

ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel

EDWARD S. KUSHI
First Deputy

LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

MEMORANDUM

TO: Don S. Guzman, Chair
Parks, Recreation, Energy, and Legal Affairs Committee

FROM: Mimi DesJardins *mdj*
Deputy Corporation Counsel

DATE: October 15, 2018

SUBJECT: **PRL-44**
Lease of County Real Property To Maui In-Line Hockey Association, Inc. for the Operations of a Skate Rink At Kalama Park (Kihei)

At the October 3, 2018 PRL Committee meeting, your committee recommended adoption of the revised proposed resolution approving the above-referenced lease. After your committee took this action, it was discovered that Exhibit "C" to the lease, entitled "Reservations, Covenants, Terms and Conditions", required amendment in several places. The amendments were necessary to reflect the fact that this property was conveyed to the County by E.O., and therefore, the State of Hawaii also needs to be included in the indemnification and insurance provisions. In addition, a few minor changes that are not related to the insurance clauses were also required.

A new version of the lease, which incorporates these changes, is attached here as Exhibit 1. Also attached here is Exhibit 2, which is a copy of the updated version of Exhibit "C" to the lease, with the changes appearing in bold for your review.

WHEREAS, the State of Hawaii through Executive Order No. 854 has assigned control and management of the area to the County of Maui; and

WHEREAS, Lessee has operated its programs from this site since 1997 and has constructed the Kalama Park Skating Facility on site, which provides a tobacco, drug and alcohol free environment for the development of youth inline hockey players and competitive leagues for youth and adults, as further detailed in Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, the County of Maui supports Lessee and hopes to assist Lessee by issuing this Lease so that Lessee may continue to conduct its activities on 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 leased area comprises a 22,796 square foot area, more or less, within Kalama Park, more particularly shown on Exhibit "B-1", attached hereto and by reference incorporated herein, which is a portion of Tax Map Key No. (2)3-9-005:052, set aside by Executive Order No. 854, attached hereto and by reference incorporated herein as Exhibit "B-2", hereinafter referred to as the "Premises."

B. Use of Premises. Lessee shall use the Premises for operation of a skate rink, to include public skating, youth and adult hockey league play, pick-up hockey play, and loan of skates and safety equipment for use by skaters. The use of the Premises for any other purpose shall require the prior written approval of Lessor, through its Director of the Department of Parks and Recreation ("Director") and the State of Hawaii, Board of Land and Natural Resources ("BLNR").

Lessor reserves the right to conduct two special events per year at the Premises, during the months of June, July or August, with 90-days written notice to Lessee. Lessor will ensure such special events comply with the Department of Parks and Recreation permit requirements, and will include additional reasonable requirements desired by Lessee.

C. Term. This Lease shall commence upon execution and expire upon the 30th day of June 2036, unless sooner terminated as provided herein.

D. Cancellation. The Lease shall be subject to immediate cancellation in the event of disapproval of Executive Order No. 854, 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 the nominal rental amount of ONE HUNDRED DOLLARS (\$100) per annum, the receipt and sufficiency of which is hereby acknowledged.

F. Kalama Park. Lessee may have temporary, non-exclusive use of the parking lots in Kalama Park. Any use of areas of Kalama Park, other than the Premises, shall require a permit as described in Paragraph H. below. Lessee shall indemnify, defend, and hold harmless the Lessor, the State of Hawaii, and their respective Lessor's officers, employees, and agents from and against any and all claims for bodily injury, wrongful death and/or property damage by any persons caused by, occasioned by, arising from, or resulting from this use of Kalama Park.

G. No Disturbance: Lessee acknowledges and confirms that the Premises is a part of a public park facility used by the general public. Lessee and anyone claiming under Lessee, shall limit their activities to the Premises covered by this Agreement and will exercise its rights in a manner causing as little interference as reasonably possible with the use of the rest of Kalama

Park by Lessor and the general public. Lessee and anyone claiming under Lessee shall obey reasonable rules, regulations, instructions and/or directions of Lessor and Lessor's officers, employees, or agents with respect to same.

H. Permit required. If Lessee desires to have temporary, exclusive use of any portions of Kalama Park, outside of the Premises, Lessee shall apply for a use permit with the Department of Parks and Recreation.

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

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

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

K. BLNR requirements.

1. Upon receiving approval from the Board of Land and Natural Resources, the Lessee shall provide approved building permits for the existing structure. If no building permits were obtained at the time of construction, after the fact permits must be obtained. All structures must be permitted and built to Maui County Code.

2. All uses by the Lessee shall not interfere with the functions and operations of Kalama Park.

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

LESSOR:

COUNTY OF MAUI

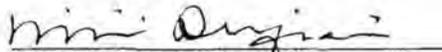
By _____
ALAN M. ARAKAWA
Its Mayor

APPROVAL RECOMMENDED:


BUTCH KAALA BUENCONSEJO
Director of the Department of
Parks and Recreation

By _____
MARK R. WALKER
Its Director of Finance

APPROVED AS TO FORM
AND LEGALITY:


MIMI DESJARDINS
Deputy Corporation Counsel
County of Maui

LF 2014-2242
2018-10-05 Lease

LESSEE:

MAUI IN-LINE HOCKEY ASSOCIATION,
INC.

By Mellie Rodrigo Yadao
(Signature)

Mellie Rodrigo Yadao
(Print Name)

Its Pres.
(Title)

By Kris Volk
(Signature)

Kris Volk
(Print Name)

Its TREASURER
(Title)

STATE OF HAWAII)
)
 COUNTY OF MAUI) SS.

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.

[Stamp or Seal]

 Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

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

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

STATE OF HAWAII)
COUNTY OF MAUI) SS.

On this ____ day of _____, 20____, before me appeared MARK R. WALKER, 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 MARK R. WALKER acknowledged the said instrument to be the free act and deed of said County of Maui.

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

[Stamp or Seal]

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

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

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

STATE OF Hawaii
Mau)
) SS.

On this 9TH day of OCTOBER, 2018, before me personally appeared NELLIE RODRIGO YADAD, 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.



Deborah Kele
Notary Public, State of Hawaii
Print Name: DEBORAH KELE
My commission expires: 11-14-2018

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>OCTOBER 9, 2018</u>	# Pages: <u>30</u>
Notary Name: <u>DEBORAH KELE</u>	Judicial Circuit: <u>2ND</u>
Doc. Description: <u>MAUI IN-LINE HOCKEY ASSOCIATION, INC.</u>	
<u>LEASE OF COUNTY RECREATIONAL SPACE AND EXHIBITS</u>	
Notary Signature: <u>Deborah Kele</u>	
Date: <u>11-14-2018</u>	

STATE OF Hawaii
Mau)
) SS.

On this 9th day of OCTOBER, 2018, before me personally appeared KRIS VADLA, 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.



Deborah Kele
 Notary Public, State of HAWAII
 Print Name: DEBORAH KELE
 My commission expires: 11-14-2018

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>OCTOBER 9, 2018</u>	# Pages:	<u>30</u>
Notary Name:	<u>DEBORAH KELE</u>	Judicial Circuit:	<u>2ND</u>
Doc. Description:	<u>MAUI IN-LINE HOCKEY ASSOCIATION, INC.</u>		
	<u>LEASE OF COUNTY RECREATIONAL SPACE AND EXHIBITS</u>		
Notary Signature:	<u>Deborah Kele</u>		
Date:	<u>11-14-2018</u>		



MAUI INLINE HOCKEY AGENCY DESCRIPTION

The Maui Inline Hockey Association, herein referred to as "MIHA", provides public skate three nights a week at the Kalama Park Skating Facility, herein referred to as "the rink". This public skate is provided free of charge for those skaters that bring their own equipment to the rink, otherwise MIHA provides skate rental for 5 (five) dollars a pair. There is also safety equipment available for free use for all skates, regardless if they have rented skates or brought their own. These skate nights are on Wednesday from 6 pm to 8 pm and Friday & Saturday from 6 pm to 9 pm. The rink provides an alcohol, smoke and drug free place to experience the wonderful outdoor scenery of Kalama Park for skaters of all ages. Public skate is run year-round by volunteers.

In addition to the Public Skate nights, MIHA also runs multiple hockey leagues. These leagues generally include about 50 children ranging in age from 6 to 17 and about 40 adult players at least 18 years old. These leagues run practice for youth teams on Monday and Tuesday nights at the rink, with the Adult League playing their competitive games on Tuesday nights. The remainders of the League games are played on Thursday nights. In addition to competitive leagues, there are also practice nights, called 'drop-in' or 'pick-up' hockey that is available to any MIHA member. Any non-member can participate if they pay the nightly 5 (five) dollar rental fee and fill out the MIHA waivers. These practice nights are held on Sunday night for Adults and Monday nights for younger, developmental players usually 14 years or older. The hockey leagues usually run from two seasons; the Fall Season is September to December of the current year and the Winter Season is February to May of the following year.

Since 1997, MIHA has been operating the rink to provide public skate and competitive hockey leagues for Maui residents and visitors alike. This facility is a gathering place for youths to be safe and provide a source of exercise. This can be seen on any give skate night with the amount of people that participate in public skate. The number of public skaters a year is estimated to be around 5000 people, many of which are repeat users of the rink. But since 1997, the wear and tear on the rink has started to show. Many of the boards need to be replaced along the inside (Mauka) of the playing surface. The fence that encloses the playing surface also needs to be replaced. Additionally the playing surface will need to be resurfaced in the near future. All of these repairs have historically been handled with contributions to MIHA and with funds raised through Public Skate. With the increased use of the rink over the past 5 (five) years, there has been accelerated wear on the facility, including public trees falling in, and on parts of, the rink causing damage to fencing that encloses the playing surface as well as the rink facility, and will need to be repaired, or replaced in the near future.

EXHIBIT " A "

MAUI INLINE HOCKEY ASSOCIATION LEASE AREA

Being a portion of Lot 21-A of the Kamaole Homesteads and a portion of Grant 8763 to F. Sommerfeld (being deed of Frank Sommerfeld to Territory of Hawaii dated July 12, 1938, recorded in Liber 1451 page 269) and a portion of the government land of Kamaole, KALAMA PARK (County of Maui) (C.S.F. No. 9074) (Executive Order No. 854) [TMK: (2) 3-9-005:052], being a lease area for the Maui InLine Hockey Association affecting Kalama Park.

Situated at Kamaole, Kula, Wailuku, Maui, Hawaii
TMK: (2) 3-9-005:052 portion

Beginning at the most northerly corner of this Lease Area which lies $130^{\circ} 20' 39''$ and 785.58 feet from a point of curvature on the southerly side of the South Kihei Road right of way, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being 211.89 feet north and 22,782.18 feet west and running by azimuths measured clockwise from true south; thence,

1. $326^{\circ} 07'$ 157.46 feet along KALAMA PARK (County of Maui) (C.S.F. No. 9074) (Executive Order No. 854) [TMK: (2) 3-9-005:052]; thence,
2. $236^{\circ} 07'$ 1.00 feet along the same; thence,
3. $326^{\circ} 07'$ 34.10 feet along the same; thence,
4. $56^{\circ} 07'$ 29.10 feet along the same; thence,
5. $82^{\circ} 28'$ 7.75 feet along the same; thence,
6. $56^{\circ} 07'$ 72.95 feet along the same; thence,
7. $101^{\circ} 07'$ 17.40 feet along the same; thence,
8. $146^{\circ} 07'$ 19.00 feet along the same; thence,
9. $56^{\circ} 07'$ 5.50 feet along the same; thence,
10. $146^{\circ} 07'$ 4.00 feet along the same; thence,
11. $236^{\circ} 07'$ 5.50 feet along the same; thence,
12. $146^{\circ} 07'$ 57.00 feet along the same; thence,
13. $56^{\circ} 07'$ 5.50 feet along the same; thence,
14. $146^{\circ} 07'$ 4.00 feet along the same; thence,

MAUI INLINE HOCKEY ASSOCIATION LEASE AREA

TMK: (2) 3-9-005:052 portion

Page 2 of 2

- | | | |
|--------------|-------|--|
| 15. 236° 07' | 5.50 | feet along the same; thence, |
| 16. 146° 07' | 56.60 | feet along the same; thence, |
| 17. 56° 07' | 5.00 | feet along the same; thence, |
| 18. 146° 07' | 4.00 | feet along the same; thence, |
| 19. 236° 07' | 5.00 | feet along the same; thence, |
| 20. 146° 07' | 18.29 | feet along the same; thence, |
| 21. 191° 07' | 18.39 | feet along the same; thence, |
| 22. 236° 07' | 12.99 | feet along the same; thence, |
| 23. 146° 07' | 2.60 | feet along the same; thence, |
| 24. 222° 30' | 22.60 | feet along the same, thence, |
| 25. 326° 07' | 8.00 | feet along the same; thence, |
| 26. 236° 07' | 72.34 | feet along the same to the point of beginning and containing an area of 22,796 square feet or 0.523 acres. |

This description is based on an actual field survey and was prepared by me or under my direct supervision.



Randall Sherman
Licensed Professional Land Surveyor
State of Hawaii Certificate Number LS4187
License Expiration Date: April 30, 2016
Land Court Certificate Number 189

17 APR 15
Date



Valley Isle Surveyors, Inc.

P.O. Box 1001

Kihei, HI 96753

TEL: (808) 874-8066

Setting Aside Land for Public Purposes

By this Executive Order, I, the undersigned, Governor of the Territory of Hawaii, by virtue of the authority in me vested by paragraph 9 of Section 73 of the Hawaiian Organic Act, and every other authority me hereunto enabling, do hereby order that the public land hereinafter described be, and the same is, hereby set aside for the following public purpose: Public park to be known as "KALAMA PARK" to be under the control and management of the Board of Supervisors of the County of Maui.

"KALAMA PARK"

Portion of Lot 21-A, Kamaole Homesteads, portion of Grant 8763 to F. Sommerfeld, conveyed by Frank Sommerfeld to Territory of Hawaii, by deed dated July 12, 1938, recorded in Liber 1461 page 269, and portion of the government land of Kamaole.

Kamaole Makai, Kula, Maui.

Beginning at the northeast corner of this parcel of land, on the southwest side of the Kihei-Makana Road, the true azimuth and distance from a pipe at the east corner of Grant 9862 to Church of Jesus Christ of Latter Day Saints being 104° 03' 3.23 feet and the coordinates of said point of beginning referred to Government Survey Triangulation Station "Puu o Kali" being 1699.66 feet North and 22842.89 feet West, as shown on Government Survey Registered Maps 2237 and 3005, and running as follows, all azimuths measured clockwise from True South:-

1. 343° 48' 30" 1027.81 feet along southwest side of Kihei-Makana Road;
2. 339° 43' 30" 1075.96 feet along same;
3. Thence along same on a curve to the left with a radius of 1175.82 feet, the direct azimuth and distance being: 325° 47' 15" 566.47 feet;
4. 311° 51' 302.90 feet along same to a pipe;

EXHIBIT "B-2"

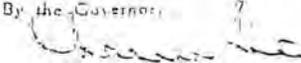
5. 354° 52' 249.20 feet along west side of ILILI ROAD to a pipe;
6. 84° 52' 220.00 feet along Grant 5448-B, Lot 9 Apana 2 to Beniamina Kamaukōli and passing over a pipe at 99.0 feet to high water mark;

Thence along seashore along high water mark for the next six (6) courses, the direct azimuths and distances between points on seashore being:

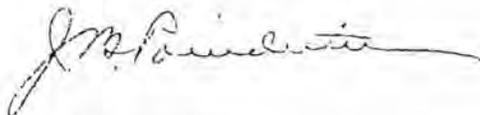
7. 257° 10' 155.00 feet;
8. 174° 30' 295.00 feet;
9. 122° 24' 710.80 feet to an iron pin;
10. 121° 35' 630.00 feet;
11. 147° 00' 1445.00 feet;
12. 163° 44' 289.50 feet; thence
13. 204° 03' 196.50 feet along the government land of Keokea to a pipe and passing over Waimahelani Triangulation Station at 59.5 feet;
14. 341° 40' 75.00 feet along Grant 9862 to Church of Jesus Christ of Latter Day Saints;
15. 204° 03' 826.77 feet along same to the point of beginning.

AREA 46.40 ACRES

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the Territory of Hawaii to be affixed Done at the Capitol at Honolulu this seventy-seventh day of October Nineteen Hundred and Twelve

By the Governor: 
Secretary of Hawaii

AAD:HK
417 Hawaii 200 8-200



Approved as to form


Deputy Attorney General

U

Territory of Hawaii

Office of the Secretary

This is to Certify That the within is a true copy of Executive Order No. 650
setting aside land for public purposes, the original of which is on file in this office.

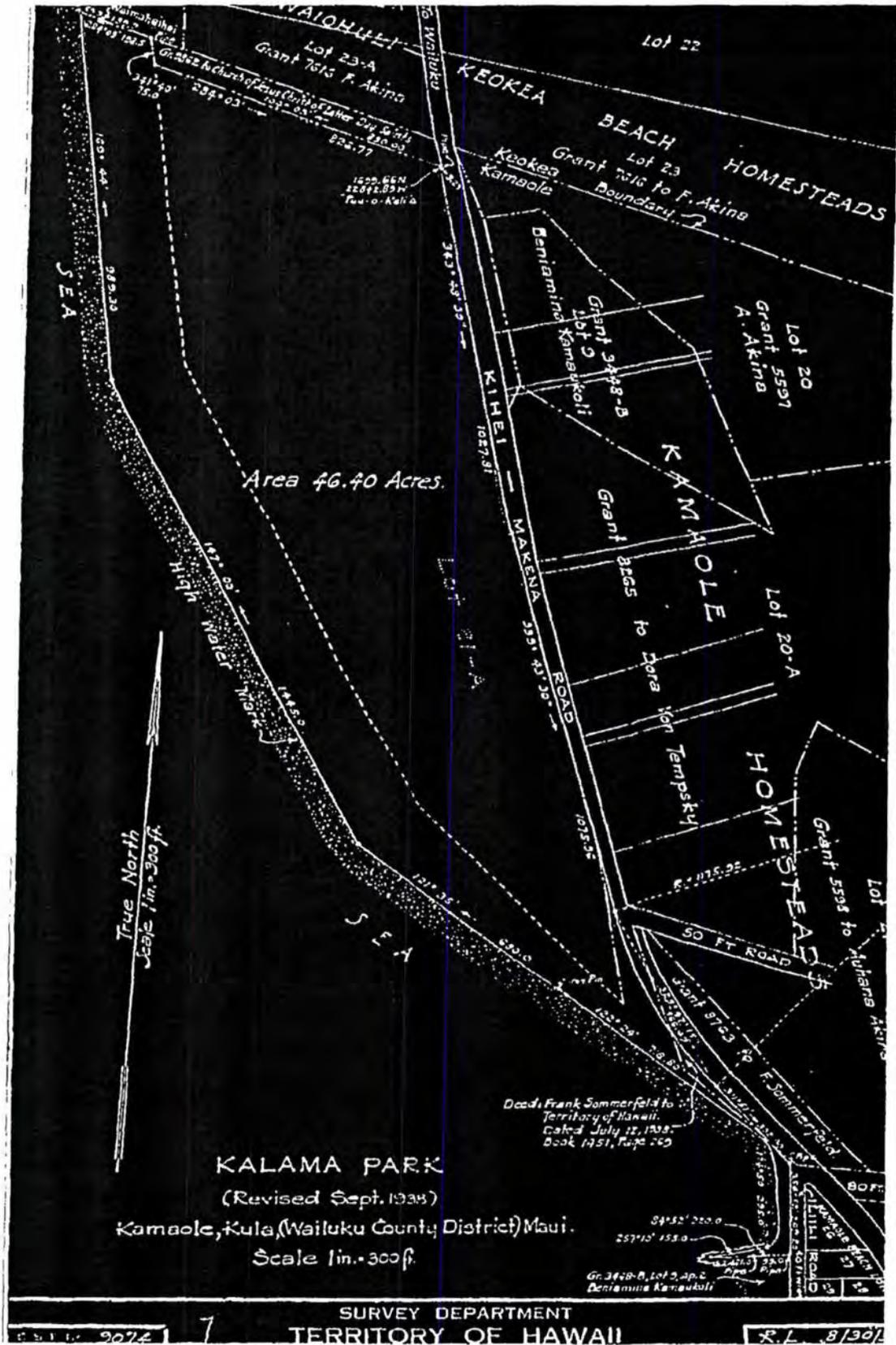
In Testimony Whereof, the Secretary of the Territory of
Hawaii, has hereunto subscribed his name and caused
the Great Seal of the Territory to be affixed.

DONE in Honolulu, this twentieth day of
September A. D. 1917

[Handwritten Signature]

Executive Order No. 177
Setting Aside Land for
Public Purposes

Land	Purpose	Date



RESERVATIONS, COVENANTS, TERMS AND CONDITIONS

RESERVING UNTO THE STATE OF HAWAII THE FOLLOWING:

1. Minerals and Waters.

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

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

2. Prehistoric and Historic Remains. All prehistoric and historic remains found on the Premises, this Lease shall be subject to the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land.

LESSEE HEREIN COVENANTS AND AGREES WITH LESSOR AS FOLLOW:

1. Taxes, Assessments, Etc. Lessee shall pay or cause to be paid, prior to delinquency, any taxes and assessments, of every description, as to said Premises, or any part thereof, including any improvements thereon; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during said term. Without limiting the generality

EXHIBIT "C"

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. That the Lessee shall pay when due all charges, duties and rates of every description excluding charges for electrical service but including water, sewer, gas, refuse collection or any other charges, as to which said Premises, or any part thereof, or any improvements thereon, or the Lessor or Lessee in respect thereof, may during said term become liable, whether assessed to or payable by the Lessor or Lessee.

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

4. Indemnification. To the extent permitted by law, Lessee shall indemnify, release, and hold harmless the County and State of Hawaii, its departments, agencies, officers, directors, employees, and agents from any and all manner of actions and claims, suits, damages, judgments, costs and expense, including reasonable attorney's fees, arising from the Lessee's use of the Premises or arising 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 the 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 without any fault on their part, is made a party to any litigation commenced by or against Lessee (other than condemnation proceedings), Lessee shall pay all costs and expenses, including attorney's fees, incurred by or imposed on Lessor. Lessee shall pay all costs and expenses, including attorney's fees, which may be incurred by or paid by Lessor in enforcing the covenants, obligations, rules, regulations, provisions, terms and conditions of this Lease, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

6. Assumption of Risk and Liability. Lessee, as a material part of the consideration to Lessor for this Lease, does hereby assume all risk of bodily injury, wrongful death and/or property damage, business interruption or economic loss occasioned by any accident, fire, or nuisance made or suffered on the Premises, and hereby waives any and all claims against 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, Department of Parks and Recreation 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, Department of Parks and Recreation. Alterations or improvements on the Premises approved by the Director, Department of Parks and Recreation 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 times remain, the property of the Lessor.

13. Repair and Maintenance. Lessee shall at its own expense at all times during the term of this Lease, substantially repair and maintain, and keep all improvements now or hereafter built or made on the Premises in good and safe repair, order, and condition, reasonable wear and tear excepted.

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

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

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

16. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental regulation (hereinafter collectively referred to as "hazardous substances"). Prior to commencing use of the Premises for any activity involving the storage, use, or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of this Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Premises and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the Premises which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of cognizant governmental authorities; and (d) surrender possession of the Premises to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Premises during the term of this Lease. Lessee shall indemnify and hold harmless Lessor 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, 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. In order to protect itself as well as the County and the State of Hawaii under the indemnification agreement set forth herein, the 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 the County of Maui and the State of Hawaii, their departments, agencies, officers, directors, employees and agents as "Additional Insured" and shall include a duty to defend the County, and the State of Hawaii, their departments, agencies, officers, directors, 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 Parks and Recreation and the Director of Finance, 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 throughout the term of this Lease. Unless waived by the County and the State of Hawaii, the insurance policy shall expressly state that the coverage provided under such policy shall not be cancelled or terminated, unless the Carrier has first given Lessor thirty (30) calendar days prior written notice of the intended cancellation or termination.

20. Property Insurance. Lessee shall, unless otherwise agreed to through the joint decision and discretion of the Director of the Department of Finance and the Director, Department of Parks and Recreation, procure and, during the entire term of this Lease, keep in force and effect special form property insurance covering all of the lessee's leasehold improvements, trade fixtures, inventory, equipment and personal property from time to time in, on or upon the Premises, in an amount not less than the full replacement cost thereof without deduction for depreciation, providing protection against all risks of loss not otherwise excluded

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

21. Fire Insurance. Lessee shall, unless otherwise agreed to through the joint decision and discretion of the Director of the Department of Finance and the Director, Department of Parks and Recreation, procure, at its own cost and expense, and maintain during the period of this Lease, a policy or policies of fire insurance, on all buildings and improvements on the Premises, against loss or damage by fire in an amount equal to one hundred percent (100%) of the replacement value of the Premises as established by the insurance appraiser and as approved by the Director of Finance, and shall pay premiums thereon at the time and place the same are payable. The policy or policies of insurance shall be made payable in the case of loss to the County of Maui, as its interest may appear, and shall be deposited with the County. Any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible be used by Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to the plans and specifications approved in writing by the County; provided, however that with the approval of the County, Lessee may surrender this Lease and Lessee shall then receive that portion of said proceeds which constitute the proportionate value of permanent improvements made by Lessee, if any, in relation to the unexpired term of this Lease and useful life of the improvements at the time of the loss, if any, with the County retaining the remaining proceeds of said proceeds.

22. Condemnation. If at any time during the term of this Lease any portion of the leased Premises should be condemned or required for public purposes by the State of Hawaii or the United States, Lessee shall be entitled to receive from the condemning authority the proportionate value of Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of this Lease; provided that Lessee may, in the alternative, remove and relocate Lessee's improvements to the remainder of the Premises occupied by Lessee. Lessee shall not by reason of the condemnation be entitled to any claim against Lessor for condemnation or indemnity for its interest in this Lease and all compensation payable or to be paid for or on account of this Lease by reason of the condemnation, except as aforesaid as to Lessee's improvements, shall be payable to and be the sole property of Lessor. Where the portion taken renders the remainder unsuitable for the use or uses for which the land was leased, Lessee shall have the option to surrender this Lease and be discharged and relieved from any further liability therefor; provided that Lessee may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by Lessor. The foregoing right of Lessor shall not be exclusive of any other to which Lessor may be entitled by law.

23. Lessor's Lien. Lessor shall have a lien on all the buildings and improvements placed on the Premises by Lessee, on all property kept or used on the Premises, whether the same is exempt from execution or not, and on the premises, whether the same is exempt from execution or not, and on the rents of all improvements

and buildings situated on the Premises for all costs, attorney's fees, rent reserved, taxes, and assessments paid by Lessor on behalf of Lessee and for the payment of all money as provided in this Lease to be paid by Lessee, and such lien shall continue until the amounts are paid.

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

25. Sublease. Lessee may not sublease the premises without written authorization of Lessor.

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 of contract; and in the event of such termination, all buildings and improvements thereon 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), as amended. Lessee shall be responsible for complying with the ADA and Lessee shall defend, indemnify and hold harmless Lessor against any and all claims regarding non-compliance with any requirement of the ADA. All costs relating to any required improvements or modifications to the Premises, and any existing improvements thereon, shall be borne by Lessee. Notwithstanding any other provision of this Lease to the contrary, any improvements to the Premises constructed by Lessee shall be in compliance with the ADA.

31. Compliance with Laws. Lessee shall comply with all federal, state, and

county laws pertaining to the Premises and activities conducted on the Premises, now in force or which may hereinafter be in force.

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

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

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

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

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

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

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

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

END OF EXHIBIT "C"

8



DEPARTMENT OF PARKS AND RECREATION
700 Hali'a Nako'a Street, Unit 2, Wailuku, Hawaii 96793

ANNUAL REAL PROPERTY GRANT REPORT
Report Period: Fiscal Year July 1, _____ - June 30, _____

ORGANIZATION: _____

Tax Map Key Number(s): _____

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

INSTRUCTION

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

I. Program Data/Status Summary

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

II. Narrative Report

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

Please submit the following information with this report:

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

Report Prepared by: _____
Print Name/Title Signature Date

EXHIBIT " D "

RESERVATIONS, COVENANTS, TERMS AND CONDITIONS

RESERVING UNTO THE STATE OF HAWAII THE FOLLOWING:

1. Minerals and Waters.

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

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

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

LESSEE HEREIN COVENANTS AND AGREES WITH LESSOR AS FOLLOW:

1. Taxes, Assessments, Etc. Lessee shall pay or cause to be paid, prior to delinquency, any taxes and assessments, of every description, as to said Premises, or any part thereof, including any improvements thereon; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during said term. Without limiting the generality

EXHIBIT "C"

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. That the Lessee shall pay when due all charges, duties and rates of every description excluding charges for electrical service but including water, sewer, gas, refuse collection or any other charges, as to which said Premises, or any part thereof, or any improvements thereon, or the Lessor or Lessee in respect thereof, may during said term become liable, whether assessed to or payable by the Lessor or Lessee.

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

4. Indemnification. To the extent permitted by law, Lessee shall indemnify, release, and hold harmless the County and State of Hawaii, its departments, agencies, officers, directors, employees, and agents from any and all manner of actions and claims, suits, damages, judgments, costs and expense, including reasonable attorney's fees, arising from the Lessee's use of the Premises or arising 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 the 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 without any fault on their part, is made a party to any litigation commenced by or against Lessee (other than condemnation proceedings), Lessee shall pay all costs and expenses, including attorney's fees, incurred by or imposed on Lessor. Lessee shall pay all costs and expenses, including attorney's fees, which may be incurred by or paid by Lessor in enforcing the covenants, obligations, rules, regulations, provisions, terms and conditions of this Lease, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

6. Assumption of Risk and Liability. Lessee, as a material part of the consideration to Lessor for this Lease, does hereby assume all risk of bodily injury, wrongful death and/or property damage, business interruption or economic loss occasioned by any accident, fire, or nuisance made or suffered on the Premises, and hereby waives any and all claims against 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, Department of Parks and Recreation **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, Department of Parks and Recreation. Alterations or improvements on the Premises approved by the Director, Department of Parks and Recreation **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 times remain, the property of the Lessor.

13. Repair and Maintenance. Lessee shall at its own expense at all times during the term of this Lease, substantially repair and maintain, and keep all improvements now or hereafter built or made on the Premises in good and safe repair, order, and condition, reasonable wear and tear excepted.

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

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

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

16. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental regulation (hereinafter collectively referred to as ¹¹ 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, 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. In order to protect itself as well as the County and the State of Hawaii under the indemnification agreement set forth herein, the 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 the County of Maui **and the State of Hawaii, their** departments, agencies, officers, directors, employees and agents as "Additional Insured" and shall include a duty to defend the County, **and the State of Hawaii, their** departments, agencies, officers, directors, 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 Parks and Recreation and the Director of Finance,** 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 throughout the term of this Lease. Unless waived by the County **and the State of Hawaii**, the insurance policy shall expressly state that the coverage provided under such policy shall not be cancelled or terminated, unless the Carrier has first given Lessor thirty (30) calendar days prior written notice of the intended cancellation or termination.

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

21. Fire Insurance. Lessee shall, unless otherwise agreed to **through the joint decision and discretion of the Director of the Department of Finance and the Director, Department of Parks and Recreation**, procure, at its own cost and expense, and maintain during the period of this Lease, a policy or policies of fire insurance, on all buildings and improvements on the Premises, against loss or damage by fire in an amount equal to one hundred percent (100%) of the replacement value of the Premises as established by the insurance appraiser and as approved by the Director of Finance, and shall pay premiums thereon at the time and place the same are payable. The policy or policies of insurance shall be made payable in the case of loss to the County of Maui, as its interest may appear, and shall be deposited with the County. Any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible be used by Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to the plans and specifications approved in writing by the County; provided, however that with the approval of the County, Lessee may surrender this Lease and Lessee shall then receive that portion of said proceeds which constitute the proportionate value of permanent improvements made by Lessee, if any, in relation to the unexpired term of this Lease and useful life of the improvements at the time of the loss, if any, with the County retaining the remaining proceeds of said proceeds.

22. Condemnation. If at any time during the term of this Lease any portion of the leased Premises should be condemned or required for public purposes by the State of Hawaii or the United States, Lessee shall be entitled to receive from the condemning authority the proportionate value of Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of this Lease; provided that Lessee may, in the alternative, remove and relocate Lessee's improvements to the remainder of the Premises occupied by Lessee. Lessee shall not by reason of the condemnation be entitled to any claim against Lessor for condemnation or indemnity for its interest in this Lease and all compensation payable or to be paid for or on account of this Lease by reason of the condemnation, except as aforesaid as to Lessee's improvements, shall be payable to and be the sole property of Lessor. Where the portion taken renders the remainder unsuitable for the use or uses for which the land was leased, Lessee shall have the option to surrender this Lease and be discharged and relieved from any further liability therefor; provided that Lessee may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by Lessor. The foregoing right of Lessor shall not be exclusive of any other to which Lessor may be entitled by law.

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

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

25. Sublease. Lessee may not sublease the premises without written authorization of Lessor.

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 of contract; and in the event of such termination, all buildings and improvements thereon 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), as amended. Lessee shall be responsible for complying with the ADA and Lessee shall defend, indemnify and hold harmless Lessor against any and all claims regarding non-compliance with any requirement of the ADA. All costs relating to any required improvements or modifications to the Premises, and any existing improvements thereon, shall be borne by Lessee. Notwithstanding any other provision of this Lease to the contrary, any improvements to the Premises constructed by Lessee shall be in compliance with the ADA.

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

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

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

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

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

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

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

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

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

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

END OF EXHIBIT "C"