

ORDINANCE NO. _____

BILL NO. 89 (2025)

A BILL FOR AN ORDINANCE AUTHORIZING
THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN
INTERGOVERNMENTAL AGREEMENT WITH THE
STATE OF HAWAII DEPARTMENT OF HAWAIIAN HOME LANDS
RELATED TO GENERAL LEASE NO. 311

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The County of Maui ("County") and the State of Hawaii, Department of Hawaiian Home Lands ("DHHL") wish to enter into a lease agreement, which will be known as General Lease No. 311, attached hereto as Exhibit "1".

Section 2.20.020, Maui County Code, provides, "Unless authorized by ordinance, the mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the county or any department or agency thereof."

In addition, special condition 22(f) requires the County to defend and indemnify the Department of Hawaiian Homelands and the State of Hawaii.

SECTION 2. Under Section 2.20.020, Maui County Code, the Council authorizes the Mayor or the Mayor's authorized representative to execute the Memorandum of Agreement and any amendments consistent with the purpose and scope of the Memorandum of Agreement that do not increase the County's financial obligation or the agreement's duration.

SECTION 3. This Ordinance takes effect on approval.

APPROVED AS TO FORM
AND LEGALITY:

/s/ Michael J. Hopper

MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

LF2025-0399
2025-07-07 IGA Ord DHHL General Lease 311

EXHIBIT "1"

After Recordation Return by: Mail (**X**) Pickup () To:

County of Maui
Department of Public Works
200 South High Street, 4th Floor
Wailuku, HI 96793

Affected Tax Map Key No. (2) 4-4-002:003 (por.)

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

GENERAL LEASE NO. 311

between

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

and

**COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS**

covering

HAWAIIAN HOME LANDS

situate at

**Tax Map Key: (2) 4-4-002:003 (por.)
Honokowai, Lahaina, Island of Maui**

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. 311

THIS INDENTURE OF LEASE, made this _____ day of _____, 2025 (effective date), by and between the State of Hawaii, by its **DEPARTMENT OF HAWAIIAN HOME LANDS**, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LESSOR," and **COUNTY OF MAUI, DEPARTMENT OF PUBLIC WORKS**, whose mailing address 200 South High Street, 4th Floor, Wailuku, Hawaii 96793, hereinafter called "LESSEE."

W I T N E S S E T H:

WHEREAS, under section 204(a)(2) of the Hawaiian Homes Commission Act of 1920, as amended ("Act"), and section 10-4-1 of the Hawaii Administrative Rules, as amended, the Department of Hawaiian Home Lands, as LESSOR, is authorized to dispose of available lands not required for leasing to native Hawaiians under section 207(a) of the Act by lease on the same terms, conditions, restrictions, and uses applicable to the disposition of public lands pursuant to Chapter 171, Hawaii Revised Statutes ("HRS"); and

WHEREAS, the LESSOR has determined that the land described below is not immediately needed for leasing to native Hawaiians; and

WHEREAS, pursuant to section 171-95, HRS, the LESSOR may lease lands by direct negotiation, and without recourse to public auction, to government agencies for terms up to, but not in excess of 65 years, at such rental and on such other terms and conditions as the Hawaiian Homes Commission ("Commission") may determine; and

WHEREAS, the LESSEE has requested a lease of Hawaiian home lands in Honokowai, Lahaina, island of Maui for the purpose of storing heavy equipment necessary to the Lahaina recovery efforts, including equipment for other nearby county operations; and

WHEREAS, the proposed area is currently vacant and consists of 3.11 acres of existing asphalt roadway and parking lot previously used by SVO Pacific for off-site hotel parking and is designated for industrial use in LESSOR's Honokowai Master Plan.

WHEREAS, the LESSOR has determined that leasing this land to the LESSEE will assist the LESSEE in effectuating its purpose, and be of benefit to the LESSOR's beneficiaries; and

WHEREAS, the LESSOR has determined that this lease satisfies the requirements of the Act.

NOW THEREFORE, in consideration of the terms, covenants and conditions herein contained, all on the part of the LESSEE to be kept, observed and performed, does lease to the LESSEE, and the LESSEE does lease from the LESSOR, the premises located at Honokowai, Lahaina, island of Maui, Hawaii, Tax Map Key No. (2) 4-4-002:003 (por.), comprising of approximately 3.11 acres of Hawaiian Home Lands, shown on the map attached hereto as **Exhibit "A,"**("Premises") and subject to the following rights reserved unto the LESSOR:

(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 minerals 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, diaspore, 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 any land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in road construction in furtherance of the LESSEE'S permitted activities on the demised Premises and not for sale to others.

b. All surface waters, ground waters, and water systems, appurtenant to the Premises 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 demised Premises as may be required in the exercise of this right reserved.

c. As a condition precedent to the exercise by the LESSOR of any rights reserved in this paragraph 1, just compensation shall be paid to the LESSEE for any of the LESSEE's improvements taken which amount is to be determined in the manner set forth in paragraph 3.

(2) Prehistoric and historic remains. All prehistoric and historic remains, including without limitation places, objects or specimens, if any, which may be on the Premises, together with the right at all times to enter the Premises for the purpose of searching, exploring for and conducting research on objects, antiquities and specimens, of Hawaiian or other ancient art or handicraft or prehistoric, historic or archeological interest, and removing the same for preservation.

(3) Withdrawal. The right to withdraw all or any portion of the Premises for the purposes of the Act, as reserved by section 204(a)(2) of the Act. The right to withdraw reserved under this paragraph 3 shall be exercised only after a minimum one (1) years prior written notice is given to the LESSEE. The LESSEE will be entitled to compensation for those improvements made by the LESSEE on any portion of the premises withdrawn which have been approved by the LESSOR in an amount equal to the proportionate value of the LESSEE's improvements so withdrawn in the proportion that it bears to the unexpired term of the lease; provided, that the

LESSEE may, in the alternative, remove or relocate its improvements to the remainder of the demised Premises occupied by the LESSEE.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances belonging or appertaining to the LESSEE for the terms as defined below, unless the term shall be sooner terminated as provided in this lease, the LESSEE yielding and paying therefore all taxes, rates, assessments, and other charges hereunder payable by the LESSEE during the term as provided in the lease, on the following terms and conditions:

1. Term. The term of this lease shall be for twenty (20) years, commencing on the date that the Lease document is fully executed, unless sooner terminated as hereinafter provided. Prior to the expiration of this lease, the parties may extend the lease period by mutual written agreement.

2. Rent. The monthly fee shall be SEVEN THOUSAND EIGHT HUNDRED TWENTY-FIVE (\$7,825.00) and subject to a 3% incremental annual increase. The processing and documentation fee of \$275.00 shall be waived.

All financial obligations due and owing by Lessee under the terms of this Lease shall be subject to and contingent upon the annual appropriation of public funds by the Council of the County of Maui. In the event that sufficient funds are not appropriated by the Council to cover Lessee's financial obligations under this Lease, upon advance written notice to Lessor of at least TEN (10) business days, Lessee may unilaterally terminate this Lease.

3. Use. The LESSEE shall use the Premises for equipment storage for Lahaina recovery efforts and to support other critical County functions.

4. Quiet enjoyment. The LESSOR covenants and agrees with the LESSEE that, upon the LESSEE's observance and performance of the required terms, covenants and conditions contained in this lease, the LESSEE shall and may have, hold, possess and enjoy the Premises for the term of the lease, without hindrance or interruption by the LESSOR or any other person or persons lawfully claiming by, through or under it.

5. Utility services. The LESSEE shall pay, or cause to be paid, all charges, duties, rates and, other outgoings of every description, including water, sewer, gas, refuse collection, relocation of utility poles and lines or any other charges, as to which the Premises or any part, or any improvements, or the LESSOR or the LESSEE may become liable for during the term, whether assessed to or payable by the LESSOR or the LESSEE.

6. Issuance and relocation of utility easements. (a) The LESSEE may request an easement for utility purposes or relocation of an existing utility easement, and, if so approved by the LESSOR, the LESSEE shall pay all costs related to the issuance and installation of a new utility easement or relocation of an existing utility easement. (b) The LESSOR may issue utility easements or relocate existing utility easements without the LESSEE's approval, provided that the issuance or relocation thereof does not unreasonably interfere with the LESSEE'S use of the Premises. In such event, the LESSOR shall pay for all costs related to the issuance and

installation of a new utility easement or relocation of an existing easement, unless the issuance or relocation is done at the request of a utility company, in which case the utility company shall pay all related costs.

7. Sanitation, etc. The LESSEE shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

8. Waste and unlawful, improper or offensive use of premises. The LESSEE shall not strip or commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the Premises, or any part thereof, nor, without the prior written consent of the LESSOR, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.

9. Compliance with laws. The LESSEE shall, if applicable, comply with the requirements of any municipal, state and federal authorities and observe all municipal ordinances and state and federal statutes applicable to the premises.

10. Inspection of premises. The LESSEE will permit the LESSOR and its agents, at all reasonable times so as to cause as little interference with the LESSEE'S use of the Premises as is reasonably possible, to enter into and upon the Premises to inspect and examine the same and determine the state of repair and condition thereof, including, without limitation, the right to inspect the LESSEE'S records regarding compliance with all applicable rules and regulations.

11. Lessor's approval of improvements. The LESSEE shall not at any time during the term construct, place, maintain and install on the Premises any building, structure or improvement of any kind and description except with the prior written consent of the LESSOR and upon those conditions the LESSOR may impose, unless otherwise provided in the lease. The LESSEE may make nonstructural alterations not exceeding Twenty-Five Thousand Dollars (\$25,000.00) in cumulative costs per alteration during the term of this lease without the LESSOR'S consent. The LESSEE shall own these improvements until the expiration or termination pursuant to a breach of the lease, at which time the ownership shall automatically vest in the LESSOR.

12. Repairs to improvements. The LESSEE shall, at its own expense, keep, repair and maintain all buildings and other improvements now existing or hereafter constructed or installed on the Premises in good order, condition and repair, reasonable wear and tear excepted.

13. Assignments, etc. The LESSEE shall not transfer or assign this lease or any interest, either voluntarily or by operation of law; any unauthorized transfer or assignment shall be null and void; provided that, with the prior written approval of the LESSOR, the assignment and transfer of this lease or any portion thereof may be made to the governmental or corporate successor of the LESSEE.

14. Subletting. The LESSEE shall not rent or sublet the whole, or any part of, the Premises without the prior written consent of LESSOR, at LESSOR's sole discretion.

If this paragraph is violated, the LESSEE shall relinquish all sublease rents collected from the Premises.

15. Termination. At the end of, or at earlier termination of this lease, the LESSEE shall peaceably deliver unto the LESSOR possession of the Premises, together with all buildings and other improvements of whatever nature or name, now or hereafter erected or placed upon same, in good order and condition, reasonable wear and tear excepted. Furthermore, should the LESSEE, upon the expiration, termination, and/or revocation of this lease, fail to remove any and all of its personal property from the Premises, after notice thereof, the LESSOR may remove any and all personal property from the Premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of the LESSEE, and the LESSEE does agree to pay all costs and expenses for the disposal, removal, and/or storage of the personal property.

16. Non-warranty. The LESSOR does not warrant the conditions of the Premises, as the same is leased "as is."

17. Abandonment by Lessee. The LESSEE agrees that, should the LESSEE breach this lease and abandon the premises, this lease shall continue in effect so long as the LESSOR does not terminate the lease or the LESSEE's right to possession. The LESSOR may enforce all of its rights and remedies under this lease. Further, the LESSOR need not mitigate its damages in the event the LESSEE abandons the Premises and the LESSEE hereby expressly agrees to make the LESSOR whole in accordance with the terms of this lease.

18. Hazardous Materials Claims. The LESSEE shall immediately advise the LESSOR in writing of:

a) Any and all actual, alleged or threatened discharge, dispersal, release, escape, disposal or presence of pollutants or Hazardous Materials on, under or about the Premises, except such discharge, release or presence done in strict compliance with all applicable Hazardous Materials Laws and used by The LESSEE on the Premises in connection with the uses permitted by this lease.

b) Any and all enforcement, clean up, removal, mitigation, remediation or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the premises;

c) Any and all written claims made or threatened by any third party against the LESSEE or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (a) , (b) and (c) above are hereinafter referred to as "Hazardous Materials Claims"); and

d) The LESSEE's discovery of any occurrence or condition on the Premises which could subject the LESSEE, LESSOR or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws.

All Hazardous Material Claims shall be promptly investigated, and, if appropriate, remediated by an environmental consultant selected by the LESSEE and approved by the LESSOR, who shall perform all investigations, sampling and tests to the reasonable satisfaction of the LESSOR. The LESSOR shall have the right to join and participate in, as a party if it so elects, any settlements, remedial actions, legal proceedings or actions initiated in connection with any Hazardous Materials Claims. The LESSOR may participate in the investigation either directly or through one or more designated agents, employees, consultants or contractors, and shall have access to all information, raw data, opinions and test results generated by the investigation. With respect to any liability or potential liability under this Section 25 (Hazardous Materials), the LESSEE shall be responsible for damages and injury to the extent that the LESSEE's liability for such damage or injury has been determined by a court or otherwise agreed to by the LESSEE. The LESSEE shall pay for such damage or injury to the extent permitted by law and, provided that funds are appropriated, allotted or otherwise properly made available for that purpose. The LESSEE shall require the Developer, the Sub-lessee, any other sub-lessees, (except if such sub-lessee is the LESSEE or other State of Hawai'i government entities) to be responsible for any loss, damage, cost, expense, lien or liability directly or indirectly arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials, on, under or about the Premises by or through the LESSEE, Developer, and/or Sub-lessee, including without limitation the costs of any required or necessary repair, cleanup or detoxification of the Premises, and the preparation and implementation of any closure, remedial or other required plans.

19. Hawaii Law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

20. Exhibits – Incorporation in Lease. All exhibits referred to are attached to this lease and are deemed incorporated by reference.

21. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

22. Special Conditions.

- a. LESSEE agrees to accept the Premises in "as is" condition and shall maintain the Premises in a neat and clean condition, including trimming overgrown vegetation and depositing of trash on a regular basis. No new construction shall be allowed without prior approval of LESSOR. No major alteration or addition of any kind shall be made to the Premises unless plans are first submitted and approved by LESSOR. New construction may require the preparation of an HRS Chapter 343. Environmental Assessment.
- b. LESSEE shall comply with all federal, state and county regulations or requirements regarding environmental issues and the safe handling and disposal of toxic or hazardous materials. Upon termination of the lease, LESSEE shall be

[REMAINDER OF PAGE BLANK -- SIGNATURE PAGE FOLLOWS]

responsible for environmental clean-up of any contamination or hazardous materials brought onto the site or caused by LESSEE's activities.

- c. All hazardous and/or toxic materials, including trucks and equipment containing hazardous and toxic materials, that could cause contamination of the soil or ground water must be stored in accordance with all federal, state and county laws and regulations on impermeable surface, such as concrete or asphalt pavement. Such surface must be maintained in good repair and approved by LESSEE prior to occupying the Premises. Major equipment repair or servicing shall not be permitted.
- d. LESSEE may be required to remove and dispose of all surface material, including asphalt paving and concrete slab that becomes contaminated beyond the allowable State of Hawai'i, Department of Health limits due to LESSEE's use.
- e. LESSEE shall take reasonable measures in preventing any hazardous materials from leaching on the Premises. Proper storage of any oil or gasoline is required.
- f. LESSEE shall release, defend, indemnify and hold harmless the Department of Hawaiian Home lands and the State of Hawaii, its officers, employees, contractors, representatives, and agents from and against all liability, loss, damage, costs, and expenses, including all attorney's fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of LESSEE and LESSEE's officers, employees, agents, representatives, or contractors occurring during or in connection with the exercise of the approved lease.
- g. LESSEE shall obtain proper permission from adjacent landowner(s) for roadway access not covered by the lease.
- h. LESSEE shall be solely responsible for the security of all items stored on the Premises. LESSEE shall be allowed to install security fencing; however, if LESSEE intends to install other types of security systems, LESSEE must first request and obtain LESSOR's written approval.
- i. No residential use shall be permitted, including temporary overnight camping. However, LESSEE shall be allowed to provide a shelter for security purposes, if such persons are hired for security purposes.
- j. Prior to vacating the Premises, LESSEE shall remove, at LESSEE's sole cost, all of the LESSEE's equipment, constructed improvements, trash, goods and materials and restore the area to a condition as good as or better than that which existed prior to LESSEE's use. LESSEE shall also notify LESSOR to do a site inspection when LESSEE has completed removal.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

Approved by the Hawaiian
Homes Commission on:
January 21, 2025

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

APPROVED AS TO FORM:

By: _____
Kali Watson, Chairman
Hawaiian Homes Commission

Deputy Attorney General
State of Hawaii

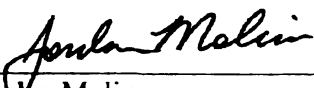
LESSOR

County of Maui

MAYOR:

By: _____
Richard T. Bissen
Its: Mayor

APPROVAL RECOMMENDED:

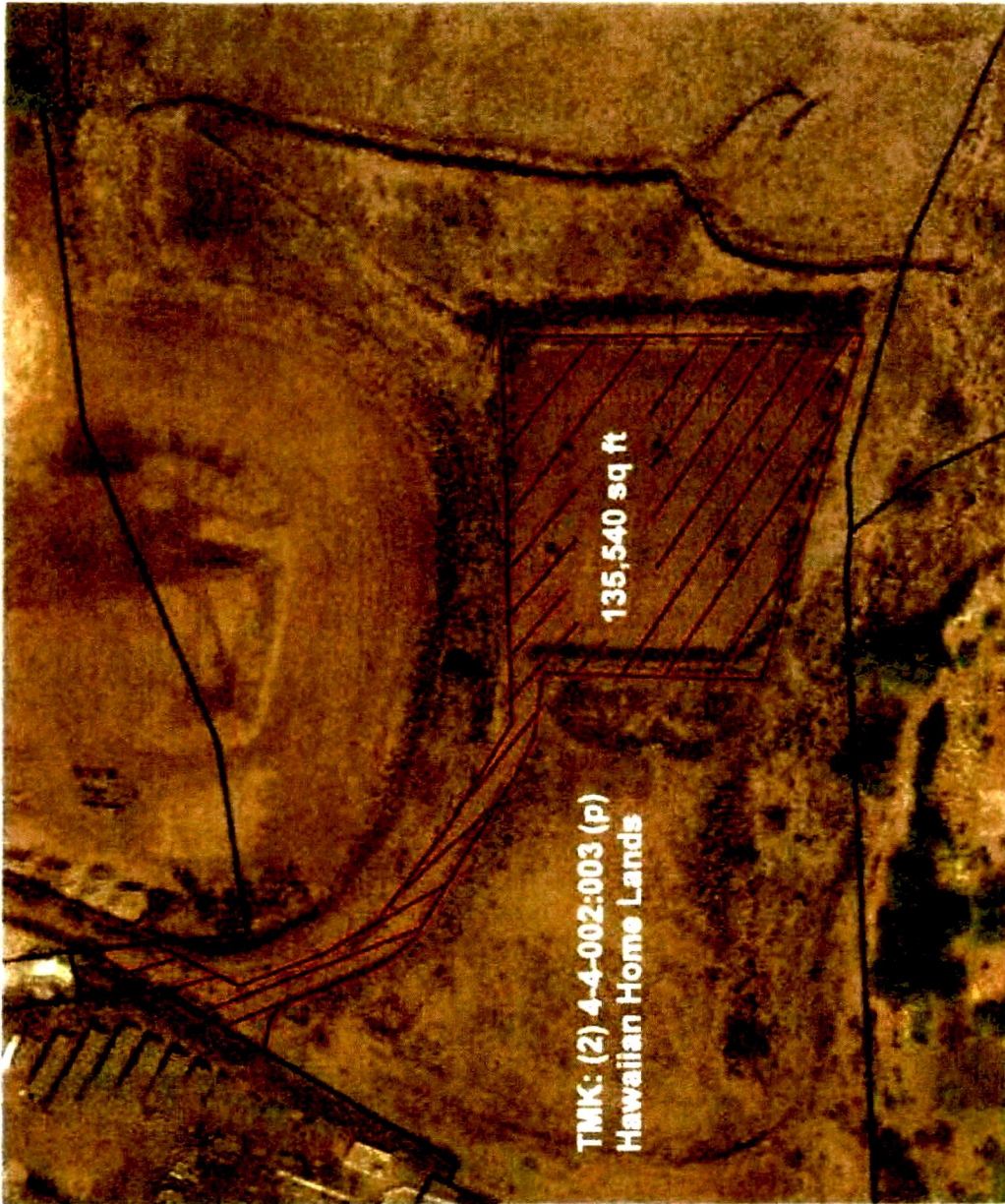
By: 
Jordan Molina
Its: Director of Public Works

APPROVED AS TO FORM AND
LEGALITY:

Deputy Corporation Counsel
Department of the Corporation Counsel

LESSEE

EXHIBIT "A"
Tax Map Key No. (2) 4-4-002:003 (por.)
(Premises)



STATE OF HAWAII)
) SS
CITY and COUNTY OF HONOLULU)

On this _____ day of _____, 20__, before me appeared KALI WATSON, to me personally known, who, being by me duly sworn, did say that he is the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth.

Notary Public, State of Hawaii

Print Name _____

My commission expires: _____

Document Date: _____	# of Pages: _____
Notary Name: _____	1st Circuit
Doc. Description: _____	
_____ Notary Signature	
NOTARY CERTIFICATION	

STATE OF HAWAII

COUNTY OF MAUI

)
) SS
)

On this _____ day of _____, 20__, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he is the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth.


Notary Public, State of Hawaii

Print Name _____

My commission expires: _____

Document Date: _____	# of Pages: _____
Notary Name: _____	_____ Circuit
Doc. Description: _____	
_____ Notary Signature	
NOTARY CERTIFICATION	

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Mr. Lee", is written over a horizontal line.

Upon the request of the Mayor.