

**RECEIVED**

By Dept of the Corporation Counsel at 2:55 pm, Aug 06, 2021

**REQUEST FOR LEGAL**

**Date:** August 6, 2021  
**From:** Yuki Lei K. Sugimura, Vice-Chair  
Human Concerns and Parks Committee

TRANSMITTAL

**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Mimi DesJardins, Esq.

**Subject:** GRANT OF A LEASE EXTENSION TO MAUI NUI BOTANICAL GARDENS (KAHULUI)  
(HCP-24)

**Background Data:** Please see attached resolution. Please attach an updated Exhibit "1" to include the extended lease date of June 30, 2050. Please provide your response to hcp.committee@mauicounty.us.

**Work Requested:**  FOR APPROVAL AS TO FORM AND LEGALITY  
 OTHER:

Requestor's signature <u>Yuki Lei Sugimura</u> Yuki Lei K. Sugimura	Contact Person <u>Wilton Leauanae</u> (Telephone Extension: 7761)
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- ROUTINE (WITHIN 15 WORKING DAYS)
- RUSH (WITHIN 5 WORKING DAYS)
- PRIORITY (WITHIN 10 WORKING DAYS)
- URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): August 13, 2021  
REASON: To meet posting deadline for Council meeting on August 24, 2021.

**FOR CORPORATION COUNSEL'S RESPONSE**

ASSIGNED TO: MDJ	ASSIGNMENT NO. 2021-0014	BY: jcm
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TO REQUESTOR:  APPROVED  DISAPPROVED  OTHER (SEE COMMENTS BELOW)  
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF THE CORPORATION COUNSEL

Date 8-13-2021

By Mimi DesJardins

(Rev. 7/03)

hcp:ltr:024acc01:wal

Attachment

# Resolution

No. \_\_\_\_\_

## AUTHORIZING A GRANT OF A LEASE OF COUNTY RECREATIONAL SPACE TO MAUI NUI BOTANICAL GARDENS INC.

WHEREAS, Maui Nui Botanical Gardens Inc., a Hawaii nonprofit corporation, desires to obtain a lease for the portion of Keopuolani Regional Park, known as the Maui Nui Botanical Gardens, from the County of Maui for a nominal sum; and

WHEREAS, Maui Nui Botanical Gardens Inc. desires to occupy that certain parcel identified as tax map key (2) 3-8-007:001 (por.), an area measuring 6.367 acres ("Premises"), and described and depicted in the Lease Agreement, attached as Exhibit "1"; and

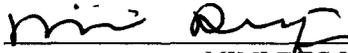
WHEREAS, in accordance with Section 3.36.090, Maui County Code, the Council of the County of Maui may authorize the grant of a lease of County Recreational Space by Resolution; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That Maui Nui Botanical Gardens Inc. be granted the right to occupy the Premises in accordance with the terms and conditions of the proposed Lease, for an annual rental amount of \$100 to expire on June 30, 2050;
2. That the Mayor and the Director of Finance or their authorized representatives be authorized to execute the proposed Lease Agreement; and
3. That certified copies of this Resolution be transmitted to the Mayor, the Director of Finance, the Director of Parks and Recreation, and the Executive Director of Maui Nui Botanical Gardens Inc.

**Resolution No.** \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY



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MIMI DESJARDINS  
Deputy Corporation Counsel  
County of Maui

hcp:misc:024areso01:wal



W I T N E S S E T H:

WHEREAS, the County of Maui is the owner of that certain parcel of land commonly referred to as Keopuolani Park, particularly identified as TMK No. (2)3-8-007:001 (hereinafter referred to as the "Parcel"), an area approximately 109.153 acres; and

WHEREAS, Lessee hopes and desires to continue its operation of the Maui Nui Botanical Gardens in a portion of the Parcel; and

WHEREAS, the County of Maui supports Lessee and hopes to assist Lessee by issuing this Lease so that Lessee may continue its operations; NOW, THEREFORE,

Lessor, for and in consideration of Lessee's covenants and agreements set forth herein, does hereby agree to grant a lease to Lessee and Lessee hereby accepts said lease on the terms and conditions set forth below:

A. Premises. The Premises shall be limited to the portion of the parcel known as the Maui Nui Botanical Gardens, situate at Owa and Kalua, Kahului, Wailuku, Maui, Hawaii, consisting of approximately 6.367 acres, being a portion of the Parcel, as shown on Exhibit "A", attached hereto and by reference made a part hereof (hereinafter referred to as "Premises"). The Premises do not include the existing amphitheater and nursery areas, nor the undeveloped vehicular access road to said amphitheater and nursery areas (hereinafter collectively referred to as "Excluded Areas"). The

estimated yearly fair market rental value of the Premises, effective October 15, 2020, is \$3,497.13.

B. Use of Premises. Lessee shall use the Premises solely for the purpose of promoting the conservation and ethnobotanical uses and appreciation of native and Polynesian-introduced plants through the operation of a botanical garden, leadership and collaboration on conservation programs, growing an interpretive education program, and forging strong partnerships with the County of Maui and others in the pursuit of these goals. The use of the Premises for any other purpose shall require the prior written approval of Lessor, through its Director of the Department of Parks and Recreation ("Director").

C. Term. This Lease shall commence upon execution and expire upon the 30th day of June 2050, unless sooner terminated as provided herein. This lease shall supersede in its entirety any existing lease.

D. Rent. Lessor reserving and the Lessee yielding and paying to the Lessor a rental of ONE HUNDRED AND NO/100 DOLLARS (\$100.00) per annum, payable to the County of Maui, Department of Finance, at Lessor's address designated herein or as otherwise designated in writing by Lessor to Lessee.

E. Excluded Areas. Due to the proximity of the Excluded Areas to the Premises, Lessee shall make its reasonable best efforts to notify the Department of any observed maintenance or safety issues within the Excluded Areas.

F. Use of Keopuolani Regional Park (''Parcel''). Lessee may have temporary, non-exclusive use of areas of the Parcel, other than the Premises, that are not being used by other parties and are not scheduled for use by other parties, for daily activities without obtaining a permit from Lessor. Any use of areas of the Parcel, other than the Premises, shall not restrict the public's use and access of the Parcel for outdoor recreation. Lessee shall indemnify, defend, and hold harmless Lessor and its officers, employees, and agents from and against any and all claims for bodily injury, wrongful death and/or property damage by any persons caused by, occasioned by, arising from, or resulting from this use of the Parcel.

G. No Disturbance: Lessee acknowledges and confirms that the Premises is a part of a public park facility used by the general public. Lessee and anyone claiming under Lessee, shall limit their activities to the Premises covered by this Agreement and will exercise its rights in a manner causing as little interference as reasonably possible with the use of the rest of the Parcel by Lessor and the general public. Lessee and anyone claiming under Lessee shall obey reasonable rules, regulations, instructions and/or directions of Lessor and Lessor's officers, employees, or agents with respect to same.

H. Permit Required. If Lessee desires to have temporary, exclusive use of portions of the Parcel, outside of the Premises, Lessor shall apply for a use permit with the Department of Parks and Recreation.

I. Compliance with County Grants: Lessor may terminate this Agreement in the event that Lessee is unable to show Lessor, to the Director's reasonable satisfaction, that the Lessee is in compliance with all terms and conditions of any Grant Agreement with the County of Maui.

J. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibits "B" and "C" attached hereto and by reference made a part hereof.

K. Grant requirements. Within three (3) weeks after the end of each fiscal year, Lessee shall transmit to the Department of Parks and Recreation a report, using Exhibit "D", provided herewith, containing the following information for the previous fiscal year:

1. Program status summary;
2. Program data summary;
3. Summary of participant characteristics;
4. Changes in real property tax assessment for the real property;
5. Earnings from the grant of real property; and
6. Narrative report.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the date set forth above.

**LESSOR:**

APPROVAL RECOMMENDED:

COUNTY OF MAUI

\_\_\_\_\_  
KARLA H. PETERS  
Director of  
Parks and Recreation

By \_\_\_\_\_  
MICHAEL P. VICTORINO  
Its Mayor

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
SCOTT K. TERUYA  
Its Director of Finance

\_\_\_\_\_  
MIMI DESJARDINS  
Deputy Corporation Counsel  
County of Maui  
LF2019-0952

**LESSEE:**

MAUI NUI BOTANICAL GARDENS INC.

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)  
Its \_\_\_\_\_  
(Title)

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)  
Its \_\_\_\_\_  
(Title)

STATE OF HAWAII            )  
   )  
 COUNTY OF MAUI            )        SS.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared MICHAEL P. VICTORINO, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 7-5.11 and Section 9-18 of the Charter of the County of Maui; and the said MICHAEL P. VICTORINO acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

\_\_\_\_\_  
 Notary Public, State of Hawaii

Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

<b>NOTARY PUBLIC CERTIFICATION</b>	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	
_____	
_____	
_____	
Notary Signature: _____	
Date: _____	

[Stamp or Seal]

STATE OF HAWAII            )  
   )  SS.  
 COUNTY OF MAUI            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared SCOTT K. TERUYA, to me personally known, who being by me duly sworn, did say that he is the Director of Finance of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 9-18 of the Charter of the County of Maui; and the said SCOTT K. TERUYA acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

\_\_\_\_\_  
 Notary Public, State of Hawaii

Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

<b>NOTARY PUBLIC CERTIFICATION</b>	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	
_____	
_____	
[Stamp or Seal]	
Notary Signature: _____	
Date: _____	

STATE OF HAWAII            )  
   )  SS.  
 COUNTY OF MAUI            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

\_\_\_\_\_  
 Notary Public, State of \_\_\_\_\_

Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

<b>NOTARY PUBLIC CERTIFICATION</b>	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	
_____	
_____	
[Stamp or Seal]	
Notary Signature: _____	
Date: _____	

STATE OF HAWAII        )  
                                  )  SS.  
COUNTY OF MAUI        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

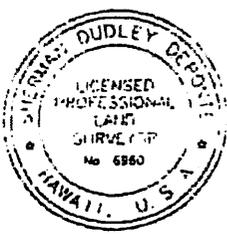
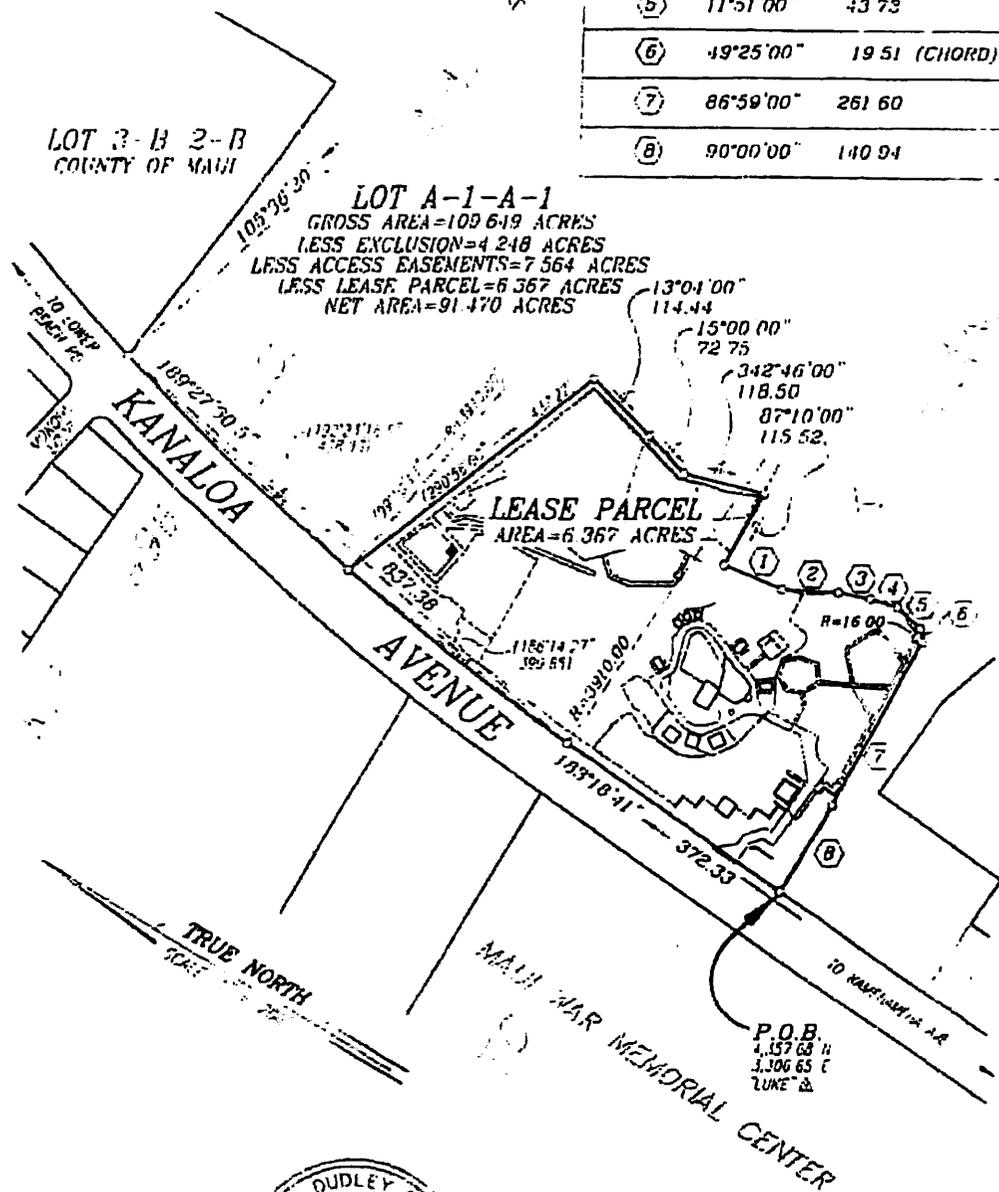
<b>NOTARY PUBLIC CERTIFICATION</b>	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	
_____	
_____	
_____	[Stamp or Seal]
Notary Signature: _____	
Date: _____	

NOTE. THIS SKETCH & ATTACHED LAND DESCRIPTION DO NOT IN ANY WAY REPRESENT THAT THIS IS A FINAL SUBDIVISION FORMAL SUBMITTAL TO THEN APPROVAL BY THE COUNTY OF MAUI IS NECESSARY

AZ & DIST FOR LEASE PARCEL.		
①	350°38'00"	89.22
②	332°03'00"	80.50
③	340°19'30"	46.71
④	346°21'00"	40.90
⑤	11°51'00"	43.73
⑥	49°25'00"	19.51 (CHORD)
⑦	86°59'00"	261.60
⑧	90°00'00"	140.94

LOT 3-B-2-B  
COUNTY OF MAUI

**LOT A-1-A-1**  
GROSS AREA=100.649 ACRES  
LESS EXCLUSION=4.248 ACRES  
LESS ACCESS EASEMENTS=7.564 ACRES  
LESS LEASE PARCEL=6.367 ACRES  
NET AREA=91.470 ACRES



THIS WORK WAS DONE BY ME OR UNDER MY DIRECT SUPERVISION.  
*Sherman Dudley Deponte*  
**SHERMAN DUDLEY DEPONTE**  
LICENSED PROFESSIONAL LAND SURVEYOR  
STATE OF HAWAII CERTIFICATE NO 6960  
EXPIRATION DATE 30 APRIL 2008

AKAMAI LAND SURVEYING, INC. P.O. BOX 1748 MAKAWAO, MAUI, HAWAII 96768	JOB NO.: 205353EXH
	SCALE: 1" = 200'
	T.M.K.:(2)3-B-01.Por 01
	DATE:11MAR'08 SHEET 1 OF 1

EXHIBIT "A"



EXHIBIT "A"

**GENERAL CONDITIONS FOR GRANT OF LEASE  
TO OCCUPY COUNTY REAL PROPERTY**

In the consideration of a grant of lease to occupy County real property, the Grantee shall:

1. Not discriminate either in the hiring of staff, use of volunteers, or delivery of client services on the basis of sex, sexual orientation, national origin, age, race, color, religion or handicap;
2. Comply with all provisions of the rules and regulations relating to Chapter 3.36 of the Maui County Code, as amended;
3. Provide written reports on forms specified by the Grantor to provide adequate monitoring of Grantee's use of the leased premises, to the Department of Parks and Recreation, as required by Chapter 3.36 of the Maui County Code, as amended;
4. Implement a system of accounting in conformance with generally accepted accounting practices in order to insure the effective administration of the grant. Such accounts shall be kept separate from other financial management accounts of the Grantee;
5. The County has the right to audit Grantee to determine compliance with the terms of the grant agreement. Grantee will cooperate fully and assist the County in such audit.
6. Comply with all terms and conditions as specified in the lease document.
7. In the event the grantee fails to adhere to any of the conditions listed here, the County may terminate the lease.

**EXHIBIT "B"**

## STANDARD RESERVATIONS, COVENANTS, TERMS AND CONDITIONS

In consideration of the foregoing grant of a lease/license to the Lessee/Licensee, the Lessee/Licensee herein agrees to the following reservations, covenants, terms and conditions. In the event any of the following conflict with any reservation, covenant, term or condition contained in the BODY of the lease/license, the reservation, covenant, term or condition contained in said BODY shall prevail. All references to the lease, the lessee or the lessor shall include and be deemed to refer to the license, the licensee or the licensor, where applicable.

A) **RESERVATIONS.** Lessee understands and agrees that the foregoing lease is subject to Lessor's reservation of the following:

1. Minerals and Waters.

A. All minerals as hereinafter defined, in, on or under the Premises and the right, on Lessor's own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such materials by any means whatsoever including strip mining. "Minerals" as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver bauxite, bauxitic clay, dispore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and without limitation thereon all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of Lessee's permitted activities on the Premises and not for sale to others.

B. All surface and ground water appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the Premises as may be required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by Lessor of the rights reserved in this paragraph, just compensation shall be paid to Lessee for any of Lessee's improvements taken.

2. Prehistoric and Historic Remains. All prehistoric and historic remains found on the Premises.

3. Ownership of Fixed Improvements. Lessor shall retain ownership of all improvements of whatever kind or nature, located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease, provided that at the end of the lease term, any such improvements shall be the property of the Lessor.

B) **COVENANTS, TERMS AND CONDITIONS.** Lessee herein covenants and agrees with Lessor as follows:

Master revised 6/2020

1. Payment of Rent. That the Lessee shall pay said rent to the Lessor at the times, in the manner and form aforesaid in legal tender of the United States of America.

2. Taxes, Assessments, Etc. Lessee shall pay or cause to be paid, prior to delinquency, any taxes and assessments, of every description, as to said Premises, or any part thereof, including any improvements thereon; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during said term. Without limiting the generality of the foregoing, Lessees shall also be responsible for the payment of any Hawaii general excise tax (or successor tax) imposed upon the payment of all sums by Lessee under this Lease. Lessee shall remain current in payment of all taxes, rents, or other obligations to the United States, the State of Hawaii, or any of its political subdivisions, including the County of Maui.

3. Utility Services. Lessee shall pay, prior to delinquency, all charges for water, sewer, gas, electricity, telephone and other services or utilities used by Lessee on the Premises during the term of the Lease unless otherwise expressly agreed in writing by Lessor.

4. No Residential Use. Lessee, its agents, employees and invitees, shall not use the Premises as temporary or permanent residence. Lessee shall not permit or allow any person to live on the Premises.

5. Indemnification. Lessee shall indemnify and save Lessor harmless against and from any and all suits, claims, damages, judgments, costs and expense, including reasonable attorney's fees, arising from the Lessee's use of the Premises or arise from the construction of Lessee's improvements, from the failure of Lessee to observe and perform any of the covenants, obligations, rules, regulations, provisions, terms and conditions of this Lease, or from any act or negligence or omission to act of Lessee, its agents, contractors, servants, employees, concessionaires or licensees in or about the demised Premises or in any connection with this Lease. In case any action or proceeding be brought against Lessor (in addition to Lessee) by reason of any such claim, even though such claim be based on alleged fault of Lessor, Lessee agrees to pay the reasonable costs and expenses thereof, counsel fees and any judgments or settlement of claim secured against Lessee by reason of such action or proceeding unless Lessor is found to be grossly negligent or guilty of willful misconduct. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

6. Costs of Litigation. In case Lessor, without any fault on its part, is made a party to any litigation commenced by or against Lessee (other than condemnation proceedings), Lessee shall pay all costs and expenses, including attorneys' fees, incurred by or imposed on Lessor. Lessee shall pay all costs and expenses, including attorneys, fees, which may be incurred by or paid by Lessor in enforcing the covenants, obligations, rules, regulations, provisions, terms and conditions of this Lease, in recovering

possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

7. Assumption of Risk and Liability. Lessee, as a material part of the consideration to Lessor for this Lease, does hereby assume all risk of bodily injury, wrongful death and/or property damage, business interruption or economic loss occasioned by any accident, fire, or nuisance made or suffered on the Premises, and hereby waives any and all claims against the Lessor. All inventory, property, vehicles, approved improvements and equipment of Lessee shall be kept, placed or stored at the sole risk of Lessee, and Lessor shall not be responsible or liable for any damage thereto or loss or theft thereof, including subrogation claims by Lessee's insurance carriers.

8. Inspection of Premises. That the Lessee will permit the Lessor and its agents, at all reasonable times during the said term, to enter the Premises and examine the state of repair and condition thereof.

9. "As Is" Condition. Lessor has not made and shall not make, any representation or warranty, implied or otherwise, with respect to the condition of the premises, including but not limited to (a) any express or implied warranty of merchantability or fitness for any particular purpose or (b) any dangerous or defective conditions existing upon the premises, whether or not such conditions are known to Lessor or reasonably discoverable by Lessee. Lessee accepts the Premises in a completely "as is" condition, with full assumption of the risks, and consequences of such conditions.

10. Mortgage. Lessee may mortgage or create a security interest in the demised premises or any portion thereof with the prior written approval of the Director, provided that, in the case of default the leasehold interest may be foreclosed only by judicial action pursuant to Chapter 667, Hawaii Revised Statutes, and the leasehold interest shall be transferred to the purchaser by assignment of lease for the remainder of the lease term only.

11. Liens. Lessee shall not commit or suffer any act of neglect whereby the Premises, or any part thereof, or the estate of Lessee in the same, shall become subject to any attachment, judgment, lien, charge, or encumbrance (hereinafter collectively called "Lien"), whatsoever. In the event that any Lien shall attach to or encumber the Premises, or if an application for a Lien is filed in any court of competent jurisdiction, Lessee shall bond against or discharge the same within ten (10) days after written request by Lessor. Lessee shall indemnify and hold harmless the Lessor from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom, including attorney's fees.

12. Rules and Regulations. Lessor excepts and reserves the right, from time to time, to adopt reasonable rules and regulations pertaining to Lessee's use of the Premises, which rules and regulations shall be binding upon Lessee upon notice thereof to Lessee. For enforcement of such rules and regulations, if any, Lessor shall have all remedies in this Agreement and any other remedies allowed by law.

13. Alterations and Improvements. Lessee shall make no alterations to any structure on the Premises or construct any building or make any other improvements on the Premises without the prior written approval of the Director. Alterations or improvements on the Premises approved by the Director made by and paid for by Lessee, with the exception of fixtures which cannot be removed without damage to the Premises, shall, unless otherwise provided by written agreement between the Parties, be the property of Lessee.

14. Fixed Improvements. Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind or description except with the prior written approval of Lessor and upon those conditions the Lessor may impose, including any adjustment of rent, unless otherwise provided in this Lease. All improvements of whatever kind or nature located on the Premises prior to, or on the commencement date of this Lease shall be, and at all times remain, the property of the Lessor.

15. Repair and Maintenance. Lessee will at its own expense and at all times during the term of this Lease, well and substantially repair and maintain, and keep all improvements now or hereafter built or made on the Premises in good and safe repair, order and condition, reasonable wear and tear excepted. At the discretion of the Lessor, such repair and maintenance may include, but not be limited to, private and/or common area restroom facilities, and ground maintenance.

16. Breach. That time is of the essence of this agreement and if the Lessee shall fail to pay such rent or any part thereof at the times and in the manner aforesaid within thirty (30) days after delivery by the Lessor of a written notice of such breach or default, or if the Lessee shall become bankrupt, or shall abandon the said Premises, or if this lease and said Premises shall be attached or otherwise be taken by operation of law, or if any assignments be made of the Lessee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and such failure shall continue for a period of more than thirty (30) days after delivery by the Lessor of a written notice of such breach or default, by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or holder of record having a security interest in the Premises, the Lessor may at once re-enter the Premises or any part thereof, and upon or without such entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of the Lessor; furthermore, Lessor shall retain all rent paid in advance as damages.

17. Funding of Improvements. The Lessee shall be solely responsible for the funding of its improvements, maintenance, and operation of the Premises and shall hold the Lessor and the State of Hawaii harmless from any and all claims whatsoever arising in connection with said activities.

18. Right to Enter. The Lessor and the agents or representatives thereof shall have the right to enter and cross any portion of said demised land for the purpose of performing any public or official duties; provided, however, in the exercise of such rights, the Lessor shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the Premises.

19. Acceptance of Rent Not a Waiver. That the acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant or condition of this lease, nor of the Lessor's right to re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any such breach, and the failure of the Lessor to insist upon strict performance of any such term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition or option.

20. Extension of Time. That notwithstanding any provision contained herein to the contrary, wherever applicable, the Lessor may for good cause shown, allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions and covenants contained herein; provided, however, that this provision shall not be construed to permit any extension of the initial term of this lease.

21. Justification of Sureties. Such bonds as may be required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as such in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justification shall be filed as provided in section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after such period as the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to said Lessor a deed or deeds of trust of real property, all of such character as shall be satisfactory to said Lessor and valued in the aggregate at not less than the principal amount of said bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by the Lessor under the foregoing provision shall be determined by the Lessor, and the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities or money and shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until such consent be granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation hereunder.

22. Quiet Enjoyment. The Lessor hereby covenants and agrees with the Lessee that upon payment of said rent at the times and in the manner aforesaid and the observance and performance of the

covenants, terms and conditions hereof on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess and enjoy the Premises for the term hereby demised, without hinderance or interruption by the Lessor or any other person or persons lawfully claiming by, through or under it.

23. Non-Warranty. The Lessor does not warrant the Premises, any or all existing improvements on the Premises, or the condition of said improvements to be satisfactory or fit for any specific or particular purpose, the same being herein leased in its existing "as is" condition.

24. Sanitation. Lessee shall keep the Premises and improvements in a strictly clean, sanitary and orderly condition.

26. Assignability, Etc. Unless the prior written consent of Lessor and the State of Hawaii through its Board of Land and Natural Resources is obtained, Lessee shall not transfer, assign, sublet or permit any other person or entity to occupy or use the Premises or any portion thereof, or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, and any such transfer or assignment so made shall be null and void.

25. Definitions. As used herein, unless clearly repugnant to the context:

A. "Lessee" shall mean and include the Lessee named herein, its heirs, devisees, personal representatives, successors or any permitted assigns, according to the context thereof.

B. "Lessor" shall mean and include the County of Maui, its officers, agents and assigns. Unless otherwise indicated, wherever the prior written consent or approval of the "Lessor" is required in this lease, such consent or approval shall include, but is not limited to, the consent or approval of the Mayor, the Director of Finance, and, where applicable, the Directors of Housing and Human Concerns, Parks and Recreation, or Economic Development.

C. "Premises" shall be deemed to include the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon.

D. "Waste" shall be deemed to include, but not limited to:

1. Permitting the Premises or any portion thereof to become unduly eroded and/or failure to take proper precautions or make reasonable effort to prevent or correct same;

2. Permitting any material increase in weeds in uncultivated portions thereof; and

3. Failure to employ all of the usable portions of the Premises.

26. Waste and Unlawful, Improper or Offensive Use of Premises. Lessee shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the Premises, or any part thereof, nor, without the prior written consent of the Director, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees growing on the Premises at the commencement of this Lease, as well as any trees that are growing on the Premises during the duration of this Lease.

Lessee shall not allow the Premises to become unduly eroded or subject to any material increase in weeds or litter, and Lessee shall make reasonable efforts to prevent or correct same.

27. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental regulation (hereinafter collectively referred to as "hazardous substances"). Prior to commencing use of the Premises for any activity involving the storage, use, or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of this Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Premises and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the Premises which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of cognizant governmental authorities; and (d) surrender possession of the Premises to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Premises during the term of this Lease. Lessee shall indemnify and hold harmless Lessor from and against any and all claims relating to hazardous materials arising from this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

28. Rights of Way and Easements. Lessor reserves the right to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, without limitation, including the right to enter to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that, in any such event, any improvements made by Lessee which were damaged as a result of such entry shall be restored to a condition as near as

practicable prior to such entry. Lessor further reserves the right to authorize public access over, across, under and through the Premises.

29. Access to Information. Lessee shall provide Lessor with access to Lessee's books, records, assets, facilities, and all other information relative to the use of the Premises, as deemed necessary in the judgment of Lessor.

30. Liability Insurance, Required Coverage. Lessee shall obtain, pay for, and keep in force throughout the period of this Lease comprehensive liability insurance issued by an insurance company (the "Carrier") authorized to do business in the State of Hawaii (an "Admitted Carrier"), or by a company not authorized to do business in the State of Hawaii (a "Non-Admitted Carrier") only through a general insurance agent or broker licensed in the State of Hawaii. The Carrier shall be rated no less than "A-" as established by "AM Best" or "Standard and Poor" ratings.

The insurance policy, as evidenced by issuance of a "Policy Endorsement", shall name Lessor and its officers, employees and agents as "Additional Named Insured", and shall include a duty to defend Lessor and its officers, employees and agents against any loss, liability, claims, and demands for injury or damage, including but limited to, claims for property damage, personal injury, or wrongful death, arising out of, or in connection with Lessee's actions and/or use of Premises.

Unless otherwise agreed to through the joint decision and discretion of the Director of the Department of Finance and the Director, the insurance policy shall contain the following minimum requirements:

- 1) No less than a Combined Single Limit ("CSL") of liability coverage of \$1,000,000;
- 2) No erosion of limit by payment of defense costs; and
- 3) Minimum annual aggregate limit of \$2,000,000.

Prior to or upon the execution of this Agreement, Lessee shall furnish the Lessor with a copy of the insurance policy certificate together with the required endorsements verifying such insurance coverage. If the scheduled expiration date of a current insurance policy is sooner than the specified termination date of this Lease, the Lessee shall, upon renewal of the insurance policy, provide the County with a copy of the renewed insurance policy certificate together with the required endorsements.

Unless waived by Lessor, the insurance policy shall expressly state that the coverage provided under such policy shall not be cancelled or terminated, unless the Carrier has first given Lessor thirty (30) calendar days prior written notice of the intended cancellation or termination.

If at any time, and from time to time, a higher limit or other requirements shall be deemed appropriate, customary, or necessary, in the reasonable discretion of the Director, Lessee shall obtain and maintain such coverage.

31. Property Insurance. Lessee shall, unless otherwise agreed to through the joint decision and discretion of the Director of the Department of Finance and the Director, procure and, during the entire term of this Lease, keep in force and effect special form

property insurance covering all of Lessee's leasehold improvements, trade fixtures, inventory, equipment and personal property from time to time in, on or upon the Premises, in an amount less than the full replacement cost thereof without deduction for depreciation, providing protection against all risks of loss not otherwise excluded for the Premises, together with insurance against sprinkler damage, vandalism, and malicious mischief, including demolition and debris removal and extended coverage, hurricane/wind coverage, and with inflation guard endorsement, if available in any insurance company qualified to do business in the State of Hawaii and shall, from time to time, deposit promptly with Lessor the policy and premium receipts therefor or a current certificate that such insurance is in full force and effect and shall not be cancelled without written notice to Lessor sixty (60) days prior to the effective date of such cancellation. All such policies shall be made payable to Lessor and Lessee as their interests may appear (it being understood and agreed that Lessor's interest shall be limited to permanent fixtures and other installations which are not removable by Lessee upon the termination of this Lease), and shall provide for a deductible of not more than \$5,000.00. All policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease shall cease and terminate in accordance with the provisions of this Lease.

32. Fire Insurance. Lessee shall, unless otherwise agreed to through the joint decision and discretion of the Director of the Department of Finance and the Director, procure, at its own cost and expense, and maintain during the period of this Lease, a policy or policies of fire insurance, on all buildings and improvements on the Premises, against loss or damage by fire in an amount equal to one hundred percent (100%) of the replacement value of the Premises as established by the insurance appraiser and as approved by the Director of Finance, and shall pay premiums thereon at the time and

place the same are payable. The policy or policies of insurance shall be made payable in the case of loss to the County of Maui, as its interest may appear, and shall be deposited with the County. Any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible be used by Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to the plans and specifications approved in writing by the County; provided, however that with the approval of the County, Lessee may surrender this Lease and Lessee shall then receive that portion of said proceeds which constitute the proportionate value of permanent improvements made by Lessee, if any, in relation to the unexpired term of this Lease and useful life of the improvements at the time of the loss, if any, with the County retaining the remaining proceeds of said proceeds.

33. Condemnation. If at any time during the term of this Lease any portion of the leased Premises should be condemned or required for public purposes by the State of Hawaii or the United States, Lessee shall be entitled to receive from the condemning authority the proportionate value of Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of this

Lease; provided that Lessee may, in the alternative, remove and relocate Lessee's improvements to the remainder of the Premises occupied by Lessee. Lessee shall not by reason of the condemnation be entitled to any claim against Lessor for condemnation or indemnity for its interest in this Lease and all compensation payable or to be paid for or on account of this Lease by reason of the condemnation, except as aforesaid as to Lessee's improvements, shall be payable to and be the sole property of Lessor. Where the portion taken renders the remainder unsuitable for the use or uses for which the land was leased, Lessee shall have the option to surrender this Lease and be discharged and relieved from any further liability therefor; provided that Lessee may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by Lessor. The foregoing right of Lessor shall not be exclusive of any other to which Lessor may be entitled by law.

35. Lessor's Lien. Lessor shall have a lien on all the buildings and improvements placed on the Premises by Lessee, on all property kept or used on the Premises, whether the same is exempt from execution or not, and on the premises, whether the same is exempt from execution or not, and on the rents of all improvements and buildings situated on the Premises for all costs, attorney's fees, rent reserved, taxes, and assessments paid by Lessor on behalf of Lessee and for the payment of all money as provided in this Lease to be paid by Lessee, and such lien shall continue until the amounts are paid.

36. Lessee's Right to Terminate. If Lessee is not in default of the terms of this Lease to be observed and performed, Lessee may terminate this Lease by giving Lessor at least sixty (60) days prior written notice of such termination.

37. Surrender of Premises. At the expiration, revocation, cancellation or termination of this Lease, Lessee shall peaceably surrender the Premises, together with all improvements existing or constructed thereon, unless provided otherwise. On or before the last day of the term or the sooner termination thereof, Lessee, if not then in default, shall remove all trade fixtures, operating equipment and other personal property of Lessee from the Premises and repair any damage occasioned by any such removal. Property not so removed shall be deemed abandoned by Lessee.

38. Termination. If Lessee becomes bankrupt, dissolves, becomes inactive, or abandons the leased Premises for a period of four (4) consecutive months, or if this Lease and the leased Premises shall be attached or otherwise taken by operation of law, or if any assignment be made of Lessee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, obligations, rules, regulations, provisions, terms and conditions, and such failure shall continue for a period of more than thirty (30) days after delivery by Lessor of a written notice of such breach or default, by personal service, registered mail or certified mail to Lessee at Lessee's last known address, all rights granted hereunder to Lessee shall cease and this Lease shall terminate without prejudice to any other remedy or right of action for arrears of rent or damages or for any preceding or other breach or contract; and in the event of such termination, all buildings and improvements there on shall

remain and become the property of Lessor, subject to any valid mortgages against the property.

39. Covenant Against Discrimination. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, sex, sexual orientation, age, religion, color, ancestry, national origin, disability, marital status, arrest and court record, assignment of income for child support obligations and National Guard participation.

40. ADA Compliance. Lessor makes no representations or warranties, express or implied, as to the Premises or any existing improvements thereon, regarding compliance with the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§12101-12213 (2000). Lessee shall be responsible for complying with the ADA and Lessee shall defend, indemnify and hold harmless Lessor against any and all claims regarding non-compliance with any requirement of the ADA. All costs relating to any required improvements or modifications to the Premises, and any existing improvements thereon, shall be borne by Lessee. Notwithstanding any other provision of this Lease to the contrary, any improvements to the Premises constructed by Lessee shall be in compliance with the ADA.

41. Compliance with Laws. Lessee shall comply with all federal, state, and county laws pertaining to the Premises and activities conducted on the Premises, now in force or which may hereinafter be in force.

42. Interpretation Under Hawaii Law. This Lease is made and entered into in the State of Hawaii, and shall in all respects be interpreted, enforced, and governed under the laws of the State of Hawaii.

43. Gender. The use of any gender shall include all genders, and if there be more than one Lessee or Lessor, then all words used in the singular shall extend to and include the plural.

44. Paragraph Headings. The paragraph headings throughout this lease are for the convenience of Lessor and Lessee and are not intended to construe the intent or meaning of any of the provisions thereof.

45. Time of the Essence. Time is of the essence of this Lease and all of the terms, provisions, covenants, and conditions hereof.

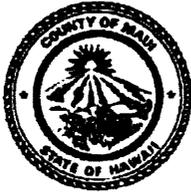
46. Notices. All notices or demands that are required or may be given under this Lease by one party to another party, or that are required by law, shall be in writing and shall be deemed to have been validly given or served in the following manner: (a) by delivery to the intended addressee; or (b) by depositing the notice with a reputable private courier service for next business day delivery to the intended recipient at its address set forth on the first page of this Lease or at such other address as a party shall have designated for such purpose by notice to the other party or parties; or (c) by depositing the notice with the United States Postal Service for delivery, postage prepaid, registered or certified mail, return receipt requested, to the intended recipient at its address set forth on the first page of this Lease or at such other address as a party

shall have designated for such purpose by notice to the other party or parties.

A notice shall be deemed received upon personal delivery to the designated address or three days after being deposited with a private courier service or with the United States Postal Service as described, supra. Rejection of or refusal to accept a notice or the inability to give notice because a notice of a change in address was not given as required by this Paragraph shall be deemed to be receipt of the notice sent when tendered as provided by this Paragraph.

If a party has designated an agent for service of process, notice to the agent shall conclusively be deemed service on the party. A party shall have the right from time to time to change its address for receipt of notice and to specify any other address within the United States of America by giving written notice of the change in address to the other party or parties at least fifteen (15) days in advance. A notice of change of address is effective under this Lease only when actually received.

47. Assistance of Legal Counsel. The Parties represent and certify to each other that they have been advised to seek the advice of legal counsel and have done so. The Parties have carefully read and fully understand all of the provisions of this Lease, and have thoroughly discussed all aspects of this Lease with their respective counsel. The parties are voluntarily entering into this Lease and no party or its agents, representatives, or attorneys have made any representations concerning the terms or effects of this Lease other than those contained herein.



# DEPARTMENT OF PARKS AND RECREATION

700 Hali'a Nako'a Street, Unit 2, Wailuku, Hawaii 96793

## ANNUAL REAL PROPERTY GRANT REPORT

Report Period: Fiscal Year July 1, 2020 - June 30, 2021

ORGANIZATION: \_\_\_\_\_

Tax Map Key Number(s): \_\_\_\_\_

**Department of Parks and Recreation's Mission:** The purpose of the Department of Parks and Recreation is to provide safe, satisfying and cost-effective recreational opportunities for the residents of and visitors to Maui County.

### INSTRUCTIONS

Provide a narrative response to each question below for each quarter and fiscal year.

#### I. Program Data/Status Summary

- a. List each program goal/benchmark for the leased/licensed site and how it contributes towards the Parks Department's mission (noted above).
- b. What objectives/action steps were completed this fiscal year for each goal?
- c. What measurable outcomes were achieved this fiscal year?
- d. Were your organization's programs/activities open to the public? If so, how were they promoted to residents and visitors?
- e. Give actual number of people attended at activities, programs and events on property for each quarter of the fiscal year.
- f. What objectives/actions steps will be accomplished during the next fiscal year?

#### II. Narrative Report

- a. What program challenges occurred this fiscal year and how were they addressed and/or resolved?
- b. Describe any staff changes in your organization.
- c. Were there any fundraising activities on leased/licensed property? If so, please indicate how many, type of activity, primary beneficiary of the fundraising, and how your organization participated and benefited from the activity.
- d. Describe improvements on the property, its condition, and your risk evaluation program. How often are site inspections done and by who?
- e. Disclosure of any organizational conflict of interest and criminal violations.
- f. Were audits done this fiscal year? When is the next audit planned for your organization?

**Please submit the following information with this report:**

- a. Board of Directors' Minutes.
- b. Updated list of Board of Directors
- c. Financial status report including but not limited to the total revenue generated on the property leased/licensed.
- d. Update Tenant Contact Information Form.
- e. Current Liability Insurance Certificate naming the County of Maui as additional insured.

Report Prepared by: \_\_\_\_\_  
Print Name/Title Signature Date



# MAUI NUI BOTANICAL GARDENS

*CONSERVING HAWAIIAN PLANTS & CULTURAL HERITAGE*

April 5, 2019

Director Karla Peters  
County of Maui  
Department of Parks and Recreation  
700 Hali'a Nakoa Street, Unit 2  
Wailuku, Hawai'i 96793

Aloha e Director Peters,

Thank you for the opportunity to submit a letter of request and new lease application to amend our current lease for the portion of tax map key (2) 3-8-007:001, Keōpūolani Park. We respectfully request two changes:

1. The current lease with your Department expires June 30, 2026; we are formally requesting that the lease term be extended to June 30, 2041, an additional 15 years after the current expiration date.
2. The current lease states, beginning on page 2, "The Premises does not include the playground area, the existing amphitheater and nursery areas, nor the undeveloped vehicular access road to said amphitheater and nursery areas, hereinafter collectively referred to as "Excluded Areas".
  - a. We are formally requesting that the words, "...the playground area..." be removed from this sentence, so that it reads, "The Premises does not include the existing amphitheater and nursery areas, nor the undeveloped vehicular access road to said amphitheater and nursery areas, hereinafter collectively referred to as "Excluded Areas".
  - b. The reason for this change is that the former playground was removed by your department in 2017, the area is now an inclusive grassy area, and we would like to incorporate this grassy area into the normal activities of the botanical garden.

The original metes and bounds description in our current lease were reviewed by Raymond Cabebe, Vice President and Land Planner of Chris Hart and Partners, Inc., who stated that it appeared the former playground area was included in the original description of "Premises".

Sincerely,

Tamara Sherrill  
Executive Director  
Maui Nui Botanical Gardens

Attachments: 1) Current lease signed in 2011; 2) Real Property Grant Application Form; 3) Application Narrative; 4) MNBG Nursery and Work Area Project Summary



EXHIBIT "A"



**COUNTY OF MAUI  
DEPARTMENT OF PARKS AND RECREATION**

**MAUI COUNTY GRANTS OF REAL PROPERTY**

**APPLICANT**

Legal Name of Organization: Maui Nui Botanical Gardens Inc.

Address: 150 Kanaloa Ave., Kahului, HI, 96732 (physical)  
P.O. Box 6040, Kahului, HI, 96733 (mailing)

Director/Manager: Tamara Sherrill, tamara@mnbg.org  
Phone: (808) 249-2798 Fax: 249-0325

Organization President: Christopher Nakahashi, chris.nakahashi@gmail.com  
Phone: (808) 357-3738 Fax: n/a

Email: Tamara Sherrill, tamara@mnbg.org

Contact Person (Grant Writer): Tamara Sherrill, tamara@mnbg.org  
Title: Executive Director Phone: (808) 249-2798

Total annual budget of organization: \$ 369,200

Has the applicant applied for funds from the County of Maui this fiscal year?  
 Yes Source: Office of Economic Development, line item grant  No

Requesting Lease of entire parcel  Requesting License to Occupy a portion of a parcel

**TERM OF LEASE/LICENSE REQUESTED:** 15 Years Annual Fee Requested \$100

**TYPE OF REQUEST:**  New  Renewal  Extension

**DESCRIPTION OF PROPERTY: TMK:** (2) 3-8-007:001 (portion of Keōpūolani Park)

Please provide the Tax Map Key Number, Address (if available), Metes & Bounds description (if available) and area (i.e. \_\_\_sq. ft., 6.367 acres) of real estate for which lease/license is being requested. approximately 6.367 acres

Please provide a Tax Map, available online at <http://www.co.maui.hi.us/index.asp?NID=757>

In one (1) sentence, DESCRIBE THE INTENDED USAGE of the facility/site for which the lease/license is being requested.

The intended usage is in promoting the conservation and ethnobotanical uses and appreciation of native and Polynesian-introduced plants through the operation of a botanical garden, leadership and collaboration on conservation programs, growing an interpretive education program, and forging strong partnerships with the County of Maui and others.

***1. Description of the nature and purpose of the agency requesting the lease.***

*Goals and objectives of the organization.*

The mission of the nonprofit entity Maui Nui Botanical Gardens Inc. is to foster appreciation and understanding of Maui Nui's plants and their role in Hawaiian cultural expression by providing a gathering place for discovery, education, and conservation. Our vision is cultivating widespread preservation, conservation, and integration of Hawaiian plants throughout Maui Nui. Our goal is to promote the native Hawaiian and Polynesian introduced plants of Maui County by operating a public botanical garden and through our programs and services.

*Population and clientele served.*

Maui Nui Botanical Gardens is open to the public six days a week and serves both tourist visitors and Hawai'i residents.

*Services provided and number served.*

Maui Nui Botanical Gardens provides services to support our mission and the Maui County Department of Parks and Recreation's mission of providing safe, cost-effective recreational opportunities for residents and visitors of Maui County. We do this by maintaining a native Hawaiian plant garden with interpretive materials including signage, interpretive panels, and tour materials; and by maintaining an active volunteer program, education program, and conservation program. In FY2018, we welcomed 13,405 visitors to the site: 3,619 walk-in visitors and memberships; 7,630 event attendees; 232 cultural workshop attendees; 1,368 people hosted on school field trips or service learning; and 556 volunteers.

*Source of funding/support for organization's services and activities.*

Our funding comes from a wide variety of sources consisting of grants, contributions and membership, fundraising and programmatic income, and in-kind donations.

Grants from government and private foundations include:

The Maui County Office of Economic Development –operational support  
Hawai'i Tourism Authority –education program, conservation program and event support  
Hawai'i Community Foundation – projects vary depending on year  
Ceres Trust –Hawaiian taro varieties maintenance and distribution  
Kaulunani Urban and Community Forestry – annual Arbor Day 1,000 Hawaiian Tree Give Away event  
Strong Foundation –capital improvements, new nursery

Contributions and membership donations include:

Restricted gifts –for specific projects  
Annual fund gifts – appeals twice a year

Narrative Application for Maui County Grants of Real Property  
submitted by Maui Nui Botanical Gardens Inc. Date April 5, 2019

Membership dues – throughout the year

Matching grant challenges – from major donors, to increase annual appeal income

Fundraising and programmatic income includes:

Admissions fees – fees for walk-in visitors

Event income - merchandise, food, drink, plants, booth fees, rental of tents, tables, and chairs

Plant sales – daily sales from our office deck

Tours – paid tours to groups and individuals

Donation drop box

Workshops – paid Saturday cultural workshops hosted by outside artisans and horticulturalists

In-kind donations, for example:

Nā Hua Ho‘ohuli i ka Pono – providing a part or full-time intern to assist with seed storage and propagation in FY2019

Maui Electric Company – has provided plants and advertising for our annual Arbor Day 1,000

Hawaiian Tree Give-Away for the past 15 years

Community volunteers – contributed 5,471 hours of work towards maintenance in FY2018

*Administrative/management structure.*

The Board of Directors consists of 5-15 volunteer members and manages the affairs of the corporation, including overseeing work of the Executive Director, and entering into contracts. The Executive Director serves as the Chief Executive of the corporation under the direction of the Board of Directors and leads the Board in raising the necessary funds to carry out annual plans, develops annual budgets, provides fiscal oversight and accountability, provides program and administrative management of the corporation, and directs staff in the implementation of those plans. In addition to the Executive Director, we have a Program Manager who is responsible for administrative assistance, public relations, and volunteer coordination, a Nursery and Garden Manager responsible for maintaining the plant collection and supervising garden staff, and various part and full-time garden staff responsible for the maintenance of the plant collection and nursery. All MNBG employees supervise interns and volunteers in special projects and in maintenance activities.

*Intended usage of the site.*

*Specific uses/activities to be conducted at the site.*

We have three broad goals that inform our programs. Use of the site falls into one or more of these three categories.

- 1) Residents and visitors will gain a greater appreciation of the value of Native Hawaiian and Polynesian-introduced plants, through meaningful learning experiences offered at Maui Nui Botanical Gardens. Specific uses include operation as a public botanical garden with interpretive signage and materials; hosting workshops and small educational events; hosting group activities

Narrative Application for Maui County Grants of Real Property  
submitted by Maui Nui Botanical Gardens Inc. Date April 5, 2019

for schools and community groups; mentoring service learning students and interns; and hosting annual events.

2) Assist in preventing extinction of Maui Nui's native Hawaiian plants and pre-contact Hawaiian crop varieties through conservation efforts at MNBG. Specific uses include producing plants for sale and donation, collecting and storing seeds for future use by conservation partners and by MNBG, and partnering with other agencies to implement plans to prevent local species extinction.

3) Retain MNBG's ability to promote itself with Maui's residents and visitors and raise revenue to sustain the Gardens. Specific uses include accepting donations, charging admission to visit, selling plants and other merchandise, and hosting workshops and events.

*Reason and justification of need for these services/activities.*

Especially in Central Maui, there is a need for attractive, meaningful, culturally sensitive visitor destinations that connect both visitors and residents to the cultural history of Maui County.

In order to support environmental protection in Maui County, the community must understand the link between environment and economy. This support increases sensitivity toward the impact we have on natural areas utilized by both residents and tourists.

Native plant materials are increasingly in demand by the Maui community for cultural and landscape uses. This threatens the remaining accessible wild plant populations with over collecting. There is also a need to have well verified collections of traditional crop varieties that can supply growers and farmers seeking to grow uniquely Hawaiian plants.

The potentially economically valuable genetic diversity developed by ancient Hawaiians in traditional canoe crops is at risk of being lost, and coastal native Hawaiian plant species are threatened with extinction.

*Target population to be served at the site.*

Most users of Maui Nui Botanical Garden are residents of the island of Maui; tourist visitors make up about 17% of total visitors, and residents are approximately 83%.

Specific populations served by our educational and plant donation programs include students from preschool to college age, Hawaiian cultural groups, conservation nonprofits working to protect natural areas, homeowners, gardeners, landscapers, small farmers, volunteers and community service groups located in Maui County.

*Estimated average number of people using the site on a weekly basis.*

Excluding large annual community events, we welcome approximately 116 visitors weekly. Annual events attract between 1,000 and 3,000 participants in one day.

Narrative Application for Maui County Grants of Real Property  
submitted by Maui Nui Botanical Gardens Inc. Date April 5, 2019

*Frequency of use (daily, monthly, quarterly and number of hours per day).*

Maui Nui Botanical Gardens is open six days a week, 8 hours a day (Monday through Saturday, 8 am to 4 pm), excluding state holidays. Daily use = 8 hours; monthly use = approximately 25 days per month; quarterly use = approximately 75 days per quarter.

***Explain how/where the services/activities described above are currently being carried out and how use of the requested site will improve delivery of those services/activities.***

The activities and services described above have only ever been carried out at the requested site.

***Describe the management plan for the site. Who and how will daily management of the site be handled?***

The MNBG team consists of 4.4 Full Time Employees that supervise daily volunteers in maintenance and management of the site. The leader of this team, the Executive Director, is supervised by an eleven-person board that meets monthly or bi-monthly depending on season. Administrative management is performed by the Program Manager and Executive Director; site maintenance and landscaping is performed by the Garden and Nursery Manager and two groundskeepers, by a weekly community volunteer group (the “Weed and Pot Club”) that works every Wednesday morning from 8:30 to 10:30 am, and by various interns and service-learning students from U.H. Maui College and elsewhere.

***What would be the impact on the services/activities to be conducted at the site if a lease is not granted?***

The services and activities provided by Maui Nui Botanical Gardens, Inc. would cease if a lease is not granted, as all activities are based on the native plant landscape that has been maintained and improved since the early 2000’s on this site.

***If major improvements/construction is planned on the requested site, please provide the following:***

*Budget including projected costs and funding sources and amounts. Please identify firm/committed funding sources and amounts.*

Projected Budget for building new nursery and work area on approximately 1 acre of site that is currently undeveloped land

Description	Projected Cost	Funding Source	Secured/Pending
General Requirements from Contractor	\$10,300	Strong Foundation	Secured
Site Clearing, Grading, Swale, Gravel	\$57,500	Strong Foundation	Secured
Concrete Pad	\$9,108	Strong Foundation	Secured

Narrative Application for Maui County Grants of Real Property  
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Containers moved to new area	\$1,000	Strong Foundation	Secured
Roof over Containers	\$20,400	Strong Foundation	Secured
Greenhouse	\$25,800	Capital Campaign	Pending
Contractor Fees and Insurance	\$37,389	Capital Campaign	Pending
Architectural Fee	\$5,000	Capital Campaign	Pending
Building Permit	\$750	Capital Campaign	Pending
Archeological Monitoring	\$7,900	Capital Campaign	Pending

*Description of the planned improvement including plans or a least a conceptual drawing(s) of the facility.*

Please see the attachment provided, MNBG Nursery and Work Area Project Summary.

**MICHAEL P. VICTORINO**  
Mayor

**SCOTT K. TERUYA**  
Director

**MAY-ANNE A. ALIBIN**  
Deputy Director

**MARCY L. MARTIN**  
Administrator

**GERY MADRIAGA**  
Assistant Administrator



COUNTY OF MAUI  
DEPARTMENT OF FINANCE  
**REAL PROPERTY ASSESSMENT DIVISION**

70 E. KAAHUMANU AVENUE, SUITE A-16  
KAHULUI, HI 96732-2196  
Assessment: (808) 270-7297 | Fax: (808) 270-7884  
[www.mauipropertytax.com](http://www.mauipropertytax.com)

DATE: October 14, 2020

MEMO TO: Karla H. Peters, Director of Parks and Recreation

FROM: Marcy Martin, AAS Real Property Tax Administrator, Department of Finance

SUBJECT: Request for rental estimate for  
Description: Maui Nui Botanical Gardens  
TMK: (2)-3-8-007:001 por  
Request dated: October 14, 2020

The assessed value for the 2020 assessment year is: \$63,700

The assessed value of the subject property was estimated using standardized mass appraisal techniques for real property tax purposes.

The capitalization rates used for the rent estimate are from the Appraisal Institute Economic Indicators Q4 2019 (see below):

- Office 5.91%
- Warehouse 5.47%
- Residential/Apartment 5.49%
- Vacant land (residential) 5.49%

The estimated annual rent is calculated by multiplying the assessed value by the above referenced capitalization rate.

The annual rent estimate for the above mentioned property is \$ 3,497.13

## Economic Indicators | PwC Real Estate Investor Survey, Q4 2019

	Regional Mall		CBD Office		Warehouse		Apartment	
	Q4 2019	Q3 2019	Q4 2019	Q3 2019	Q4 2019	Q3 2019	Q4 2019	Q3 2019
<b>Discount Rate (IRR)<sup>a</sup></b>								
Range (%)	5.00 – 10.00	5.00 – 10.00	5.50 – 10.00	5.25 – 10.00	5.25 – 8.00	5.25 – 8.00	5.50 – 10.00	5.50 – 10.00
Average (%)	7.23	7.23	6.88	6.86	6.16	6.13	7.10	7.09
Change (bps)		0		+2		+3		+1
<b>Overall Cap Rate (OAR)<sup>a</sup></b>								
Range (%)	4.00 – 9.00	4.00 – 9.00	3.75 – 7.50	3.75 – 7.50	3.75 – 6.40	3.75 – 6.40	3.50 – 7.00	3.75 – 7.00
Average (%)	6.18	6.18	5.52	5.52	4.87	4.83	5.15	5.10
Change (bps)		0		0		+4		+5
<b>Residual Cap Rate</b>								
Range (%)	4.25 – 12.00	4.25 – 10.00	5.00 – 7.50	5.00 – 7.50	4.50 – 6.75	4.50 – 6.75	4.00 – 7.00	4.00 – 7.00
Average (%)	7.05	6.85	5.91	5.91	5.47	5.46	5.49	5.50
Change (bps)		+20		0		+1		-1

<sup>a</sup>Rate on unleveraged, all-cash transactions. Definitions: bps — basis points. Discount Rate (IRR) — internal rate of return in an all-cash transaction, based on annual year-end compounding. Overall Cap Rate (OAR) — initial rate of return in an all-cash transaction. Residual Cap Rate — overall capitalization rate used in calculation of residual price; typically applied to the NOI in the year following the forecast. Survey involves institutional-grade properties. Source: PwC Real Estate Investor Survey; personal survey conducted by PwC during October 2019. For subscription information, please email us-pwcsurvey@pwc.com.

► For continuously updated economic indicators, visit [www.appraisalinstitute.org/news/market-data](http://www.appraisalinstitute.org/news/market-data) (login required).

[www.appraisalinstitute.org](http://www.appraisalinstitute.org)

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