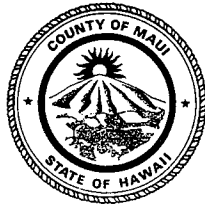


ALAN M. ARAKAWA
MAYOR



RECEIVED KEITH A. REGAN
MANAGING DIRECTOR

2016 NOV 25 PM 3:13

OFFICE OF THE MAYOR

Ke'ena O Ka Meia
COUNTY OF MAUI – Kalana O Maui

OFFICE OF THE
COUNTY CLERK

November 25, 2016

Honorable Michael White, Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair White and Members:

SUBJECT: LAHAINA CIVIC CENTER LEASE

I am transmitting a proposed bill entitled, "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION FOR A SIXTY-FIVE YEAR LEASE OF CERTAIN LAND IN THE DISTRICT OF LAHAINA, ISLAND OF MAUI, DESIGNATED AS TAX MAP KEYS (2) 4-5-021:018 AND 019, CONSISTING OF APPROXIMATELY 20.137 ACRES".

The purpose of the proposed bill is to authorize the County to enter into an Intergovernmental Agreement with the Hawaii Housing Finance and Development Corporation for the lease of land near the existing Lahaina Civic Center at a cost of \$1.00 per year for a lease term of 65 years for the purpose of carrying out the responsibilities of County departments and agencies.

Thank you for your attention in this matter.

Sincerely,

A handwritten signature in black ink that reads "Alan Arakawa". The signature is fluid and cursive.

ALAN M. ARAKAWA
Mayor

COUNTY COMMUNICATION NO. 16-322

ORDINANCE NO. _____

BILL NO. _____ (2016)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION FOR A SIXTY-FIVE YEAR LEASE OF CERTAIN LAND IN THE DISTRICT OF LAHAINA, ISLAND OF MAUI, DESIGNATED AS TAX MAP KEYS (2) 4-5-021:018 and 019, CONSISTING OF APPROXIMATELY 20.137 ACRES.

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

SECTION 1. Purpose. The County of Maui ("County") and State of Hawaii Housing Finance and Development Corporation ("State") wish to enter into an Intergovernmental Agreement for lease of certain parcels of land located in Lahaina, Maui, Hawaii, designated as tax map keys (2) 4-5-021:018 and 019, consisting of approximately 20.137 acres.

Under the lease, the County would pay rent of one dollar per year as rent for a lease term of sixty-five years, for a total of Sixty-Five Dollars (\$65), payable as a lump sum payment upon the execution of the lease. The County would also be required to pay twenty percent (20%) of all funds derived by the County from the use of the premises other than rent for affordable housing as approved by the lessor as additional rent.

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

SECTION 2. Council Authorization. Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor to enter into an intergovernmental agreement, in the form of the lease attached hereto as Exhibit "1".

SECTION 3. Effective Date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

S:\ALL\MJH\ORDS\Lahaina Civic Center Lease Intergovernmental Agreement.wpd

Land Court () Regular (X) Double ()

Total pages _____

PARTIES TO DOCUMENT:

PROPERTY DESCRIPTION

DOCUMENT NO.
TRANSFER CERTIFICATE OF
TITLE NO:

EXHIBIT "1"

GROUND LEASE
CIVIC CENTER LOTS
VILLAGES OF LEIALI'I

THIS INDENTURE ("Lease"), made this _____ day of _____, 201__, ("Effective Date") by and between the **HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**, a public body and a body corporate and politic of the State of Hawaii, the principal place of business and mailing address of which is 677 Queen Street, Suite 300, Honolulu, Hawaii 96813, ("Lessor"), and **COUNTY OF MAUI**, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii, 96793 ("Lessee");

W I T N E S S E T H:

WHEREAS, Lessor is the master developer of the Villages of Leiali'i pursuant to a Memorandum of Understanding with the Department of Land and Natural Resources ("DLNR") dated January 4, 1993, and Sections 10-13.6 and 171-18.5, Hawaii Revised Statutes ("HRS").

WHEREAS, Lessor acquired title to approximately 544 acres Makai of the proposed Lahaina Bypass Highway from DLNR by Land Patent Grant No. S-15,792, which includes Tax Map Key Nos. (2) 4-5-021: 003, 013, 018 to 021; and 4-5-036: 111.

WHEREAS, Lessee is desirous of leasing Tax Map Key Nos. (2) 4-5-021: 018 and 019 near the existing Lahaina Civic Center for any purpose permitted by law, including but not limited to public parking, baseyard purposes, and expansion of County facilities for the purpose of carrying out the responsibilities of County departments and agencies.

NOW, THEREFORE, the Lessor for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises at Wahikuli, Lahaina, Island and County of Maui, State of Hawaii more particularly described in Exhibits "A-B" which are attached and incorporated by reference (the "premises" or the "Leased Land").

It being expressly understood and agreed by Lessor that, except as provided herein, Lessee is the leasehold owner of all buildings and real property improvements and fixtures which are now or hereafter situated on such land described in Exhibits "A-D"; provided that Lessee, for itself and its successors and assigns, covenants that, except as provided by Sections 9 and 27 of this Lease, the buildings and real property improvements and fixtures shall not be separated from the premises demised hereby and can only be conveyed or encumbered with any conveyance or encumbrance of this Lease subject to Lessor's approval or consent if required as provided below in Section 13 pertaining to "Assignment of Lease" even though not expressly mentioned or described in the conveyance or other instrument.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of: Sixty-Five (65) years, commencing on the Effective Date, up to and including the _____ day of _____, 20____, unless sooner terminated as hereinafter provided, for any purpose permitted by law, including but not limited to public parking, baseyard purposes, and expansion of County facilities for the purpose of carrying out the responsibilities of County departments and agencies, the Lessor reserving and the Lessee yielding and paying to the Lessor at the office of the Lessor, rent as provided hereinbelow:

- A. Base Lease Rent. A base lease rent of \$1.00 per year for the full term of the Lease shall be payable in advance in a lump sum payment of SIXTY-FIVE AND NO/100 DOLLARS (\$65.00) upon the execution of this Lease; and
- B. Twenty percent (20%) of Funds. In accordance with HRS Sec. 10-13.5, twenty per cent (20%) of all funds Lessee derives from the premises, other than rent from affordable housing as approved by Lessor, shall be paid quarterly to Lessor, by the end of the calendar month following the quarter for which such amount is based. The amount shall be submitted in arrears with an itemized list of all funds Lessee derives from the premises, other than rent from leases of affordable housing, for the quarter upon which such amount is based.
- C. [Reserved]

RESERVING UNTO THE LESSOR 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 the 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 the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxite 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 Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.
2. Prehistoric and Historic Remains. All prehistoric and historic remains found on the premises.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS
FOLLOWS:

1. Payment of Rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this Lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, Assessments, Etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, fees, fines, and assessments of every description, if any, as to which the premises or any part, or any improvements, or the Lessor or Lessee, 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 those installments, together with interest, which becomes due and payable during the term.

a. Lessee's Right to Contest. Lessee shall have the right, at its own expense, to contest the amount or validity of any tax or assessment, including the assessment for additional lease rent described in Section B above, by appropriate proceedings diligently conducted in good faith. As a condition precedent to Lessee's contesting any tax or assessment, Lessee shall (i) comply with all laws, orders, rules and regulations respecting such contest, (ii) give Lessor prior written notice of Lessee's intent to so contest said amount or validity, and (iii) in order to protect Lessor from any sale or foreclosure against the premises or any part thereof, provide a good and sufficient surety bond or other security deemed appropriate by Lessor in the amount of such tax or assessment plus estimated penalties and interest that may be imposed. Lessee shall bear any and all costs, liabilities or damages, including reasonable attorneys' fees and costs arising out of such contest. Nothing in this section relieves, modifies, or extends Lessee's covenant to pay any such tax or assessment at the time and in the manner provided in this Section 2.

b. Lessor's Cooperation in Lessee's Contest. Provided Lessor incurs no cost or liability in doing so, Lessor shall cooperate (and Lessor shall execute applications, certificates and like documents) with Lessee in any proceedings brought by Lessee to contest the validity or the amount of any taxes or assessments or to recover any taxes or assessments paid by Lessee. If the provisions of any law at the time in effect shall require that such proceedings be brought by or in the name of Lessor, then, provided Lessor incurs no cost or liability in doing so, Lessor shall join in any such proceedings or permit the same to be brought in its name. If any such proceedings shall be brought by Lessee, Lessee shall, without limiting any other indemnity in this Lease, defend, indemnify and hold the Lessor and the State of Hawaii harmless from all claims arising from such proceedings.

3. Utility Services. 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 the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee, excluding any utility charges contracted directly by the residential and retail commercial tenants.

4. 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, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, or HIV (human immunodeficiency virus) infection.

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition as comparable residential developments in Hawaii, similar in age, desirability of location, level of housing affordability, kind and nature to the Improvements.

6. Waste and Unlawful, Improper or Offensive Use of Premises. The Lessee shall be responsible for the maintenance of the premises during the term of this Lease and shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful or improper use of the premises or any part thereof. Lessee shall be responsible for responding to any complaints against the leased premises and for resolving any issues arising from the complaints, including but not limited to, taking action to halt any waste, nuisance, or unlawful use of the premises.

7. Compliance with Laws. The Lessee shall comply with the applicable laws of all governmental authorities having jurisdiction over the Leased Land, construction of the Improvements, and use and operation of the premises now in force or which may become effective subsequent to the commencement of this Lease.

8. Inspection of Premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the Lease term, to enter the premises and examine the state of its repair and condition with three (3) days prior written notice to Lessee.

9. Improvements. The Lessee shall own any improvements until the expiration or earlier termination of the Lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee's sole cost and expense. Lessee shall own in fee simple all buildings, structures and real property improvements which are now or hereafter situated on the premises; provided that Lessee, for itself and its successors and assigns, covenants that the buildings, structures and real property improvements shall not be separated from the premises and can only be conveyed or encumbered with any conveyance or encumbrance of this Lease subject to Lessor's approval or consent as provided below in Section 13, Assignment of Lease etc.

10. Repairs to Improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted as to comparable developments in Hawaii, similar in age, desirability of location, level of housing affordability, kind and nature to the improvements. Lessee shall also, at its own expense, make any and all repairs and perform all work required to keep the premises, buildings, and improvements on the premises in compliance with all County, State, and Federal laws and regulations, including but not limited to environmental, Americans with Disabilities Act, and other requirements.

11. Liens. Except for the liens permitted by Section 13, Section 19 and Section 20 of

this Lease and except for leases and/or rental agreements with residential and commercial tenants for the residential and commercial spaces in the project described in Section 12, the Lessee shall at all times keep the premises free and clear of all mechanics' and materialmen's liens and all other liens and encumbrances. Lessee shall promptly pay all contractors and materialmen in accordance with its contract(s) for construction of any improvements with respect to work performed by or for Lessee or materials purchased by or for Lessee so as to prevent any liens attaching to the premises. Notwithstanding the preceding sentence, Lessee may contest any and all invoices and payment requests from such contractors and materialmen, provided that Lessee, if the amount contested exceeds Twenty-Five Thousand Dollars (\$25,000), shall first post with Lessor a bond (in an amount equal to 100% of the contested invoices) or other security, in form and amount reasonably acceptable to Lessor, to secure the payment of any contested amounts (plus any fees, interests and penalties) and the removal of any liens which may attach as a result of such nonpayment and contest if such lien remains outstanding for a period of more than twenty (20) calendar days. To the extent permitted by law, and as authorized by the Maui County Council Lessee shall defend, indemnify, and hold harmless the Lessor from and against any claims for such liens and encumbrances and all resulting expenses.

12. Character of Use. The Lessee shall use or cause the premises to be used for any purpose as allowed by law, including but not limited to public parking, baseyard purposes, and expansion of County facilities for the purpose of carrying out the responsibilities of County departments and agencies ("Project"). Lessee shall ensure that the use and occupancy of the premises complies with all applicable County, State, and Federal laws and regulations.

13. Assignments of Lease, etc. Lessee shall not assign this Lease without the written approval or consent of Lessor. A permitted assignee shall have the same rights and obligations hereunder as the original Lessee; provided, however, that no such assignment shall be effective to transfer any interest in this Lease unless Lessor shall have approved or consented to the assignment and shall have received either a true executed copy of such assignment or written notice thereof, the written undertaking of the assignee to perform all obligations of Lessee hereunder, which undertaking may be incorporated in such assignment. No such assignment shall release the Lessee or assignor from further liability hereunder unless Lessor shall consent in writing to such assignment, and Lessor will not require payment of any money except a reasonable service charge for such consent nor withhold such consent unreasonably or because of the assignee's national origin, race, color or creed; provided, however, that any person acquiring the leasehold estate in consideration of the extinguishment of a debt secured by mortgage of this Lease or through foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on Lessee by this Lease only during the period such person has possession of ownership of the leasehold estate.

14. Subletting. Lessee shall be allowed to sublet the whole or a portion of the premises for any lawful purpose without the prior approval of the lessor, including but not limited to public parking, baseyard purposes, and expansion of County facilities for the purpose of carrying out the responsibilities of County departments and agencies

15. Indemnity. The Lessee shall, to the extent permitted by law, and as authorized by the Maui County Council, defend, indemnify, and hold harmless the Lessor from and against any

claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) the use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this Lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments. This provision shall survive the expiration or earlier termination of this Lease.

16. Costs of Litigation. To the extent permitted by law, and as authorized by the Maui County Council, in case the Lessor shall be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this Lease, in recovering possession of the premises, or in the collection of delinquent rents, taxes, and any and all other charges.

17. Liability Insurance. Lessee shall maintain insurance acceptable to Lessor in full force and effect throughout the term of this Lease. The policy or policies of insurance maintained by the Lessee shall provide the following minimum policy limits and coverages:

Coverage

Minimum Policy Limits

Commercial General
Liability and Auto-
mobile Insurance

Lessee's commercial general liability and automobile liability, including products and completed operations coverage, and automobile liability insurance shall be written on occurrence form and contain broad form property damage and bodily injury coverage of a combined single limit of not less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate arising out of or in connection with operations performed under this Lease. Automobile insurance, and basic no-fault and personal injury protection as required by Hawaii laws, shall be no less than \$1,000,000 per accident. If the Lessee does not own automobiles, it shall maintain Hired & Non-owned Automobile Liability coverage.

Pollution Liability

Lessee shall obtain at Lessee's expense, and shall keep in effect during the term of the

Lease, Pollution Liability Insurance covering Lessee's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Lessee all arising out of Lessee's lease and use of the Leased Land. Combined single limit per occurrence may not be less than \$3,000,000. Annual aggregate limit may not be less than \$3,000,000. The policy shall name the State of Hawaii, Department of Land and Natural Resources and the Lessor as additional insureds.

Workers' Compensation

As required by Hawaii laws

Property

Including Windstorm written on a replacement cost basis in an amount not less than 100% of the replacement cost of the buildings and contents, including betterments and improvements, made by Lessee, located on the premises. Lessee shall be responsible for any deductible or self-insurance retention, and to provide these coverages on a primary basis. State of Hawaii, Department of Land and Natural Resources and Lessor shall be a loss payee under the Property Insurance. Coverage should be evidenced on form Acord 27 – Evidence of Property Insurance.

The Commercial General Liability Insurance and the Automobile Insurance shall contain the following four provisions:

- a. It is agreed that any insurance maintained by the State of Hawaii shall apply in excess of and not contribute with insurance provided by this policy.
- b. The State of Hawaii, Department of Land and Natural Resources and Lessor are added as additional insured parties for operations performed on the property under this Lease.
- c. (Deleted).
- d. Insurance shall include a cross liability or severability of interest clause.
- e. If any of the above required insurance is cancelled before the expiration

date thereof, Lessee shall provide Lessor notice in writing within thirty (30) days of being notified of any cancellation.

The above required insurance shall be primary and shall cover the insured for all operations to be performed under this Lease and on the leased premises, all operations performed incidentally, directly or indirectly connected with all operations to be performed under this Lease and on the premises, including operations performed outside the work area and all change order work.

Lessee agrees to a Waiver of Subrogation for each required policy described herein. When required by the insurer, or should a policy condition not permit the Lessee to enter into a pre-loss agreement to waive subrogation without an endorsement, the Lessee shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should the Lessee enter into such an agreement on a pre-loss basis.

Lessee agrees to deposit with Lessor, on or before the Effective Date of this Lease, certificates of insurance necessary to satisfy Lessor that the insurance provisions of this Lease have been complied with. Lessee further agrees to keep such insurance in effect and current certificates of insurance on deposit with Lessor during the entire term of this Lease. The certificates of insurance shall refer to this Lease.

Lessor shall retain the right at any time to review and approve coverage, form, and amount of the insurance required by this Lease. If, in the reasonable opinion of Lessor, the insurance provisions in this Lease do not provide adequate protection for Lessor, Lessor may require the Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Lessor's requirements shall be reasonable but shall be designed with due regard to the then prevailing prudent business practice in the State of Hawaii to assure protection from and against the kind of and the extent of risks which exist at the time a change in insurance is required.

Lessor shall notify the Lessee in writing of any changes in the insurance requirements desired by Lessor. If the Lessee does not deposit copies of insurance policies with Lessor incorporating such changes requested by Lessor within sixty (60) days of receipt of such notice, this Lease shall be in default without further notice to the Lessee and Lessor shall be entitled to all legal remedies, including termination of this Lease, and the Lessee shall be liable for all damages, costs, and fees. If any such insurance changes shall not be available at commercially reasonable rates, Lessee shall have the right to contest Lessor's request.

The procuring of the required policy or policies of insurance shall not be construed to limit the Lessee's liability under this Lease nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding the policy or policies of insurance, the Lessee shall be obligated for the total amount of any damage, injury, or loss incurred under or related to this Lease to the extent the Lessee is liable therefor under Sections 11, 15 or 29 of this Lease.

All rights or claims or subrogation against the State of Hawaii and Lessor, their officers, employees, and agents are waived.

Lessee shall procure from each of the insurers under all policies of insurance obtained pursuant to the provisions of this Lease, including but not limited to public liability and fire insurance, a waiver of all rights of subrogation which said insurer might otherwise have, as against the other party hereto, said waiver to be in writing and for the express benefit of the other.

17A. Contractor's Pollution Liability Insurance. Any general contractor contracted to build a building or undertake substantial rehabilitation of the Project on the premises shall be required to obtain and maintain Pollution Liability Insurance covering its liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs arising out of or caused by the operations and construction activities of said general contractor. Combined single limit per occurrence shall not be less than \$3,000,000 and aggregate limit of not less than \$5,000,000. The policy shall have tail coverage extending 5 years beyond the completion of the work contemplated by the applicable construction contract. The policy shall name the State of Hawaii, Department of Land and Natural Resources and the Lessor as additional insureds.

18. Property Insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this Lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the leased premises in the joint names of Lessor and Lessee, with the standard mortgage clause for mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities and shall pay the premiums at the time and place required under the policy.

Subject to the prior written approval of mortgagee, in the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Lessor; provided, however, that with the approval of the Lessor, the Lessee may surrender this Lease and pay the balance owing on any mortgage and the Lessee shall then receive after payment of such balance, that portion of the remaining proceeds which the unexpired term of this Lease at the time of the loss or damage bears to the whole of the term, the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the Effective Date of this Lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s).

Lessee shall procure from each of the insurers under all policies of insurance obtained pursuant to the provisions of this Lease, including but not limited to public liability and fire insurance, a waiver of all rights of subrogation which said insurer might otherwise have, as against the other party hereto, said waiver to be in writing and for the express benefit of the

other.

19. Lessor's Lien. The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used by the Lessee on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this Lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid. Notwithstanding the foregoing, this lien shall be subordinate in all respects to any mortgage which Lessee shall be allowed to place on this Lease or to which Lessor shall consent as provided in this Lease. Lessor shall execute such instruments as a permitted mortgagee may reasonably require to evidence the subordination of Lessor's lien. Upon Lessor's request, Lessee shall execute a UCC-1 statement for recording in the Bureau of Conveyances, State of Hawaii, memorializing Lessor's security interest.

20. Mortgage. Except as provided in this Lease, the Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this Lease without the prior written approval of the Lessor and any mortgage, hypothecation, or pledge without Lessor's approval shall be null and void.

Upon due application and with the written consent of the Lessor, the Lessee may mortgage, pledge or otherwise transfer this Lease if Lessee obtains a loan, the repayment of which is to be secured by one or more mortgages on the leasehold estate in favor of (i) any department or agency of the federal government, including U. S. Department of Housing and Urban Development, Federal Housing Administration, Veterans Administration, Rural Development, (ii) any department, agency or public body and body corporate and politic of the State of Hawaii, (iii) any agency or department of the County of Hawaii, (iv) any bond issuer, underwriter or trustee, or (v) any lending institution (including, without limitation, any bank, insurance company, pension or retirement fund or mutual fund), in each case, to finance or refinance the development and construction of improvements on the premises (each a "Leasehold Mortgage" and the holder of a Leasehold Mortgage referred to as a "Leasehold Mortgagee"). It is understood and agreed that such Leasehold Mortgagee, or its designee, or any purchaser in foreclosure proceedings, or any grantee pursuant to an assignment in lieu of foreclosure, may become the legal Lessee under this Lease through foreclosure proceedings, by assignment of this Lease in lieu of foreclosure or otherwise. Neither the foreclosure of any Leasehold Mortgage (whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage), nor any conveyance of the leasehold estate created by this Lease by Lessee to any Leasehold Mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument shall require the consent of Lessor under, or constitute a default under, this Lease, and upon such foreclosure, sale or conveyance, Lessor shall recognize the purchaser or other transferee in connection therewith as the Lessee under this Lease. Lessee is authorized otherwise to comply with the requirements of the mortgagee for obtaining such mortgage loan. No liability for the performance of Lessee's covenants and agreements hereunder shall attach to or be imposed upon any Leasehold Mortgagee, unless such Leasehold Mortgagee forecloses its interest and becomes the Lessee under this Lease, following which the liability shall attach only during the term of ownership of the leasehold estate by said Leasehold Mortgagee. If a

Leasehold Mortgagee shall acquire title to Lessee's interest, by foreclosure of a Leasehold Mortgage thereon, by assignment in lieu of foreclosure or by an assignment from a nominee or wholly-owned subsidiary of such Leasehold Mortgagee; or under a new lease created pursuant to Section 20.e. below, or otherwise, such Leasehold Mortgagee may subsequently assign such Lease or sublet or underlet the premises in accordance with the terms of this Lease. No Leasehold Mortgagee shall become personally liable under the agreements, terms, covenants or conditions of this Lease or any new lease entered into in accordance with the provisions of Section 20.e. below, unless and until it becomes, and then only for as long as it remains, the owner of the leasehold estate pursuant to this Lease.

If any Leasehold Mortgagee shall give written notice to Lessor of its Leasehold Mortgage, together with the name and address of the Leasehold Mortgagee, then, notwithstanding anything to the contrary in this Lease, until the time, if any, that the Leasehold Mortgage shall be satisfied and release of record:

a. No act or agreement between or on the part of Lessor or Lessee to cancel, terminate, surrender, amend, or modify this Lease or Lessee's right to possession shall be binding upon or effective against the Leasehold Mortgagee without its prior written consent.

b. If Lessor shall give any notice, demand, election or other communication required hereunder (hereafter collectively, "Notices") to Lessee hereunder, Lessor shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Such copies of Notices shall be sent by personal delivery, by an overnight delivery service, or by registered or certified mail, return receipt requested, and shall be deemed given upon receipt if sent by personal delivery, on the next business day if sent by an overnight delivery service, and seventy-two hours after the time such copy is deposited in the United States Post Office with postage charges prepaid, addressed to the Leasehold Mortgagee. No Notice given by Lessor to Lessee shall be binding upon or affect Lessee or the Leasehold Mortgagee unless a copy of the Notice shall be given to the Leasehold Mortgagee pursuant to this subsection. Lessor will not exercise any right, power or remedy with respect to any default hereunder, and no notice to Lessee of any such default shall be effective, until Lessor shall have so given to the Leasehold Mortgagee written notice or a copy of its notice to Lessee of such default. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Lessor, may change the address to which such copies of Notices are to be sent.

c. During the existence of any Leasehold Mortgage, Lessor will not terminate this Lease because of any default by Lessee hereunder or other cause whatsoever if, within a period of sixty (60) days after Lessor has mailed written notice of intention to terminate this Lease for such cause to the Leasehold Mortgagee at its last known address and also, if such Leasehold Mortgage is insured by the Department of Housing and Urban Development or guaranteed by the Veterans' Administration, to such Department or Administration, the Leasehold Mortgagee or such Department or Administration shall either cure such default or other cause or, if the same cannot be cured by the payment of money, shall undertake in writing to perform all the covenants of this Lease capable of performance by it until such time as this Lease shall be sold upon foreclosure pursuant to such Leasehold Mortgage, and in case of such

undertaking, Lessor will not terminate this Lease within such further time as may be required by the Leasehold Mortgagee or such Department or Administration to complete foreclosure of such Leasehold Mortgage or other remedy thereunder, provided (a) that such remedy is pursued promptly and completed with due diligence, and (b) that Lessor is paid all rent and other charges accruing hereunder as the same become due, and upon foreclosure sale of this Lease, the time for performance of any obligation of Lessee then in default hereunder other than payment of money shall be extended by the time reasonably necessary to complete such performance with due diligence.

d. If any Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee, the times specified above for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

e. Lessor agrees that, in the event of termination of this Lease for any reason (including, but not limited to, a rejection or termination of this Lease in bankruptcy or any other default by Lessee), Lessor, if requested by any Leasehold Mortgagee, will enter into a new lease of the premises with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original term of this Lease (and any renewal term, if any), at the base rent and additional lease rent and upon the terms, covenants and conditions herein contained, provided:

i. Such Leasehold Mortgagee shall make written request upon Lessor for the new lease within sixty (60) days after the date such Leasehold Mortgagee receives written notice from Lessor that this Lease has been terminated;

ii. Such Leasehold Mortgagee shall pay to Lessor at the time of the execution and delivery of the new lease any and all sums which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys' fees, which Lessor shall have incurred by reason of such termination;

iii. Such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Lessee, and shall further remedy any other conditions which Lessee under this Lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee; and

iv. The lessee under the new lease shall have the same right of occupancy to the buildings and improvements on the premises as Lessee had under this Lease immediately prior to its termination.

Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Section 20 shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other lien, charge or encumbrance on the fee of the premises, and

any sublease under this Lease shall be a sublease under the new lease and shall not be deemed to have terminated by their termination of this Lease.

Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to this Section 20 or to cure any default of Lessee referred to above.

21. Breach. Time is of the essence in this agreement, and if the Lessee shall fail to pay the rent, or any part, at the times and in the manner provided within thirty (30) days after delivery by the Lessor of a written notice of breach or default, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this Lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this Lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of 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, and upon or without the 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 termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor, or shall be removed by Lessee, in either case, at no cost or expense of Lessor; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

22. 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 any county or city and county, the rent shall be reduced in proportion to the value of the portion of the premises condemned. Subject to written consent of Lessor, 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 premises 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 leasehold interest and all compensation payable or to be paid for or on account of the Lessor's 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 premises were leased, the Lessee shall have the option to surrender this Lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

23. Right to Enter. The Lessor and their agents, representatives, successors or assigns shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, (i) in the exercise of these rights, the Lessor, State or County shall not interfere unreasonably with Lessee's use and enjoyment of the premises and (ii) Lessor, or its assigns, shall provide at least three (3) business days prior written notice to

Lessee.

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

25. Extension of Time. Notwithstanding any provision contained in this Lease, when applicable, the Lessor may for good cause shown, allow additional time beyond the time or times specified in this Lease for the Lessee to comply, observe, and perform any of the Lease terms, conditions, and covenants.

26. Quiet Enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions 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 of the Lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

27. Surrender. The Lessee shall, at the end of the term peaceably deliver unto Lessor possession of the premises, together with all improvements existing or constructed thereon, or Lessee shall remove such improvements, at the option of the Lessor, in either case, at no cost or expense of Lessor. 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, after notice thereof, the Lessor may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the Lease.

28. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased "AS IS."

29. Hazardous Materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like

from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

To the extent permitted by law, and as authorized by the Maui County Council, lessee agrees to defend, indemnify, and hold harmless Lessor from any damages and claims resulting from the release and/or presence of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. This covenant shall survive the expiration or earlier termination of the Lease.

For the purpose of this Lease "hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

If Lessee discovers any hazardous materials on the premises (other than groundwater contamination not directly caused, created or contributed to by Lessee), the presence of which violates any applicable laws, Lessee shall immediately undertake, at Lessee's expense, to remediate the presence of the hazardous materials in compliance with applicable laws to the extent necessary to permit the construction, operation, maintenance and use of the premises.

30. Termination for Illegal Purposes. At any time during the term of this Lease, Lessor shall have the right, notwithstanding any other provision to the contrary, to immediately terminate this Lease if the Premises or any part of the Premises, appurtenances or improvements are used, or intended to be used, in any manner or in part by Lessee, Lessee's employees, and/or Lessee's authorized agents, to commit or to facilitate the commission of a crime.

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

32. Exhibits - Incorporation in Lease. All exhibits referred to are attached to this Lease and hereby are deemed incorporated by reference.

33. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this Lease.

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

35. Time Is of the Essence. Time is of the essence in all provisions of this Lease.

36. Archeological Sites. In the event any sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the

premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office at 587-0047 in compliance with Chapter 6E, Hawaii Revised Statutes ("HRS").

37. Set Aside. This Lease is subject to the terms and conditions contained in the set aside of the premises to Lessor, Governor's Executive Order No. ____, dated _____.

38. Reserved.

39. Counterparts. This Lease may be executed in counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument.

40. Brokers' Commissions. Each party represents to the other that it is not obligated to any broker, finder or other real estate or financing agent in connection with the subject matter of this Lease or any of the transactions contemplated hereby.

41. Notices. Wherever in this Lease one party to this Lease is required or permitted to give or serve a notice, request or demand to or on the other, such notice, request or demand shall be given or served upon the party to whom it is directed in writing and shall be delivered personally with a delivery receipt, delivered by facsimile or forwarded by registered or certified mail, postage prepaid, return receipt requested or by commercial delivery service with a delivery receipt. All notices delivered by personal delivery, certified mail or commercial delivery service shall be deemed received as of the date shown on the delivery receipt as the date of delivery, the date delivery was refused, or the date the item was returned as undeliverable. Either party may change its address for the purposes of this paragraph by giving prior written notice of the change to the other party in the manner provided in this section.

42. Authority. The parties represent that the undersigned individuals possess the legal authority to enter into this lease and that the signatures shall be sufficient to bind the parties to the terms of this lease. In addition to the signatures below, this lease shall be subject to approval by the Maui County Council.

43. DCCR's. Lessor acknowledges and agrees that the premises has not been, and will not be annexed during the term of this Lease to the Declaration of Covenants, Conditions and Restrictions of Villages of Leiali'i recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2004-246863.

--The remainder of this page is intentionally left blank; the signature page follows--

Ground Lease

Lessor: Hawaii Housing Finance and Development Corporation

Lessee: County of Maui

TMK: (2) 4-5-021: 018 & 019

IN WITNESS WHEREOF, the parties have executed this Lease on the date and year first above written.

Approved by the Board of Directors
of Hawaii Housing Finance and
Development Corporation at its
meeting held on:

October 13, 2016

HAWAII HOUSING FINANCE AND
DEVELOPMENT CORPORATION

By



Craig K. Hirai
Executive Director

"Lessor"

APPROVED AS TO FORM:



Deputy Attorney General

Ground Lease
Lessor: Hawaii Housing Finance and Development Corporation
Lessee: County of Maui
TMK: (2) 4-5-021: 018 & 019

APPROVAL RECOMMENDED:


COUNTY OF MAUI
a political subdivision of the State of Hawaii

Danny Agsalog, Director
Department of Finance

By _____
Alan M. Arakawa
Its Mayor

APPROVED AS TO FORM AND LEGALITY:

“Lessee”



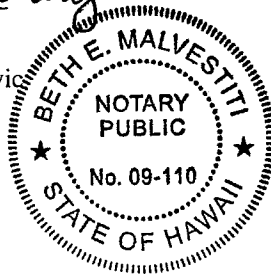
Deputy Corporation Counsel
County of Maui

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

On this _____ day of NOV 17 2016, 201_, before me appeared CRAIG K. HIRAI, personally known to me, who, being by me duly sworn, did say that (s)he is the Executive Director of the HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic of the State of Hawaii, that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation by authority of its Board of Directors, and the said officer acknowledged the instrument to be the free act and deed of the corporation.

Doc. Date not dated w/ notary
of Pages 25

Doc. Description: Ground Lease, Civic
Center Lots, Villages of Leialii



Beth E. Malvestiti
Name: Beth E. Malvestiti
Notary Public, State of Hawaii
First Judicial Circuit

My commission expires: APR 5 2017

EXHIBIT "A"

Property Description

-PARCEL FIRST:-

All of that certain parcel of land being a portion of the Government (Crown) Land of Wahikuli, situate at Lahaina, County of Maui, State of Hawaii, being LOT 1-A of the "VILLAGES OF LEIALI'I", as shown on File Plan Number 2132, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 14.619 acres, more or less.

Being a portion of the property described in Land Patent No. S-15,792 dated February 25, 1994:

Grantor: : STATE OF HAWAII, in conformity with the laws of the State of Hawaii relating to public lands and pursuant to the approval by the Board of Land and Natural Resources

Grantee : HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic of the State of Hawaii

SUBJECT TO:

1. Title to all minerals, and metallic mines reserved to the State of Hawaii.
2. The lack of a right of access recorded in insurable form to and from said land to a public street.
3. Attention is called to the fact that the subject property has no recorded easement for access to a public highway or roadway. The acquisition of an easement for access must be accomplished in order to eliminate exception no. 3 herein referred to.
4. Covenants, conditions, restrictions, reservations, agreements, obligations, easements and other provisions set forth in LAND PATENT NO. S-15,792 dated February 25, 1994, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or natural origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c) or Section 515-6, HRS.
5. SUBDIVISION AGREEMENT SECTION 18.04.030.5 EXCEPTION

Executed By : STATE OF HAWAII HOUSING FINANCE AND

DEVELOPMENT CORPORATION ("HFDC"), a body politic and corporate and STATE OF HAWAII, by its Board of Land and Natural Resources, a body politic and corporate, "Subdividers"

and Between : COUNTY OF MAUI, a body politic and corporate, "County"

On the terms, covenants and conditions contained therein,

Dated : July 19, 1994

Recorded : August 5, 1994 in the Bureau of Conveyances, State of Hawaii, as Document No. 94-130947

-PARCEL SECOND:-

All of that certain parcel of land situate Wahikuli, District of Lahaina, Island and County of Maui, State of Hawaii, being LOT 1-B of the "VILLAGES OF LEIALI'I", as shown on File Plan Number 2132, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 5.518 acres, more or less.

Said above described parcel of land having been acquired by HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic of the State of Hawaii, by LAND PATENT GRANT NO. S-15,792 dated November 4, 1994.

The corporate name of HOUSING FINANCE AND DEVELOPMENT CORPORATION was changed to HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII as set forth by instrument dated June 25, 1998, filed as Land Court Order No. 131893.

The corporate name of HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII was changed to HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION as set forth by instrument dated June 30, 2006, filed as Land Court Order No. 166725.

SUBJECT TO:

1. Title to all minerals, and metallic mines reserved to the State of Hawaii.
2. The terms and provisions contained in the following:

INSTRUMENT : LAND PATENT GRANT NUMBER S-15,792
TO HOUSING FINANCE AND
DEVELOPMENT CORPORATION
DATED : November 4, 1994

3. No vehicular access into and from HONOAPIILANI HIGHWAY (F.A.S.P No. S-0300-1) as referenced on File Plan Number 2132.

4. The terms and provisions contained in the following:

INSTRUMENT : CERTIFICATE AND AUTHORIZATION

DATED : November 2, 1990

RECORDED : Document No. 90-175544

PARTIES : STATE OF HAWAII, by its Board of Land and Natural Resources ("Owner") and HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and body corporate and politic of the State of Hawaii ("Petitioner")

5. The terms and provisions contained in the following:

INSTRUMENT : SUBDIVISION AGREEMENT SECTION 18.04.030.5 EXCEPTION

DATED : July 19, 1994

RECORDED : Document No. 94-130947

PARTIES : STATE OF HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION ("HFDC"), a body politic and corporate, and STATE OF HAWAII, by its Board of Land and Natural Resources, a body politic and corporate, "Subdividers", and COUNTY MAUI, a body politic and corporate, "County".

6. The terms and provisions contained in the following:

INSTRUMENT : MODIFICATION OF SUBDIVISION REQUIREMENTS AGREEMENT

DATED : July 27, 1994

RECORDED : Document No. 96-003302

PARTIES : STATE OF HAWAII, HOUSING FINANCE AND DEVELOPMENT CORPORATION, and STATE OF HAWAII, by its Board of Land and Natural Resources, and BOARD OF WATER SUPPLY OF THE COUNTY OF MAUI.

End of Exhibit "A"

