

HFC Committee

From: Melody Andrion <Melody.Andrion@co.maui.hi.us>
Sent: Tuesday, November 24, 2020 1:08 PM
To: HFC Committee; Lesley J. Milner
Cc: Michael Hopper; Raynette Yap
Subject: RUSH Approved HFC-61 Resolution re Lease to Kaupakalua Roping Club
Attachments: HFC-61 2020-11-24 RAFL Closing Reso re Lease to Kaupakalua RopingClub.pdf

See attached e-signed by Michael Hopper. Thanks!

For posting on the December 4, 2020 Council Agenda.

NOTICE: The information in this transmittal (including attachments, if any) is privileged and confidential and is intended only for the recipient(s) listed above. Any review, use, disclosure, distribution or copying of this transmittal is prohibited except by or on behalf of, the intended recipient. If you have received this transmittal in error, please notify me immediately by reply email and destroy all copies of the transmittal. Thank you.

REQUEST FOR LEGAL SERVICES

RECEIVED

By Dept. of the Corporation Counsel at 10:56 am, Nov 24, 2020

Date: November 23, 2020

From: Riki Hokama, Chair

Healthy Families and Communities Committee

TRANSMITTAL

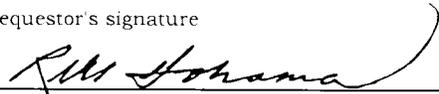
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Michael Hopper, Esq.

Subject: LEASE TO KAUPAKALUA ROPING CLUB & YOUTH RODEO, INC. (HFC-61)

Background Data: Please review the attached revised proposed resolution.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY

OTHER:

Requestor's signature  Riki Hokama	Contact Person <u>Lesley Milner</u> (Telephone Extension: 7886)
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ROUTINE (WITHIN 15 WORKING DAYS)

RUSH (WITHIN 5 WORKING DAYS)

PRIORITY (WITHIN 10 WORKING DAYS)

URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): November 25, 2020

REASON: For posting on the December 4, 2020 Council Agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: MJH	ASSIGNMENT NO. 2019-0099	BY: maa
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)

RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

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

DEPARTMENT OF THE CORPORATION COUNSEL

Date 11/24/2020

By /s/Michael J. Hopper

(Rev. 7/03)

hfc:ltr:061acc01:ljcm

Attachment

Resolution

No. _____

AUTHORIZING A GRANT OF A LEASE OF COUNTY REAL PROPERTY TO KAUPAKALUA ROPING CLUB & YOUTH RODEO, INC.

WHEREAS, Kaupakalua Roping Club & Youth Rodeo, Inc., a Hawaii nonprofit corporation, desires to obtain a lease of real property from the County of Maui for a nominal sum; and

WHEREAS, the real property the Kaupakalua Roping Club & Youth Rodeo, Inc. desires to occupy are those parcels identified for real property tax purposes as tax map keys (2)2-8-002:008, consisting of 0.642 acres, and (2)2-8-002-032, consisting of 4.191 acres, and defined in the proposed Lease Agreement, attached as Exhibit "1"; and

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

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

1. That the Kaupakalua Roping Club & Youth Rodeo, Inc. be granted the right to occupy County real property in accordance with the terms and conditions of the proposed Lease Agreement, at an annual rent of \$1 for a period of twenty years;
2. That the Mayor and the Director of Finance or their authorized representatives are authorized to execute the proposed Lease Agreement; and

Resolution No. _____

3. That certified copies of this Resolution be transmitted to the Mayor, the Director of Finance, the Director of Parks and Recreation, and the Executive Director of the Kaupakalua Roping Club & Youth Rodeo, Inc.

APPROVED AS TO FORM AND LEGALITY

/s/Michael J. Hopper

Deputy Corporation Counsel
County of Maui

hfc:misc:061areso01:ljam

Exhibit "A" attached hereto and made a part hereof, all on the part of the Lessee to be kept, observed and performed, does hereby demise and lease unto the Lessee, and the Lessee does hereby lease and hire from the Lessor, that certain parcel of land identified as Tax Map Key No. (2)2-8-002-008, consisting of approximately .642 acres, and Tax Map Key No. (2)2-8-002-032, consisting of approximately 4.191 acres and more particularly described in Exhibit "B", attached hereto and made a part hereof (hereinafter called the "Premises"), together with right of access to the Premises.

TO HAVE AND TO HOLD the Premises unto the Lessee for the term of TWENTY (20) YEARS, commencing on the _____ day of _____ 20____, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor a rental of ONE AND NO/100 DOLLAR (\$1.00) per annum, payable in advance of the lease term upon the execution hereof, to the County of Maui, Department of Finance, at Lessor's address designated herein or as otherwise designated in writing by Lessor to Lessee.

A) Use and Maintenance of Premises. That the Lessee shall use or allow the Premises hereby demised to be used solely to develop and maintain a rodeo arena and activities ancillary thereto, including but not limited to practice and competition rodeos, future renovations to clubhouse and other facilities, for the purpose of promoting the sport of rodeo for persons

residing in Maui County. The use of the Premises by parties other than the Lessee shall be at the discretion and prior written approval of the Lessor, through its Director of Parks and Recreation.

Lessee is responsible for the upkeep of the Premises, including all buildings, structures, and the roping arena. Lessor is responsible solely for the continued maintenance, upkeep and repair to electrical lines, sewer lines, and water lines associated with the Premises.

Lessee shall, at its own expense, provide portable toilet facilities at all times on said premises. Within Ninety (90) days of the execution of this Lease, Lessee agrees to cooperate with Lessor in conducting an inventory of all buildings and other improvements on said Premises, and further agrees to cooperate with Lessor in conducting physical inspections of said premises as may be requested from time to time by Lessor.

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

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

2. "Lessor" shall mean and include the County of Maui, its officers, agents and assigns. Unless otherwise

indicated, wherever the prior written consent or approval of the "Lessor" is required in this lease, such consent or approval shall include, but is not limited to, the consent or approval of the Mayor, the Director of Finance, and the Director of Parks and Recreation.

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

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

D) 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.

E) 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

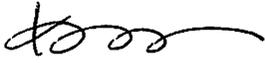
6. Narrative report.

F) Gender. The use of any gender shall include all genders, and if there be more than one (1) lessee, then all words used in the singular shall extend to and include the plural.

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

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

APPROVAL RECOMMENDED:



KARLA H. PETERS
Director, Parks and Recreation
County of Maui

APPROVED AS TO FORM
AND LEGALITY:



MIMI DESJARDINS
LF 2019-1597

LESSOR:
COUNTY OF MAUI

By: _____
MICHAEL P. VICTORINO
Its Mayor

By: _____
SCOTT K. TERUYA
Its Director of Finance

LESSEE:

KAUPAKALUA ROPING CLUB & YOUTH
RODEO, INC.

By: 

Print Name: Ross P. Cunney
Its: PRESIDENT

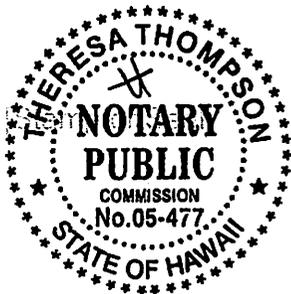
By: 

Print Name: Kelvin Ferguson Jr
Its: Vice President

STATE OF HAWAII)
) SS.
 COUNTY OF MAUI)

On this 21st day of February, 2020, before me personally appeared Ross P. Cluney, 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.



Theresa Thompson
 Notary Public, State of Hawaii

Theresa Thompson
 Print Name

My commission expires: 07/31/2021

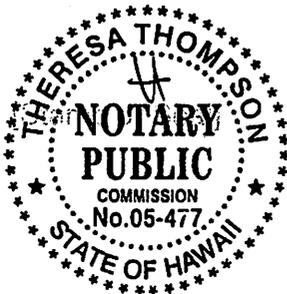
# NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>2/21/2020</u> <u>UNDATED</u>	# Pages: <u>23</u>
Notary Name: <u>Theresa Thompson</u>	Judicial Circuit: <u>2nd</u>
Doc. Description: <u>County of Maui</u>	
<u>Lease with Kaupakaha</u>	
<u>Roping Club & Youth Rodeo, Inc</u>	
Notary Signature: <u>Theresa Thompson</u>	 [Stamp Seal]
Date: <u>2/21/2020</u>	

STATE OF HAWAII)
) SS.
 COUNTY OF MAUI)

On this 21st day of February, 2020, before me personally appeared ~~Ross P. Clune~~ Kelvin Ferguson, Jr. 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.

Kelvin Ferguson, Jr.

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



Theresa Thompson
 Notary Public, State of Hawaii

Theresa Thompson
 Print Name

My commission expires: 07/31/2021

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>2/21/2020</u> <u>UPDATED</u>	# Pages: <u>23</u>
Notary Name: <u>Theresa Thompson</u>	Judicial Circuit: <u>2nd</u>
Doc. Description: <u>County of Maui</u> <u>Lease with Kaipohaku</u> <u>Roping Club & Youth Rodeo, Inc.</u>	
Notary Signature: <u>Theresa Thompson</u>	 [Stamp]
Date: <u>2/21/2020</u>	

STATE OF HAWAII)
) SS.
 COUNTY OF MAUI)

On this _____ day of _____, 2020, before me personally appeared MICHAEL P. VICTORINO, to me personally known, who, being by me duly sworn, did say that she 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 by authority of its Charter; and the said MICHAEL P. VICTORINO acknowledged the said instrument to be the free act and deed of said County of Maui.

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

[Stamp or Seal]

 Notary Public, State of Hawaii

 Print Name
 My commission expires: _____

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

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

STATE OF HAWAII)
)
 COUNTY OF MAUI) SS.

On this ____ day of _____, 2020, before me personally appeared SCOTT K. TERUYA, to me personally known, who, being by me duly sworn, did say that he is the Director of Finance of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said SCOTT K. TERUYA acknowledged the said instrument to be the free act and deed of said County of Maui.

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

[Stamp or Seal]

 Notary Public, State of Hawaii

 Print Name
 My commission expires: _____

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

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

EXHIBIT "A"

STANDARD RESERVATIONS, COVENANTS, TERMS AND CONDITIONS

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

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

1. Minerals and Waters.

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

B. All surface and ground waters 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.

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

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

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

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

2. Taxes, Assessments, Etc. That the Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which said Premises or any part thereof, or any improvements thereon, or the Lessor or Lessee in respect thereof, are now or may be assessed or become liable by authority of law during the term of this lease; 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.

3. Utility Services. That the Lessee shall pay when due all charges, duties and rates of every description, 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.

4. Covenant Against Discrimination. That the use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon sex, sexual orientation, national origin, age, race, color, religion or disability.

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

6. Waste and Unlawful, Improper or Offensive Use of Premises. That the Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the Premises, or any part thereof, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the Premises.

7. Compliance with Laws. That the Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws pertaining to the said Premises, now in force or which may hereinafter be in force. However, this lease is excluded from the Residential Landlord-Tenant code, pursuant to Hawaii Revised Statutes §521-7(1).

8. Inspection of Premises. That the Lessee will permit the Lessor and its agents, at all reasonable times during

the said term, to enter the Premises and examine the state of repair and condition thereof.

9. Liens. That the Lessee will not commit or suffer any act to neglect whereby the Premises or any improvement thereon or the estate of the Lessee in the same shall become subject to any attachment, lien, charge or encumbrance whatsoever, except as hereinafter provided, and shall indemnify and hold harmless the Lessor from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

10. Indemnity. That the Lessee will defend, indemnify and hold the Lessor harmless from and against any claim or demand for loss, liability or damage, including claims for property damage, personal injury or death, arising out of any accident on the Premises and sidewalks and roadways adjacent thereto or occasioned by any act or nuisance made or suffered on the Premises, or by any fire thereon, or growing out of or caused by any failure on the part of the Lessee to maintain the Premises in a safe condition, or by any act or omission of the Lessee, and from and against all action, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

11. Costs of Litigation. That in case the Lessor shall, without any fault on its part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee agrees and covenants to pay all costs and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall and will pay all costs and expenses which may be incurred by or paid by the Lessor and/or the State of Hawaii in enforcing the covenants and agreements of this lease, in recovering possession of the Premises or in the collection of delinquent rental, taxes and any and all other charges.

12. Liability Insurance. In order to protect itself as well as the Lessor under the indemnification agreement set forth above, 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 & Poor" ratings. The insurance policy, as evidenced by issuance of a "Policy Endorsement", shall name the Lessor, its officers, employees and agents, as "Additional Named Insured", and shall include a duty to defend the Lessor, its officers, employees and agents against any loss, liability, claims, and demands for injury or damage, including but limited to, claims for property damage, personal injury, or wrongful death, arising out of, or in connection with Lessee's use, possession and

activities associated with this Lease. Unless otherwise agreed to by the Lessor, through the joint decision and discretion of the Director of the Department of Parks and Recreation, and the Director of the Department 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 execution of this Lease, 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 Lessor with a copy of the renewed insurance policy certificate together with the required endorsements. Unless waived by the Lessor, the insurance policy shall expressly state that the coverage provided under such policy shall not be cancelled or terminated, unless the Carrier has first given the Lessor thirty (30) calendar days, prior written notice of the intended cancellation or termination.

13. Fire Insurance. That the Lessee will, at its own expense, at all times during the term of this lease, keep insured all buildings and improvements erected on the land hereby demised in the joint names of Lessor, Lessee and Mortgagee, if any, as their interest may appear, against loss or damage by fire including perils specified in the extended coverage endorsement and in an amount equal to the replacement value of said buildings and improvements, and will pay the premiums thereon at the time and place the same are payable; that the policy or policies of insurance shall be issued by a company authorized to do business in the State of Hawaii, and be made payable in case of loss to the Lessor, Lessee and Mortgagee, if any, as their interests may appear, and shall be deposited with the Lessor, through its Director of Finance; and that 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 the Lessee for rebuilding, repairing, or otherwise reinstalling the same buildings and improvements in a good and substantial manner according to the plans and specifications approved in writing by the Lessor, through its Director of Parks and Recreation.

If the scheduled expiration date of an existing policy is sooner than the specified termination date of this lease, the Lessee shall, upon renewal of the policy, furnish the Lessor with a copy of the renewed insurance policy. The policy shall expressly state that such policy shall not be cancelled unless the insurer has first given Lessor, through its Director of Finance, sixty (60) calendar days written prior notice of its proposed cancellation.

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

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

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

17. Condemnation. If at any time, during the term of this lease, any portion of the Premises should be condemned, or required for public purposes by the State of Hawaii or the United States, the rental shall be reduced in proportion to the value of the portion of the Premises condemned. The Lessee shall be entitled to receive from the condemning authority:

A. The value of growing crops, if any, which Lessee is not permitted to harvest; and

B. The proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the Lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the lands occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for its leasehold interest

and all compensation payable or to be paid for or on account of the leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the land was demised, the 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 the Lessor.

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

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

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

21. Justification of Sureties. Such bonds as may be required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as such in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justification shall be filed as provided in section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after such period as the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to said Lessor a deed or deeds of trust of real property, all of such character as shall be

satisfactory to said Lessor and valued in the aggregate at not less than the principal amount of said bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by the Lessor under the foregoing provision shall be determined by the Lessor, and the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities or money and shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until such consent be granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation hereunder.

22. Quiet Enjoyment. The Lessor hereby covenants and agrees with the Lessee that upon payment of said rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms and conditions hereof on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess and enjoy the Premises for the term hereby demised, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through or under it.

23. Surrender. That the Lessee shall, at the end of said term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the Premises, together with all improvements existing or constructed thereon unless provided otherwise. Furthermore, upon the expiration, termination and/or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the Premises, the Lessor may remove any and all such personal property from the Premises and place said property in storage at the cost and expense of Lessee, and the Lessee does hereby agree to pay all costs and expenses for removal and storage of such personal property.

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

25. Improvements. That the Lessee shall not at any time during the term of this lease construct, place, maintain, alter or install on the Premises any improvements of any kind or description whatsoever, except with the prior review and written approval of the Lessor, through its Director of Parks and Recreation and upon such conditions as the Lessor may impose. The Lessee shall be solely responsible for the funding of any and all approved improvements to the Premises together with any bonds and/or sureties as determined and required by Lessor, and further, shall defend, indemnify and hold Lessor and the State of Hawaii harmless from and against any and all claims whatsoever arising in connection with the construction, placement, maintenance, alteration and/or installation of such improvements.

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

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

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

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

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

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

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

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

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

28. Gender. The use of any gender shall include all genders, and if there be more than one (1) lessee, then all words used in the singular shall extend to and include the plural.

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

END OF EXHIBIT "A"

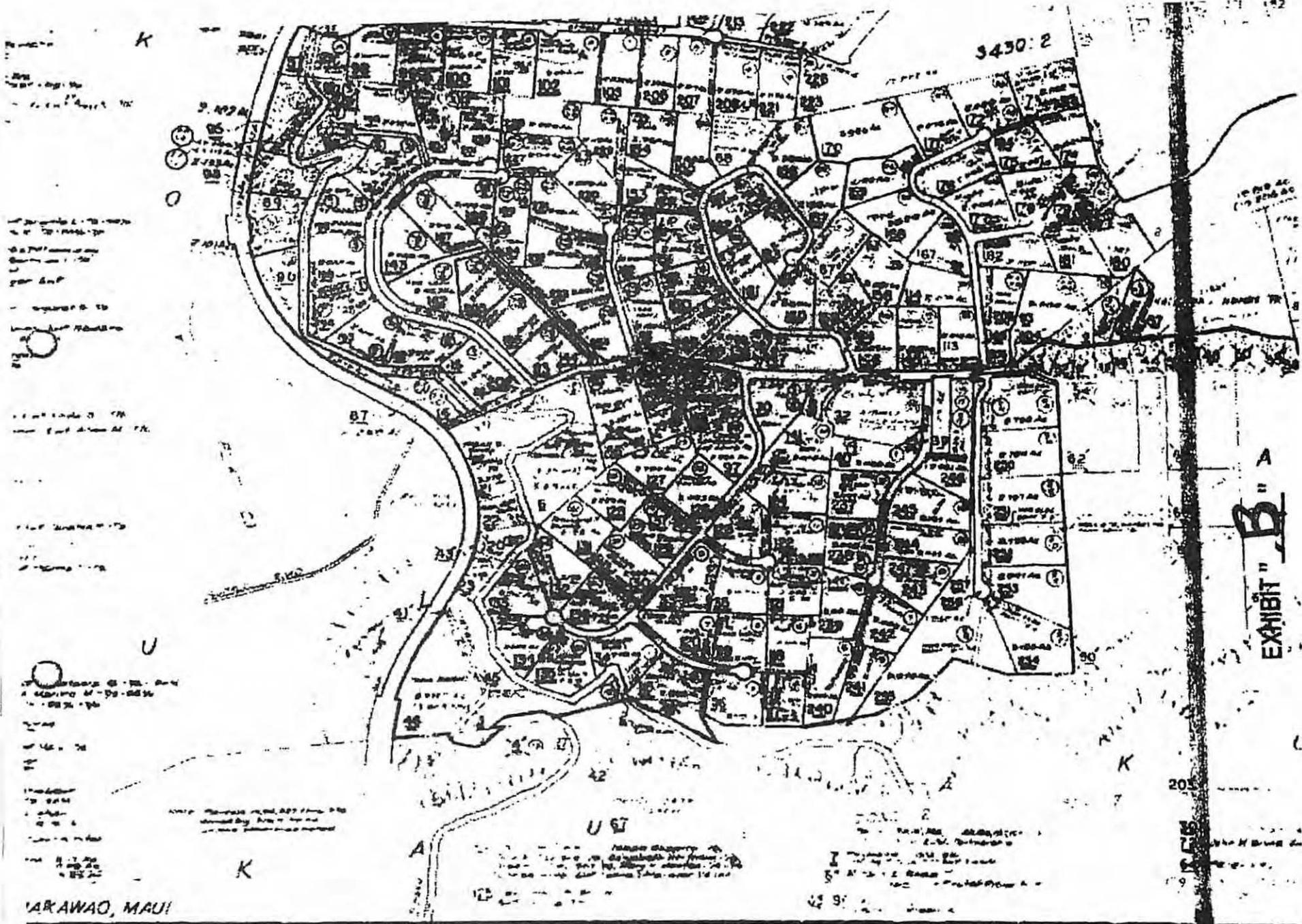


EXHIBIT "B"

ARAWAO, MAUI



Tmk: 2-8-002:008

EXHIBIT "B"



TMK 2-8-002:032

EXHIBIT "B"

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

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

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

EXHIBIT " C "



DEPARTMENT OF PARKS AND RECREATION

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

ANNUAL REAL PROPERTY GRANT REPORT

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

ORGANIZATION: _____

Tax Map Key Number(s): _____

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

INSTRUCTION

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

I. Program Data/Status Summary

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

II. Narrative Report

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

Please submit the following information with this report:

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

Report Prepared by: _____
Print Name/Title Signature Date

EXHIBIT " D "