or verbal, shall be obtained by from UNIVERSITY's Athletic Director or designee. No other approvals shall be valid.

23. Contractors and Agents. agrees that its contractors and agents shall abide by all terms and conditions of this Agreement with respect to their activities at the SSC. recognizes that it shall be responsible for all activities of its contractors and agents on UNIVERSITY premises and shall be liable for all claims, demands, damages, and losses arising from the acts and/or omissions of its contractors and agents.


24. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
25. Applicable Law and Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawai'i, and any disputes shall be resolved by a state court of competent jurisdiction in Honolulu, Hawai'i.
26. Waiver. No failure to exercise, and no delay in exercising on the part of either party, any privilege, power or right hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right or power hereunder preclude further exercise of any other right or power hereunder.
27. Notices. Any notice or communication made pursuant to, under or by virtue of this Agreement must be in writing (whether or not so stated) and sent either by personal delivery or sent by registered or certified mail, return receipt requested, nationally recognized overnight courier service, by facsimile transmission or by email. Notices must be sent to a party at the address noted below:
- To UNIVERSITY: Director of Athletics
 University of Hawai'i at Manoa
 Office of Intercollegiate Athletics
 1337 Lower Campus Road
 Honolulu, HI 96822
28. Individual Authority. The individuals executing this document represent that they have full authority to bind their respective party to the terms of this Agreement.

29. Counterparts. This Agreement may be executed in two or more counterparts, and when all counterparts have been executed, each counterpart shall be considered an original, but all counterparts shall constitute one and the same document, and in making proof of this Agreement, it shall not be necessary to prove or account for more than one such counterpart.

30. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all proposals and/or prior agreements, oral or written, and all other communications between the parties relating to the subject matter hereof. This Agreement may be supplemented and/or amended, but only if agreed to in a writing signed by duly authorized officers or representatives of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the date above written.

University of Hawai'i at Manoa

By: 
James J. Donovan III
for Director of Athletics

By: