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Elle Cochran
Don S. Guzman
Riki Hokama
Kelly T. King
Yuki Lei K. Sugimura



Director of Council Services
Maria E. Zielinski

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

August 27, 2018

Mr. Wesley Lo, Chief Executive Officer
Hale Makua Health Services
472 Kaulana Street
Kahului, Hawaii 96732

Dear Mr. Lo:

**SUBJECT: KAHULUI COMMUNITY CENTER PARK AND
SURROUNDING AREA MASTER PLAN (PRL-10)**

Enclosed is a revised proposed lease, an unsigned copy of which is attached as Exhibit "1" to the revised proposed resolution entitled "AUTHORIZING A GRANT OF A LEASE OF COUNTY REAL PROPERTY TO HALE MAKUA HEALTH SERVICES."

May I please request that Hale Makua Health Services review and, if appropriate, approve the proposed lease?

I currently intend to schedule this matter for consideration at the Parks, Recreation, Energy, and Legal Affairs Committee meeting of September 4, 2018. Therefore, I would appreciate receiving your response by **August 31, 2018**.

To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Mr. Wesley Lo
August 27, 2018
Page 2

Should you have any questions, please contact me or the Committee staff (Carla Nakata at 270-7659, or Pauline Martins at 270-8039).

Sincerely,

A handwritten signature in black ink, appearing to read "Don S. Guzman". The signature is fluid and cursive, with a large initial "D" and "G".

DON S. GUZMAN, Chair
Parks, Recreation, Energy, and Legal
Affairs Committee

prl:ltr:010a01:cmn

Enclosure

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LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup () To:

DEPARTMENT OF FINANCE
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Affects TMK No.: (2) 3-8-007:097 (por.)

Total No. of Pages: _____

KAHULUI COMMUNITY CENTER LEASE

THIS LEASE, made this _____ day of _____, 20__ by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Maui, Hawaii 96793 (“Lessor” or “County”), and HALE MAKUA HEALTH SERVICES, a Hawaii Nonprofit Corporation, whose mailing address is 472 Kaulana Street, Kahului, Maui, Hawaii 96732-2099 (“Lessee” or “Hale Makua”), hereinafter collectively referred to as the “Parties”;

WHEREAS, the County of Maui is the owner of approximately 34.082 acres identified for real property tax purposes as tax map key (2) 3-8-007:097, upon which the Kahului Community Center Park (“KCC”) is located; and

WHEREAS, the facilities contained within KCC are further described in Exhibit "A," attached hereto and incorporated herein; and

WHEREAS, KCC is situated between facilities belonging to Hale Makua and Hale Mahaolu; and

WHEREAS, Hale Makua is interested in expanding its facilities and operations; and

WHEREAS, the Parties envision KCC as a park area with an emphasis on senior citizen use, with the control and management of KCC gradually placed under Hale Makua as further planning is completed; and

WHEREAS, the Parties prepared this Lease for portions of KCC in the hopes that it will allow for Hale Makua to plan for its future expansion while making clear the overall intent is to have the entire parcel be part of a larger senior activity area;

NOW, THEREFORE, County, for and in consideration of Hale Makua's covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby agree to grant a lease to Hale Makua and Hale Makua hereby accepts said lease on the terms and conditions set forth below:

A. Premises. The Premises shall comprise two contiguous portions of land within KCC. The portion identified as Phase 1 and containing the gateball field with field house is comprised of approximately 2.831 acres and is more particularly described in Exhibit "B," attached hereto and incorporated herein, and the portion identified as Phase 2 and containing the Kahului community center building, annex (referred to as a "Performing Arts building" in Exhibit "3" attached hereto), and surrounding areas is comprised of approximately 4.570 acres and is more particularly described in Exhibit "C," attached hereto and incorporated herein. Both portions are also depicted in the Designation of Phases plan attached hereto and made a part hereof as Exhibit "D." The remaining portions of KCC, including Kokua Pool, shall not be included in this Lease and shall remain under the control and management of the County.

B. Term. The term of this Lease shall be seventy-five (75) years, commencing upon its execution, unless sooner terminated as provided herein.

C. Control and Management of Premises. The control and management of the Premises shall be placed under Hale Makua in phases. Control and management of Phase 1 shall be transferred to Hale Makua upon execution of this Lease while control and management of Phase 2 shall be transferred to Hale Makua at a time mutually agreed upon by the Director of Parks and Recreation ("Director") and Hale Makua.

The transfer of Phase 2 shall be memorialized by the Parties, in writing. Said transfer documents shall be recorded with the State of Hawaii's Bureau of Conveyances.

Hale Makua shall not be responsible or liable for any areas that are not under its control and management, with the understanding that Hale Makua shall bear full liability and responsibility for those areas under its control and management.

It is the understanding of the parties that Hale Makua may not take control of the drainage areas.

D. Use of Premises. Hale Makua shall utilize all areas of KCC under its control and management to further its purpose as a Hawaii nonprofit corporation. Residential use shall be permitted to the extent it furthers Hale Makua's goals and purpose as a Hawaii nonprofit corporation.

E. Maintenance. The areas of KCC under the control and management of Hale Makua shall be maintained at all times in clean and usable condition for the term of this Lease. If the Director determines, in the Director's sole but reasonable discretion, that the areas are not being properly maintained, the Director may transmit a written notice to Hale Makua outlining the request for maintenance. Failure to initiate a cure within thirty (30) days and fully remedy said maintenance issue(s) within ninety (90) days of receipt of written notice, to the reasonable satisfaction of the Director, shall be deemed a breach of this Lease; provided, however, in the case of maintenance issue(s) that cannot be fully remedied within ninety (90) days of receipt of written notice or where a cure cannot be initiated within thirty (30) days of receipt of written notice, Hale Makua shall commence promptly to cure the maintenance issue(s) and thereafter diligently undertake the curing of said maintenance issue(s) until said maintenance issue(s) are remedied to the reasonable satisfaction of the Director. The time within which the maintenance issue(s) may be cured may be extended for such period as deemed necessary by the Director to complete the curing thereof with diligence. Failure to cure said maintenance issue(s) to the reasonable satisfaction of the Director within the time frame set forth by the Director shall be deemed a breach of this Lease.

F. Shared Use. The Parties agree to work together to ensure that County and Hale Makua operations may be conducted harmoniously.

G. Permit Required. In the event that Hale Makua desires to have temporary, exclusive use of portions of KCC, outside of the Premises, Hale Makua shall apply for a use permit with the Department of Parks and Recreation.

H. Conditions of Grant of Real Property. As the recipient of a grant of a lease of County real property, Hale Makua shall comply with all requirements of Chapter 3.36, Maui County Code, Maui County Grants Program. 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 "E," 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.
6. Narrative report.

I. KCC Master Plan and Future Lease Expansion. The Parties recognize that KCC provides an ideal location in terms of its proximity to senior living and care facilities, to establish a holistically planned community for servicing the County's frail and elderly communities. The Parties envision working together as partners, to develop a Master Plan for the future development of KCC, taking into account the needs of the community as a whole and the various KCC user groups. When the Parties agree that the County has adequate or replacement facilities for facilities at KCC and Hale Makua is prepared to take control and management of other areas of KCC, the Parties shall submit to the Council, for its approval by resolution, a Lease Amendment expanding the Premises under the Lease. No transfer shall take place without Council approval.

J. Breach. In the event of a material breach of any term of this Lease, the County shall have the authority to enjoin the entry upon and use of KCC by Hale Makua. If after sixty (60) calendar days the material breach or breaches have not been remedied to the Director's reasonable satisfaction, the Director may unilaterally terminate this Lease. The materiality of a breach shall be determined in the Director's sole and absolute discretion.

The County may also pursue all available legal and equitable remedies for enforcement and shall be entitled to an award of attorney's fees and court costs if the County is the prevailing party.

K. Termination. In the event that Hale Makua ceases operations at any time after the execution of this Lease, this Lease shall automatically

terminate. The Parties may terminate this Lease by mutual agreement, in writing, upon ninety (90) days notice.

L. Modifications. The Premises described in Paragraph A of the Lease, Term described in Paragraph B, and Use of Premises described in Paragraphs D and F may be amended, upon mutual agreement by the Parties, by Council resolution. Other modifications to the Lease shall be in writing and upon mutual agreement of the Parties, although Council approval is not required.

M. General Terms and Conditions. Hale Makua shall comply with the General Terms and Conditions attached hereto and incorporated herein as Exhibit "F." In the event of a conflict or inconsistency between the General Terms and Conditions and the terms contained in the body of this Lease, the terms in the body of this Lease shall control.

LESSOR:

APPROVAL RECOMMENDED:

COUNTY OF MAUI

BUTCH KAALA BUENCONSEJO
Director, Department of Parks
and Recreation

By _____
ALAN M. ARAKAWA
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:

JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui

By _____
MARK R. WALKER
Its Director of Finance

LESSEE:

HALE MAKUA HEALTH SERVICES

By _____
(Signature)

(Print Name)

Its _____
(Title)

By _____
(Signature)

(Print Name)

Its _____
(Title)

prl:misc:010alease (7-31-18)

STATE OF HAWAII
COUNTY OF MAUI

)
) SS.
)

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 Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

Notary Signature: _____	[Stamp or Seal]
Date: _____	

KAHULUI COMMUNITY CENTER FACILITIES LIST

Park Structures

Community Center with two divisible meeting rooms, a stage, and a kitchen.

Parks offices on site.

Annex with Kitchen

Kokua Pool

Picnic Areas

Large barbecue grill located at the Community Center

Sports Areas

Two soccer/baseball fields, four tennis courts, two playground sets, gate ball field with field house, jogging/bicycle path.

Parking

Five lots containing a total of 150 spaces

Public Restrooms

Restrooms available inside Community Center and Annex. One comfort station located near parking lot off of Onehee Street. One ADA portable toilet available near tennis courts.

7. 122° 00' 182.78 feet along Lots 299 and 298, Kahului Town Development 11th Increment;
8. Thence, along Lot 298, Kahului Town Development, 11th Increment on a curve to the left with a radius of 20.00 feet, the radial azimuth to the point of curve being 212° 00' and the radial azimuth to the point of tangent being 124° 00' the chord azimuth and distance being;
78° 00' 27.79 feet;
9. 214° 00' 69.34 feet along Kaimana Street;
10. 122° 00' 246.47 feet along Uhu Street to the point of beginning and containing an area of 2.831 Acres.



R. T. TANAKA ENGINEERS, INC.

Kirk T. Tanaka

Kirk T. Tanaka
 Licensed Professional Surveyor
 Certificate No. 7223-LS
 License Expires: April 30, 2020

871 Kolu Street, Suite 201
 Wailuku, Hawaii 96793

April 16, 2018
 Revised: July 23, 2018

PHASE 2
KAHULUI COMMUNITY CENTER
SITUATED AT WAILUKU, KAHULUI, MAUI, HAWAII
BEING A PORTION OF LOT 3-A, KAHULUI PARK SUBDIVISION
BEING ALSO A PORTION OF GRANT 3343 TO CLAUS SPRECKELS

Beginning at the Southwesterly corner of Phase 2 on the Northerly side of Uhu Street as shown on subdivision plat "Kahului Park Subdivision" (L.U.C.A. File No. 3.1583) prepared by Newcomer-Lee Land Surveyors, Inc. revised on December 22, 1994, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 464.96 feet South and 6,204.98 feet East and running by azimuths measured clockwise from True South:

1.	122° 00'	316.11 feet	along Uhu Street;
2.	212° 43'	51.00 feet	along the remainder of Lot 3-A, Kahului Park Subdivision;
3.	257° 43'	112.00 feet	along the remainder of Lot 3-A, Kahului Park Subdivision;
4.	212° 43'	122.00 feet	along the remainder of Lot 3-A, Kahului Park Subdivision;
5.	254° 43'	50.60 feet	along the remainder of Lot 3-A, Kahului Park Subdivision;
6.	164° 43'	150.96 feet	along the remainder of Lot 3-A, Kahului Park Subdivision;
7.	216° 30'	68.14 feet	along the remainder of Lot 3-A, Kahului Park Subdivision;
8.	307° 56'	695.53 feet	along Lot 2-A-1, Kahului Park Subdivision;

9. 77° 00' 547.02 feet along Phase 1 of Lot 3-A, Kahului Park Subdivision to the point of beginning and containing an area of 4.570 Acres.



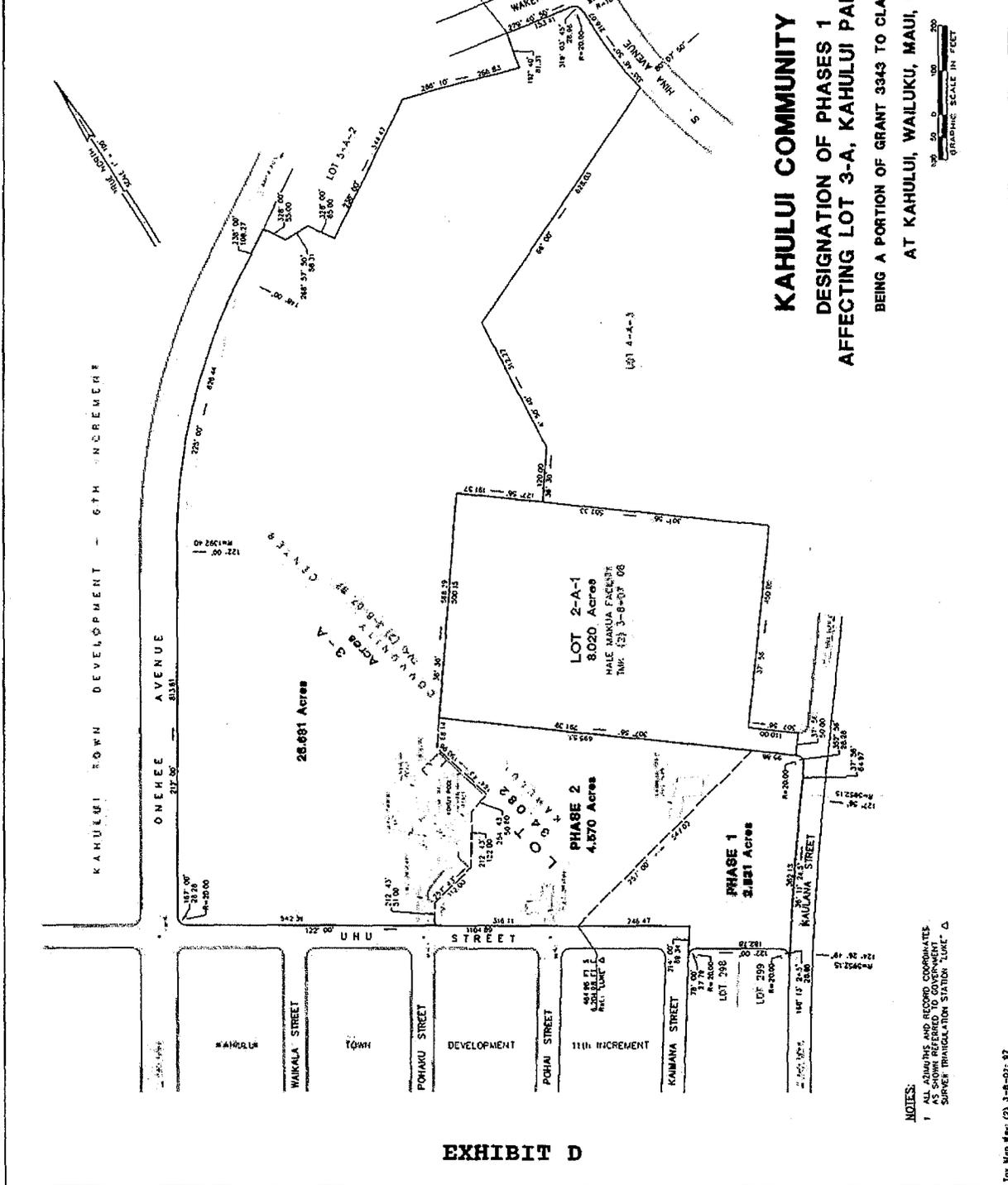
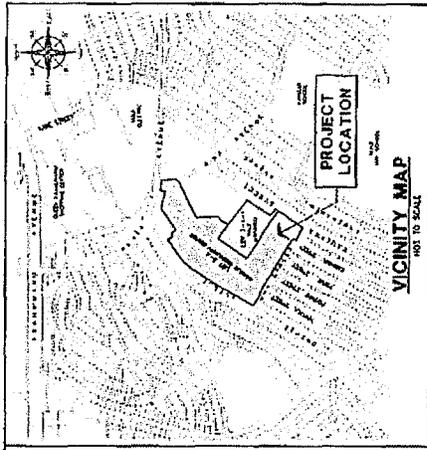
871 Kolu Street, Suite 201
Wailuku, Hawaii 96793

April 16, 2018
Revised: July 23, 2018

R. T. TANAKA ENGINEERS, INC.

A handwritten signature in cursive script, appearing to read "Kirk T. Tanaka".

Kirk T. Tanaka
Licensed Professional Surveyor
Certificate No. 7223-LS
License Expires: April 30, 2020



KAHALUI COMMUNITY CENTER
DESIGNATION OF PHASES 1 AND 2
AFFECTING LOT 3-A, KAHALUI PARK SUBDIVISION
 BEING A PORTION OF GRANT 3343 TO CLAUD SPRECKELS
 AT KAHALUI, WAILUKU, MAUI, HAWAII

THESE MAPS WERE PREPARED BY ME OR UNDER MY SUPERVISION
 MR. T. TANAKA
 LICENSED SURVEYOR NO. 152
 HAWAIIAN SURVEYING CO., LTD.
 1001 KALANANAKUI AVE., HONOLULU, HAWAII
 DATE: 07/10/12



NOTES:
 1 ALL DIMENSIONS AND RECORD COORDINATES AS SHOWN REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION 'LUMEE' Δ

THESE MAPS WERE PREPARED BY ME OR UNDER MY SUPERVISION
 MR. T. TANAKA
 LICENSED SURVEYOR NO. 152
 HAWAIIAN SURVEYING CO., LTD.
 1001 KALANANAKUI AVE., HONOLULU, HAWAII
 DATE: 07/10/12

EXHIBIT D



DEPARTMENT OF PARKS AND RECREATION

700 Hall's Nakoa Street, Unit 2, Wailuku, Hawaii 96793

ANNUAL REAL PROPERTY GRANT REPORT

Report Period: Fiscal Year July 1, _____ - June 30, _____

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.

INSTRUCTION

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

EXHIBIT "F"

RESERVATIONS, COVENANTS, TERMS AND CONDITIONS

RESERVING UNTO THE STATE OF HAWAII THE FOLLOWING:

1. Minerals and Waters.

A. All minerals as hereinafter defined, in, on or under the Premises and the right, on its 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 the State of Hawaii 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, this Lease shall be subject to the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including chapter 6E, Hawaii Revised Status, over prehistoric or historic remains found in, on, or under the land.

LESSEE HEREIN COVENANTS AND AGREES WITH LESSOR AS FOLLOW:

1. 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.

2. 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.

3. *THIS PARAGRAPH IS INTENTIONALLY LEFT BLANK*

4. Indemnification. To the extent permitted by law, Lessee shall indemnify, release, and hold 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, secured against Lessee by reason of such action or proceeding. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

5. Costs of Litigation. In case Lessor, without any fault on their respective parts, is made a party to any litigation commenced by or against Lessee (other than condemnation proceedings), Lessee shall pay all costs and expenses, including attorney's fees, incurred by or imposed on Lessor. Lessee shall pay all costs and expenses, including attorney's 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.

6. 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.

7. "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.

8. 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 of Finance and the Director of Parks and Recreation, 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.

9. 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.

10. 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.

11. 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 of Parks and Recreation. Alterations or improvements on the Premises 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.

12. 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.

13. Repair and Maintenance. Lessee shall at its own expense at all times during the term of this Lease, 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.

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

15. 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, Department of Parks and Recreation, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees growing on the Premises at the commencement of the this Lease, as well as any trees that are growing on the Premises during the duration of the 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.

16. 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.

17. 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.

18. Access to Information. Lessee shall provide Lessor 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.

19. 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, the State of Hawaii, and their respective officers, employees and agents as "Additional Named Insured", and shall include a duty to defend Lessor, State of Hawaii, and their respective 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, Department of Parks and Recreation, 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 of Finance, the Director of Parks and Recreation, or both, Lessee shall obtain and maintain such coverage.

20. 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, Department of Parks and Recreation, 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 not 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.

21. 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, Department of Parks and Recreation, 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.

22. 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.

23. 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.

24. Assignment. Lessee may not assign the Lease for the remainder of the Lease term.

25. Sublease. Lessee may not sublease the demised premises.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

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

36. 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.

37. 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.

END OF EXHIBIT F