

Council Chair  
Mike White

Vice-Chair  
Robert Carroll

Presiding Officer Pro Tempore  
Stacy Crivello

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

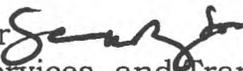


Director of Council Services  
Sandy K. Baz

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

May 25, 2017

MEMO TO: Patrick K. Wong  
Corporation Counsel

F R O M: Stacy Crivello, Chair   
Housing, Human Services, and Transportation Committee

SUBJECT: **GRANT OF A LEASE RENEWAL TO HALE MAKUA HEALTH SERVICES** (HHT-9)

At its meeting of May 18, 2017, the Housing, Human Services, and Transportation Committee discussed a proposed resolution relating to a grant of a lease of County real property to Hale Makua Health Services. The purpose of the proposed resolution is to authorize a grant of a 30-year lease to Hale Makua Health Services for the continued occupancy of two parcels located at Wailuku, Maui, Hawaii, commencing November 1, 2018, for the purposes of providing a home for the aged and disabled, and an office for a Medicare Certified Home Health Agency.

May I please request your assistance with the following nonsubstantive revisions to the proposed resolution and grant agreement, including those noted in the attached marked-up copies:

1. On page 1 of the proposed resolution, fourth WHEREAS clause, clarify the reference to Section 3.40.040, Maui County Code, and whether Subsection A(1), (2), or (3) applies to the proposed lease. Please revise the proposed resolution as appropriate.
2. On page 2 of the grant agreement, the Committee agreed to the following:

“That for and in consideration of the aforesaid grant, Grantee hereby agrees to the covenants and conditions and to make the reports as [contained] described in Exhibit[s “A” and] “B”, attached hereto and made a part hereof.”

Patrick K. Wong  
May 25, 2017  
Page 2

Because the reference to Exhibit "A" is being deleted as unrelated to the reporting requirements, please revise the proposed resolution as appropriate to reference Exhibit "A."

3. Add a notary page to Exhibit "1" for the Director of Finance.
4. Please obtain the necessary signatures to the revised grant agreement, prior to attachment to the revised proposed resolution.

I would appreciate receiving a response by **June 7, 2017**, to meet the posting deadline for the June 16, 2017 Council agenda. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Shelly Espeleta at ext. 7134, or Tammy Frias at ext. 8005).

hht:ltr:009acc01:ske

Attachment

cc: Wesley Lo, Chief Executive Officer, Hale Makua Health Services

# Resolution

NO. \_\_\_\_\_

## AUTHORIZING A GRANT OF A LEASE OF COUNTY REAL PROPERTY TO HALE MAKUA HEALTH SERVICES

WHEREAS, HALE MAKUA HEALTH SERVICES (“Hale Makua”) is currently the lessee of two (2) parcels of real property leased from the County of Maui, identified as Tax Map Key No. (2) 3-4-019:002, <sup>consisting of an</sup> area approximately 0.71 acres and Tax Map Key No. (2) 3-4-019:006, <sup>consisting of an</sup> area approximately 2.68 acres, located at Wailuku, Maui, Hawaii, hereinafter collectively called the “PREMISES”; and

WHEREAS, Hale Makua’s lease will expire on October 31, 2018; and

WHEREAS, Hale Makua has applied to the County of Maui for a grant of renewal of lease of the PREMISES for a thirty (30) year period at a charge below fair market value, to use for the purpose of providing a home for the aged and disabled, and as an office for a Medicare Certified Home Health Agency; and

[ WHEREAS, in accordance with Section 3.40.040, Maui County Code, the term of any contract to lease property of the County shall not exceed five years; provided that the Council of the County of Maui may approve a lease of property for a term exceeding five years, when such longer period is deemed necessary and in the public interest; and ]

WHEREAS, in accordance with Section 3.40.200, Maui County Code, a lease of real property at a charge below fair market value shall be considered a grant of public property and shall be submitted to the Council as an application for a grant pursuant to Chapter 3.36, Maui County Code; and

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

WHEREAS, attached hereto as Exhibit "1" is a copy of the proposed Grant Agreement for Lease of County Real Property; and

WHEREAS, attached hereto as Exhibit "2" is a copy of the proposed Lease of County Real Property; and

WHEREAS, in accordance with Section 3.36.090, Maui County Code, the Council may authorize the grant of real property by resolution; now, therefore,

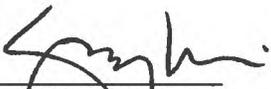
BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby finds that it is necessary and in the public interest to authorize the grant of lease of real property, and therefore waives all requirements of bidding and public notice in accordance with Sections 3.36.090 and 3.40.200, Maui County Code; and

2. That it hereby authorizes the Mayor, or his duly authorized representative, to execute all necessary documents associated with the grant of real property; and

3. That certified copies of this Resolution be transmitted to the Mayor<sup>^</sup> and the Director of Housing and Human Concerns<sup>^</sup> and Hale Makua.

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
GARY Y. MURAI  
Deputy Corporation Counsel  
County of Maui

GRANT AGREEMENT FOR LEASE OF COUNTY REAL PROPERTY

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 201~~8~~<sup>7</sup>,  
by and between HALE MAKUA HEALTH SERVICES, a Hawaii non-profit  
corporation, whose mailing address is 472 Kaulana Street,  
Kahului, Hawaii 96732, hereinafter called the "GRANTEE", and the  
COUNTY OF MAUI, a political subdivision of the State of Hawaii,  
whose principal place of business is 200 South High Street,  
Wailuku, Maui, Hawaii 96793, hereinafter called "COUNTY".

W I T N E S S E T H :

WHEREAS, the Grantee has applied to County for a grant of  
lease of certain County real property identified as Tax Map Key  
No. (2)3-4-019:00~~2~~<sup>(1)</sup> consisting of approximately .71 acres, and <sup>Tax Map Key No.</sup> (2)  
3-4-019:006, consisting of approximately 2.68 acres, located at  
Wailuku, Maui, Hawaii, and collectively known hereinafter as the  
"PREMISES", for a <sup>lease</sup> lessee commencing November 1, 2018 and  
expiring <sup>on</sup> ~~upon the 31st day of~~ <sup>31,</sup> October <sup>^</sup> 2048, unless sooner  
terminated as provided herein, to provide a home for the aged  
and disabled, and as an office for a Medicare Certified Home  
Health Agency~~x~~; and

WHEREAS, the Director of Housing and Human Concerns has  
approved the Grantee's application for grant of lease of County  
real property subject to certain guidelines and conditions; and

WHEREAS, the Director of Finance has determined that the fair market rental value of the premises is FIVE HUNDRED FORTY SEVEN THOUSAND THREE HUNDRED TWENTY SIX AND NO/100 DOLLARS (\$547,326.00) per annum; and

WHEREAS, the Grantee shall pay County a nominal rental fee for the premises of ONE HUNDRED DOLLARS (\$100.00) per annum for each one (1) year period, or a total of (\$3,000.00) for the 30-year duration of the lease;

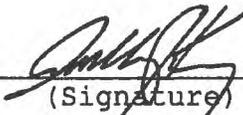
NOW, THEREFORE, IT IS HEREBY AGREED by and between the parties hereto as follows:

That for and in consideration of the aforesaid grant, Grantee hereby agrees to the covenants and conditions and to make the reports as [contained] in Exhibits [ "A" and ] "B" attached hereto and made a part hereof. described

IN WITNESS WHEREOF, the parties have executed these presents the day and year first above written.

GRANTEE

HALE MAKUA HEALTH SERVICES

By   
(Signature)  
Anthony J. Krieg  
Its CEO  
(Print Title Above)

COUNTY OF MAUI

By \_\_\_\_\_  
ALAN M. ARAKAWA  
Its Mayor

BY \_\_\_\_\_  
DANILO F. AGSALOG  
Its Director of Finance

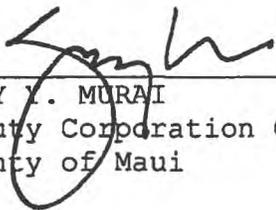
*← Need a 7<sup>th</sup> page for Director? If so, 16-page document.*

APPROVAL RECOMMENDED:

  
\_\_\_\_\_  
CAROL K. REIMANN  
Director of Housing & Human Concerns

  
\_\_\_\_\_  
SANANDA K. BAZ  
Budget Director *Revise*

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
GARY Y. MURAI  
Deputy Corporation Counsel  
County of Maui

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

On this 7<sup>TH</sup> day of JUNE, 2016, before me personally appeared ANTHONY KRIEG, 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.



Madelyn B. Tacadol  
Notary Public, State of Hawaii  
Print Name: Madelyn B. Tacadol  
**MADELYN B. TACDOL**  
My commission ~~EXPIRES~~ My Commission Expires November 11, 2018

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>NO DATE</u>	# Pages: <u>3</u>
Notary Name: <u>Madelyn B. Tacadol</u>	Judicial Circuit: <u>2ND CIRCUIT</u>
Doc. Description: <u>Grant Agreement for</u> <u>Lease of County Real Property</u>	
Notary Signature: <u>Madelyn B. Tacadol</u>	
Date: <u>6.07.2016</u>	



*Do we need a notary page for the Director of Finance? If so, this will be a 16-page document.*

STATE OF HAWAII        )  
                                  ) SS.  
COUNTY OF MAUI        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared ALAN M. ARAKAWA, 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 in behalf of said County of Maui by authority of its Charter, and the said ALAN M. ARAKAWA 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.

\_\_\_\_\_  
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: _____	



COUNTY OF MAUI  
200 South High St  
Wailuku, HI 96793

Date of Application: September 15, 2011  
(Updated March 1, 2016)

**GRANTS OF REAL PROPERTY**

**APPLICANT**

Legal Name of Organization: Hale Makua Health Services

Address: 472 Kaulana St.  
Kahului HI 96732

Director/Manager: Tony Krieg  
Phone: (808) 871-9217 Fax: (808) 871-9262

Organization President: Donna McCleary, M.D.  
Phone: (808) 669-0070 Fax: (808) 669-1234

Contact Person (Grant Writer): ...Tony Krieg .-  
Title: Chief Executive Officer Phone: (808) 871-9217

Total Annual Budget of Organization: \$ 34,973,449

Has the applicant applied for funds from the County of Maui this fiscal year?  
 Yes Source: \_\_\_\_\_  No

*Please check one*

**IXI Property LEASE** (If intended use an entire parcel)  **DLICENSE** to occupy (If intended use for a portion of a parcel)

**County Department Responsible**  
for Property, Parcel, or Facility: Housing and Human Concerns

**TERM REQUESTED:** 30 Years **TYPE OF REQUEST:**  New  Renewal  Extension

**DESCRIPTION OF PROPERTY:**  
TaxMapKey: ...3- 4 -1 9 -----  
Average or square footage of parcel: Parcel 2 = 30,941 sq feet; Parcel 6= 116,805 sq feet  
Address of parcel (if available): 1540 Lower Main St Wailuku and 1520 Main St Wailuku  
Please provide a Tax Map Key, available at <http://www.co.maui.hi.us/index.asp?NID=747>

**DESCRIBE THE INTENDED USAGE** of the facility/site for which the lease/license is be requested (one sentence).  
The site will continue to be used as a home for the aged and disabled and as an office for a Medicare Certified Home Health Agency.

**EXHIBIT A** Pg1

REV.DHHC.02 07.11

**COUNTY OF MAUI  
Grants of Real Property**

**NARRATIVE APPLICATION**

***I. Provide a description of the nature and purpose of the agency requesting the lease or license-to-occupy, including:***

- a. Goals of the Organization*
- b. Population clientele served*
- c. Services provided (including numbers served)*
- d. Sources of funding/support for the organizations services and activities*
- e. Administrative/management structure*

**History of Organization - Population/Clientele served**

Six years after the attack on Pearl Harbor, and two years after the Allied Victory, concerned citizens on Maui created Hale Makua (Home of Respected Elders) as a private, non-profit corporation to provide a nursing home for elders who had no family, and/or no means to pay for needed services. Hale Makua has expanded over the years, from 24 residential beds to 378 beds on two campuses in order to meet the growing needs of the community. The original "home" was built in Wailuku's Happy Valley. Malulani Hospital, operated by the County of Maui (at the corner of Lower Main and Mill Streets in Wailuku), was vacated in 1952 after the new Maui Memorial Hospital was built. Maui County then leased Malulani Hospital to Hale Makua as its many wooden buildings provided a larger venue for resident care. Given the age of the Malulani buildings, Hale Makua's board leadership decided to raise funds to construct a modern facility in 1961. This required formal site control which resulted in the granting of leases from both Maui County and the State of Hawaii for the parcels needed for this construction in 1964.

Hale Makua then raised funds from Federal, State, corporate and community sources that resulted in the replacement of the wooden Malulani Hospital buildings with Maui's first modern nursing care facility in 1966 with a capacity of serving 124 aged and disabled residents. This was one year after the passage of federal Medicare and Medicaid legislation which provided stable funding for this population.

In 1969, Hale Makua was asked by the state Public Health nursing department to create a Medicare certified home health care agency which had its offices at the new Wailuku facility. This service continues to this day providing skilled nursing and therapy services to 80-100 homebound individuals monthly on Maui (except Hana). A home was constructed adjacent to the Wailuku nursing facility

which became the residence of Hale Makua's Executive Director. Today this home serves as the office location for Home Health by Hale Makua.

It did not take long for the Wailuku beds to fill and the need for additional long-term care services was apparent. So, in 1975, Hale Makua approached the County for additional acreage to construct a new skilled nursing facility. Mayor Elmer Cravalho, decided to ask Alexander and Baldwin to donate land for a new facility in Kahului adjacent to Hale Mahaolu. Once again, Hale Makua organized a major fundraising campaign and a new 120 bed skilled nursing facility was built. Over time this Kahului facility has expanded to a total of 254 beds.

**Services Provided (Including Numbers Served)**

Hale Makua Health Services provides a multitude of healthcare service options along a continuum of care depending on the level of need. Services and programs include: Hale Makua Long Term Skilled and Intermediate Nursing Care, in-house and outpatient Rehab by Hale Makua, Day Health by Hale Makua, Home Health by Hale Makua and Respite Care by Hale Makua. Each of these broad areas of service include various supportive programs and services that include: behavioral management for residents suffering from Alzheimer's Disease or dementia, and other forms of memory loss; physical, occupational, and speech therapies; restorative and maintenance exercise programs; nutritional management and food services; medication management and assessment; quality assurance and compliance programs; organized activities and socialization programs including art and pet therapies; beauty shop services; financial consultation; social services and counseling; transportation; palliative care initiatives; as well as maintenance and engineering; laundry, housekeeping, purchasing, information technology support, and gardening services. Our 480 employees also receive education and training through the Clinical Development Department and employment support through the Human Resources Department.

In 2015 Hale Makua Health Services provided care to over 1200 individuals in our community (over 813 in long-term care and Rehab by Hale Makua, 470 in Home Health, over 40 individuals in Day Health by Hale Makua and 22 clients in the Care Home by Hale Makua ). This represents 111,000 patient days in the nursing homes and 7,200 home health visits.

Over the years Hale Makua Health Services has refined its mission statement to reflect the variety of services provided in the community:

*Mission : We improve the well-being of those in our care through compassionate personalized health services in our home and yours.*

..

**Current goals for Hale Makua Health Services:**

- To provide long-term nursing and rehabilitative care to no less than 850 individuals yearly through our Kahului and Wailuku campuses.
- To assure that the services Hale Makua provides meet or exceed state and federal licensing and certification standards.
- To provide skilled home health care to 500 homebound patients to support and manage ongoing recovery from surgery, illness, or accident in order to promote improvement in overall health and independence.
- To provide Day Health services to an average daily census of no less than 31 individuals to support families in providing nursing care for their loved ones during the day in order to prevent nursing home admission.
- To integrate the Eden Philosophy through the Eden Alternative initiative in order to prevent loneliness, helplessness and boredom, the three plagues of the elderly.
- To continue to explore and develop partnerships with other healthcare organizations in order to utilize resources most effectively to provide efficient, high quality, health care services and options for the Maui community.

**Sources of Funding**

Funding for Hale Makua comes primarily through third party reimbursements from Medicare and Medicaid. Medicaid is an eligibility program for persons who qualify for financial assistance and Medicare is an entitlement program for persons who have paid into the social security system. Over 85% percent of the residents at Wailuku Hale Makua and over 77% of the residents at Kahului Hale Makua are Medicaid recipients. Medicaid and Medicare payments do not cover the total cost of care per day. In fact, Hale Makua loses between nine and eleven dollars per day, per Medicaid resident. Medicare provides coverage for 6% of the residents at Kahului Hale Makua and 2% at Wailuku Hale Makua. Private or Kaiser healthcare insurance provides coverage for an average of 13-14% of the residents. In addition, Hale Makua is engaged in active community fundraising to support its mission and programs. Through special events, annual appeals and other fundraising activities, Hale Makua raised over \$400,000 in 2015.

**Administrative/Management Structure**

Hale Makua Health Services is governed by a Board of Directors who are representative of the community, have fiduciary responsibility and help set strategic direction for the organization. The Board of Directors is responsible for hiring and evaluating the CEO. The CEO oversees daily

operations with a senior management team that includes the CFO, Medical Director, Hale Makua Wailuku Administrator, Hale Makua Kahului Administrator, Director of Human Resources, and the Director of Home Health Services. These senior managers oversee supervisors throughout the organization. Hale Makua Health Services supports the philosophy that day to day decisions need to be made as close to the resident as possible and that the employees who provide the day to day care need to be supported as integral members of the care team whose knowledge and communication is vital to the success of the organization.

2. *Please explain the intended usage of the facility (or site) for which the lease/license-to-occupy is being requested. Included information about:*
- a. *The specific use(s)/activity(ies) to be conducted at the facility/site*
  - b. *The reason and justification of need for these services/activities*
  - c. *The target population to be served at the facility/site*
  - d. *The estimated average number of people using the facility/site on a weekly basis*
  - e. *The frequency of use (i.e. daily, monthly, quarterly, etc. and number of hours per day) of the facility/site*

**Specific Activities to be conducted at the facility/Site: Need and Target Population**

As was noted in the paragraphs above, Hale Makua Wailuku provides skilled and intermediate nursing care services for frail and disabled persons who are unable to care for themselves. It complies with federal and state regulations required for this care. The site also includes a 3-bedroom house, originally used as a benefit for the Executive Director of Hale Makua, but for the past 20 years has been the office hub for Home Health by Hale Makua. There is an Environmental Services Department on site that includes a Laundry Room. The Laundry Department is responsible for cleaning and folding all of the residents clothing, bedding, towels and linens for both Hale Makua, Kahului and Wailuku. Nutrition/Food Service and preparation is centralized at Hale Makua Kahului and is transported to Wailuku, seven days a week, three times a day. Improved systems for food delivery to the Wailuku campus are being evaluated. Currently, continental breakfast has been adopted with outstanding results. A committee, that includes residents at Hale Makua Wailuku, has been meeting to create a buffet meal service.

The target populations for Hale Makua Wailuku long term care are frail elderly and disabled individuals who need 24-hour around the clock, licensed nursing care and assistance with activities of daily living (i.e. bathing, feeding, dressing, toileting/incontinence, grooming, transferring). These individuals can no longer live with family or live alone because they need continuous supervision by skilled personnel including physicians, nurses, social workers, and other allied health care providers. As stated earlier, support services include organized socialization activities, daily maintenance exercise programs, counseling and social services, meal preparation and serving, laundering and cleaning, medication management, quality assurance monitoring, maintenance of facility and grounds. Hale Makua Wailuku can accommodate up to 90 nursing home residents and 23 care home residents per day.

Home Health by Hale Makua provides personalized treatment for health/medical issues for all ages in an individual's home. This includes teaching caregivers how to deal with problems that may arise from an illness or injury. Those qualifying for services are functionally or medically homebound, in need of intermittent skilled nursing or therapy services, and have a Hawaii physician overseeing care. Most of the clients utilizing home health services are recuperating from illness, recovering from an accident or surgery, or were diagnosed with a new illness that is not well controlled.

**Estimated Average Number of People Using the Facility and Frequency of Use**

The average daily nursing home census for calendar year 2015 at Hale Makua Wailuku was eighty (80) producing 28,829 patient days. Hale Makua, Wailuku also has developed a licensed care home with an average daily census of 14. A 3 bedroom home on the property houses the administrative offices of Home Health by Hale Makua which provides 6,865 skilled nursing and rehabilitation service visits to patients in their own homes.

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

The services provided are in the building that was constructed in 1966. This building includes 54 resident rooms with 90 nursing home and 25 care home beds. Each room contains two to four beds, a small sitting area and bathroom. These beds/rooms are divided into three main nursing neighborhoods (units). A large central garden area connects the three nursing neighborhoods. The Hale Makua Wailuku campus also includes a large activity room, maintenance exercise room, inside and outdoor dining rooms, two day/sitting rooms, a laundry room, Engineering/maintenance room, beauty shop, a large shower room, classroom, dental room, and administrative offices. Hale Makua Health Services has continued to improve and maintain these room/buildings/gardens through time.

The construction of this building allows ample possibilities for re-engineering of spaces. For instance a two-bed resident room was easily converted to a private respite room with little cost. Expansion of other innovative home and community-based services is also an option with slight, inexpensive re-engineering, a feature that is very important as the baby boomers begin to age.

We have two full-time staff and 4 part-time staff dedicated to maintenance of the Wailuku Campus. A contracted landscaping company maintains the plants and grounds on the leasehold property.

- 3E-

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

A full-time licensed nursing home administrator manages Hale Makua Wailuku and supervises managers in nursing, housekeeping, laundry, and resident activities. The CEO meets with the Wailuku Administrator several times a month. Facilities and ground maintenance is centralized for both the Kahului and Wailuku facilities with 7 full-time maintenance workers and 2 full-time managers. Hale Makua Health Services extensive grounds are maintained by contract.

*5. What would the impact be on the services/activities to be conducted at/trough the facility/site If a lease/license to occupy is not granted?*

If this lease is not extended by the end of its term in 2 years, a new facility will need to be built to care for current and future frail or disabled individuals who can no longer care for themselves without continuous support. We estimate the cost of such a facility to be at least \$30 million.

Maui County's frail elderly population is growing rapidly. The population aged 65 and over increased 52.3% between the 2000 and 2010 census (19,434 to 29,651 persons). While the population over age 85 increased 62% over the same period (1,642 to 2,658 persons). Not only will the full complement of beds at Hale Makua Wailuku be needed but additional facilities may also be needed in the next 10 years.

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

- a. Budget including projected costs and funding sources and amounts. Please identity firm/committed funding sources and amounts.*
- b. Description of the planned improvement including plans or at least a conceptual drawing(s) of the facility.*

No new major improvements/construction is planned beyond routine maintenance and minor reengineering/re-design of current spaces (as explained above) of the buildings and grounds at this time.

**ADDITIONAL CONDITIONS**  
**Department of Housing and Human Concerns**

In consideration of a grant of lease of COUNTY property, GRANTEE agrees to the following conditions in the use and administration of COUNTY property. In the event the following conditions conflict with any term, provision, condition and/or covenant contained in the body of the Grant Agreement, the terms, provisions, conditions and/or covenants contained in said body shall prevail.

- 1) GRANTEE shall comply with its articles of incorporation and/or bylaws and all relevant COUNTY, State and/or Federal rules and regulations concerning its policies and operations.
- 2) GRANTEE shall not discriminate either in the hiring of staff, use of volunteers, use of facilities, or delivery of client services on the basis of sex, sexual orientation, national origin, age, race, color, religion or disability. GRANTEE shall comply with all applicable federal and state laws prohibiting discrimination.
- 3) GRANTEE shall not alter program plans which provided the justification for the grant without first obtaining the prior written consent of COUNTY. GRANTEE shall inform COUNTY of any proposed changes to the budget allocations or project description or schedule outlined herein.
- 4) If applicable, GRANTEE shall comply with all requests of the State of Hawaii for information and reports regarding GRANTEE's operations.
- 5) GRANTEE shall comply with all applicable federal, state and COUNTY licensing requirements and with all applicable accreditation and other standards of quality generally accepted in the field of GRANTEE's activities.
- 6) As a nonprofit organization, GRANTEE shall establish and be governed by bylaws or policies which shall include provisions relating to nepotism and management of potential conflict-of-interest situations, as required by Section 3.36.040(c) of the Maui County Code.
- 7) NONCOMPLIANCE: GRANTEE's failure to faithfully perform any part of this Agreement or any of the Additional Conditions herein shall constitute noncompliance, and:
  - a) Should the noncompliance continue for thirty (30) days after written notice thereof is delivered to GRANTEE or mailed to its last known address; or,
  - b) If such noncompliance cannot be reasonably cured in thirty (30) days, and GRANTEE has failed to commence to cure such noncompliance and to continue to diligently use its best efforts to cure such noncompliance; or
  - c) If GRANTEE shall become bankrupt; or,

**Exhibit "B"**

- d) If GRANTEE fails to perform any of the terms of this Agreement, then the COUNTY may prohibit GRANTEE from applying for any grant for five years, return all funds or real property granted to GRANTEE and be subject to debarment proceedings.

## ## ##

END OF EXHIBIT "B"



W I T N E S S E T H:

WHEREAS, the State of Hawaii is the owner of the parcel identified as Tax Map Key No. (2) 3-4-019:002, area approximately 0.71 acres ("State Parcel"); and

WHEREAS, the State of Hawaii through Executive Order No. 4489, attached hereto as Exhibit "1" and by reference incorporated herein has assigned control and management of the State Parcel to the County of Maui; and

WHEREAS, the County of Maui is the owner of the parcel identified as Tax Map Key No. (2) 3-4-019:006, area approximately 2.68 acres ("County Parcel"); and

WHEREAS, the Lessee has occupied the site since approximately 1964 through leases from the County of Maui; and

WHEREAS, the County of Maui supports Lessee and hopes to assist Lessee by issuing this Lease so that Lessee may continue its occupancy of the site; 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 comprise the areas identified as the State Parcel and the County Parcel, hereinafter collectively referred to as the "Premises".

B. Use of Premises. Lessee shall use the Premises to provide facilities and programs to serve the frail, elderly, or disabled, and any other uses reasonably associated with care for

the aged. The use of the Premises for any other purpose shall require the prior written approval of Lessor, through its Director of the Department of Housing and Human Concerns ("Director") and the State of Hawaii, Board of Land and Natural Resources ("BLNR").

C. Term. This Lease shall commence on the first day of November 2018 and expire upon the thirty first day of October 2048, unless sooner terminated as provided herein.

D. Cancellation. The Lease shall be subject to immediate cancellation in the event of disapproval of Executive Order 4489 by the Hawaii State Legislature pursuant to Section 171-11, Hawaii Revised Statutes.

E. Rent. Lessor reserving and the Lessee yielding and paying to the Lessor rent of ONE HUNDRED DOLLARS (\$100.00) per annum.

F. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "2" attached hereto and by reference made a part hereof.

G. Grant Reporting. Within three weeks after the end of the fiscal year, each recipient of a grant of real property shall transmit to the agency a report containing the following information for the quarter and for the fiscal year to date:

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.

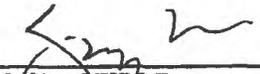
IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the date set forth above.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

APPROVAL RECOMMENDED:

  
\_\_\_\_\_  
CAROL K. REIMANN  
Director of Housing and  
Human Concerns

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
GARY Y. MURAI  
Deputy Corporation Counsel  
County of Maui  
S:\ALL\GYM\Grants.Leases\DHHC\hale makua\Lease.5.31.wpd

APPROVED BY THE BOARD OF LAND  
AND NATURAL RESOURCES AT ITS  
MEETING HELD ON: APR 24 2015

**LESSOR:**

COUNTY OF MAUI

By \_\_\_\_\_  
ALAN M. ARAKAWA  
Its Mayor

By \_\_\_\_\_  
DANILO F. AGSALOG  
Its Director of Finance

**LESSEE:**

HALE MAKUA HEALTH SERVICES

By  \_\_\_\_\_  
(Signature)  
Anthony J. Krieg  
\_\_\_\_\_  
(Print Name)

Its CEO  
\_\_\_\_\_  
(Title)

By \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name)

Its \_\_\_\_\_  
(Title)

STATE OF HAWAII        )  
                              )        SS.  
COUNTY OF MAUI        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared ALAN M. ARAKAWA, 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 ALAN M. ARAKAWA 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.

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

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

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

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

STATE OF HAWAII        )  
                              )  SS.  
COUNTY OF MAUI        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared DANILO F. AGSALOG, 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 DANILO F. AGSALOG 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.

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

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

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

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

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

On this 7TH day of June, 2016, before me personally appeared ANTHONY KRIGA, 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.



Madelyn B. Tacadol  
Notary Public, State of HAWAII  
Print Name: Madelyn B. Tacadol  
MADELYN B. TACDOL  
My commission expires November 11, 2016

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>NO DATE</u>	# Pages:	<u>5</u>
Notary Name:	<u>Madelyn B. Tacadol</u>	Judicial Circuit:	<u>2ND CIRCUIT</u>
Doc. Description:	<u>Lease Of County</u> <u>Real Property</u>		
Notary Signature:	<u>Madelyn B. Tacadol</u>		
Date:	<u>6.07.2016</u>		



STATE OF \_\_\_\_\_ )  
 ) 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.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

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



more particularly described in Exhibit "A" and delineated on Exhibit "B," both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, both being designated C.S.F. No. 14,175 and dated January 16, 1964.

SUBJECT, HOWEVER, to the condition that upon cancellation of this executive order or in the event of non-use or abandonment of the premises or any portion thereof for a continuous period of one (1) year, or for any reason whatsoever, the County of Maui shall, within a reasonable time, restore the premises to a condition satisfactory and acceptable to the Department of Land and Natural Resources, State of Hawaii.

SUBJECT, FURTHER, to disapproval by the Legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of this Executive Order.

This executive order does not authorize the recipient of the set aside to sell or exchange or otherwise relinquish the State of Hawaii's title to the subject public land.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Hawaii to be affixed. Done at the Capitol at Honolulu this 31<sup>st</sup> day of JULY, 2015.



DAVID Y. IGE  
Governor of the State of Hawaii

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JULIE H. CHINA  
Deputy Attorney General

Dated: July 4, 2015

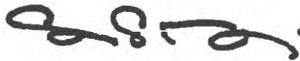


STATE OF HAWAII

Office of the Lieutenant Governor

THIS IS TO CERTIFY THAT the within is a true copy of Executive Order No. 4489 setting aside land for public purposes, the original of which is on file in this office.

IN TESTIMONY WHEREOF, the Lieutenant Governor of the State of Hawaii, has hereunto subscribed his name and caused the Great Seal of the State to be affixed.



SHAN S. TSUTSUI  
Lieutenant Governor of the State of Hawaii

DONE in Honolulu, this 10<sup>th</sup> day of August, A.D. 2015





STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

January 16, 1964

C.S.F. No. 14,175

State of Hawaii to County of Maui

Portion of Hale Makua Premises  
(Old Malulani Hospital)

Papohaku, Wailuku, Maui, Hawaii

Comprising the following:

1. Portion of Grant 3343 to Claus Spreckels

Being a portion of the land conveyed to the Minister of Interior by Claus Spreckels by deed dated September 3, 1883 and recorded in Book 81 Page 417. (Land Office Deed 131)

2. Portion of R.P. 3104 L.C.Aw. 3495, Apana 2 and 4 to Kawahie

Being a portion of the land conveyed to the Superintendent of Public Works by Henry P. Baldwin by deed August 6, 1906 and recorded in Book 282 Page 297. (Land Office Deed 1116).

Beginning at the northwest corner of this parcel of land, the northeast corner of St. Anthony School Lot and on the south side of Mill Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 4881.98 feet North and 68.28 feet East, as shown on Government Survey Registered Map 1261, thence running by azimuths measured clockwise from True South: -

1. Along the south side of Mill Street on a curve to the right having a radius of 792.51 feet, the chord azimuth and distance being 263° 51' 50" 72.90 feet;
2. 266° 30' 174.90 feet along the south side of Mill Street;
3. 332° 11' 87.70 feet along portion of Hale Makua Premises owned by the County of Maui;



EXHIBIT "A"

- 4. 62° 11' 222.96 feet along portion of Hale Makua Premises owned by the County of Maui;
- 5. 152° 52' 30" 73.28 feet along St. Anthony School Lot;
- 6. 71° 13' 1.53 feet along St. Anthony School Lot;
- 7. 150° 35' 56.13 feet along St. Anthony School Lot;
- 8. 150° 13' 57.06 feet along St. Anthony School Lot to the point of beginning and containing an Area of 30,941 Square Feet.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: Akira Tago  
Akira Tago  
Land Surveyor

Compiled from data on  
whiteprint prepared by the  
CO. of Maui, Dept. of Pub.Wks.,  
and from Govt. Survey records.

ac



11 10 162 - 2024 5 4321-4 42-2 12, 1964



## 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 FOLLOWS:

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

4. Indemnification. Lessee shall indemnify and save Lessor and the State of Hawaii 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, the State of Hawaii, or both (in addition to Lessee) by reason of any such claim, even though such claim be based on alleged fault of Lessor, the State of Hawaii, or both, 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 and/or the State of Hawaii, 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 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 and/or the State of Hawaii 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 and the State of Hawaii. 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 and the BLNR, 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 and the State of Hawaii 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 and the BLNR. Alterations or improvements on the Premises approved by the Director and the BLNR, 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 time 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, 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, PCBs, 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 and the State of Hawaii 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, subject to the approval of the Board of Land and Natural Resources ("BLNR"), 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 and the BLNR 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 and, if applicable, the BLNR.

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, 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.

The insurance policy shall expressly state that in the event that the policy is canceled or terminated prior to the expiration date, notice of said cancellation or termination shall be delivered to Lessor and the State of Hawaii.

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, the BLNR, 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, 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, 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, with prior written approval of the Director and the BLNR, assign the Lease for the remainder of the Lease term.

25. Sublease. Lessee may, with written approval of the Director and the BLNR, 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 and the State of Hawaii 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. The Parties have carefully read and fully understand all of the provisions of this Lease, and have been advised to discuss 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.

38. BLNR. All articles herein that refer to the Board of Land and Natural Resources or BLNR shall apply to real property conveyed to Lessor by the State of Hawaii pursuant to an executive order.