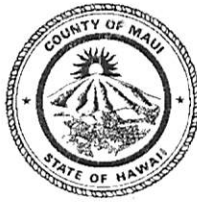


KA'ALA BUENCONSEJO  
Director

ALAN M. ARAKAWA  
Mayor



RECEIVED

2018 NOV -7 PM 1:20

BRIANNE L. ZANIN  
Deputy Director

(808) 270-7230

FAX (808) 270-7934

**DEPARTMENT OF PARKS & RECREATION**

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

November 5, 2018

Honorable Alan M. Arakawa  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

For Transmittal to:

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

APPROVED FOR TRANSMITTAL  
*Alan Arakawa* 11/7/18  
Mayor Date

Dear Chair White and Members:

**SUBJECT: PROPOSED RESOLUTION AUTHORIZING A GRANT OF A LEASE  
OF COUNTY REAL PROPERTY TO THE LAHAINA RESTORATION  
FOUNDATION**

I am transmitting a proposed resolution entitled, "AUTHORIZING A GRANT OF A LEASE OF COUNTY REAL PROPERTY TO THE LAHAINA RESTORATION FOUNDATION".

The purpose of the resolution is to authorize the Lahaina Restoration Foundation, a Hawaii non-profit corporation, to continue use of the premises for the Old Lahaina Courthouse and Banyan Tree Park [TMK (2) 4-6-001:009], and Keawaiki Park [TMK (2) 4-6-001:001 portion], for park use purposes with a term of ten years from the date of the execution of the lease document, with an option to extend for one additional ten year term.

May I respectfully request that this matter be referred to the appropriate Council committee for review and discussion.

Thank you for your attention to this matter. Should you have any questions or require additional information, please feel free to contact Roxanne Teshima, Grants Coordinator at Ext. 7949.

Sincerely,

*Brianne L. Zanin*  
KA'ALA BUENCONSEJO  
Director of Parks and Recreation

Attachment  
KB:rt

COUNTY COMMUNICATION NO. 18-411

# Resolution

No. \_\_\_\_\_

## AUTHORIZING A GRANT OF A LEASE OF COUNTY REAL PROPERTY TO THE LAHAINA RESTORATION FOUNDATION

WHEREAS, The Lahaina Restoration Foundation, a Hawaii non-profit corporation, desires to obtain a lease of certain County real property identified as Tax Map Key No. (2) 4-6-001:009, comprising an area of approximately 1.94 acres, more or less, to continue use of the premises for the Old Lahaina Courthouse and Banyan Tree Park; and Tax Map Key No. (2) 4-6-001:001 (por.), comprising an area of .2796 acres, more or less, to continue use of the Premises for the Keawaiki (Small Harbor) Park, for park use; and

WHEREAS, the proposed Lease of County Recreational Space ("Lease") is attached hereto and by reference made a part hereof as Exhibit "1"; and

WHEREAS, pursuant to 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 pursuant to Maui County Code, Section 3.36.090, the grant of the Lease is hereby authorized; and
2. That the Mayor and the Director of Finance or their authorized representatives may execute the Lease; 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 Lahaina Restoration Foundation.

APPROVED AS TO FORM  
AND LEGALITY:

A handwritten signature in black ink, appearing to read "Mimi Desjardins", written over a horizontal line.

MIMI DESJARDINS  
Deputy Corporation Counsel  
County of Maui  
LF 2016-0909  
2018-10-30 Resolution

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X)      Pickup ( )

To: DEPARTMENT OF FINANCE  
County of Maui  
200 South High Street  
Wailuku, Maui, Hawaii 96793

Affects TMK No.: (2)4-6-001:009  
TMK No.: (2)4-6-001:001 (por.)

Total No. of Pages: \_\_\_\_\_

THE LAHAINA RESTORATION FOUNDATION  
LEASE OF COUNTY RECREATIONAL SPACE

THIS LEASE, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the 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, Maui, Hawaii 96793, hereinafter referred to as "Lessor", and THE LAHAINA RESTORATION FOUNDATION, a Hawaii nonprofit corporation, whose mailing address is 120 Dickenson Street, Lahaina, Hawaii 96761 hereinafter referred to as "Lessee", and collectively referred to as the "Parties";

EXHIBIT " 1 "

W I T N E S S E T H:

WHEREAS, the State of Hawaii is the owner of two certain parcels of land that Lessee has managed or maintained as described in Exhibit "A", attached hereto and incorporated herein; and

WHEREAS, the State of Hawaii, through Executive Order Nos. 16 and 80, has assigned control and management of these two parcels, hereinafter collectively referred to as the "Premises", to the County of Maui as follows:

Parcel 1: Executive Order No. 16, attached hereto as Exhibit "B", and by reference incorporated herein, pertains to Tax Map Key No. (2) 4-6-001:009, consisting of approximately 1.94 acres, hereinafter referred to as "Banyan Tree Park," which includes the Old Lahaina Courthouse building; and

Parcel 2: Executive Order No. 80, attached hereto as Exhibit "C", and by reference incorporated herein, pertains to Tax Map Key No. (2) 4-6-001:001 (por.), consisting of approximately 0.2796 acres, which is commonly referred to as "Keawaiki (Small Harbor) Park", and is hereinafter referred to as "Keawaiki Park"; and

WHEREAS, Lessee has managed, maintained and renovated the Old Lahaina Courthouse building and the grounds of Banyan Tree Park since 1997; and

WHEREAS, Lessee has maintained the grounds at Keawaiki Park since 1980; and

WHEREAS, the County of Maui supports Lessee and hopes to assist Lessee by granting this Lease so that Lessee may continue to conduct its activities on the Premises;

NOW, THEREFORE, Lessor, for and in consideration of Lessee's covenants and agreements set forth herein, does hereby agree to grant a lease

to Lessee and Lessee hereby accepts said lease on the terms and conditions set forth below:

A. Premises. The Banyan Tree Park parcel, Tax Map Key No. (2) 4-6-001:009 (Executive Order No. 16, Exhibit "B") and the Keawaiki Park parcel, Tax Map Key No. (2) 4-6-001:001 (por.) (Executive Order No. 80, Exhibit "C"), are more particularly shown on Exhibit "D", attached hereto by reference incorporated herein.

B. Use of Premises. Lessee shall continue to manage and maintain the Old Lahaina Courthouse located within Banyan Tree Park as a museum, visitor center, offices, meeting room/video theater, and art galleries. Lessee shall continue to manage and maintain the grounds of Banyan Tree Park, and shall use the Park for public park use, recreation, events and festivals. Lessee shall maintain and manage the grounds of the Keawaiki Park for public park purposes. All use shall be in compliance with policies and guidelines set forth by the Cultural Resource Commission for Historic Districts, the National Park Service for National Historic Districts, and the Board of Land and Natural Resources. The use of the Premises for any other purpose shall require the prior written approval of Lessor, through its Director of the Department of Parks and Recreation ("Director") and the State of Hawaii, Board of Land and Natural Resources ("BLNR").

C. Term. This Lease shall commence upon execution and expire ten years thereafter, unless sooner terminated as provided herein, with an option to extend for one additional ten year term. To exercise the extension option, Lessee must submit a written request to the Director at least one year prior to expiration of the initial lease term.

D. Cancellation. The Lease shall be subject to immediate cancellation in the event of disapproval of Executive Order No. 16 or Executive Order No. 80, by the Hawaii State Legislature pursuant to Section 171-11, Hawaii Revised Statutes.

E. Rent. Lessor reserving and the Lessee yielding and paying to the Lessor the nominal rental amount of ONE HUNDRED DOLLAR (\$100.00) per annum for the Premises, the receipt and sufficiency of which is hereby acknowledged.

F. Indemnification. Lessee shall indemnify, defend, and hold harmless the Lessor, the State of Hawaii, and their respective Lessor's departments, directors, officers, employees, and agents from and against any and all claims for bodily injury, wrongful death and/or property damage by any persons caused by, occasioned by, arising from, or resulting from Lessee's actions or activities on the Premises.

G. No Disturbance: Lessee acknowledges and confirms that the Premises are public parks used by the general public. This Lease does not alter the status of the Premises as a public park, nor does this Lease alter the County's duties to users of the Premises except as explicitly provided herein. Lessee and anyone claiming under Lessee, shall limit their activities to the Premises covered by this Agreement and will exercise its rights in a manner causing as little interference as reasonably possible with the use of the Premises by Lessor and the general public. Lessee and anyone claiming under Lessee shall obey all reasonable rules, regulations, instructions and/or directions of Lessor and Lessor's officers, directors, employees, or agents with respect to same.

H. Permit required. If Lessee desires to have temporary, exclusive use of portions of the Premises other than as set forth in this Lease, Lessee shall apply for a use permit with the Department of Parks and Recreation.

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

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

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

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



LESSOR:

COUNTY OF MAUI

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

By \_\_\_\_\_  
MARK R. WALKER  
Its Director of Finance

APPROVAL RECOMMENDED:

  
\_\_\_\_\_  
BUTCH KAALA BUENCONSEJO  
Director of Parks  
and Recreation

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
MIMI DESJARDINS  
Deputy Corporation Counsel  
County of Maui  
2016-0909  
2018-10-30 Revised Lease

LESSEE:

THE LAHAINA RESTORATION  
FOUNDATION

By Theo M  
(Signature)

Theo Morrison  
(Print Name)

Its Executive Director  
(Title)

By Louisa v.d.L. Shelton  
(Signature)

Louisa v.d.L. Shelton  
(Print Name)

Its Secretary / B.O.D.  
(Title)

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

STATE OF HAWAII        )  
                                  )  
COUNTY OF MAUI        )       SS.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared ALAN M. ARAKAWA, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 7-5.11 and Section 9-18 of the Charter of the County of Maui; and the said ALAN M. ARAKAWA acknowledged the said instrument to be the free act and deed of said County of Maui.

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

[Stamp or Seal]

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

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

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

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	
_____	
_____	
_____	
[Stamp or Seal]	
Notary Signature: _____	
Date: _____	

STATE OF HAWAII        )  
                                   ) SS.  
 COUNTY OF MAUI        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared MARK R. WALKER, to me personally known, who being by me duly sworn, did say that he is the Director of Finance of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 9-18 of the Charter of the County of Maui; and the said MARK R. WALKER acknowledged the said instrument to be the free act and deed of said County of Maui.

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

[Stamp or Seal]

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

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

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

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	
_____	
_____	
_____	
[Stamp or Seal]	
Notary Signature: _____	
Date: _____	

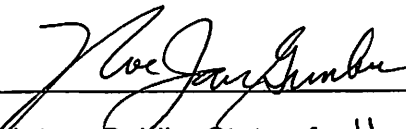
STATE OF Hawaii }  
County of Maui } ss.

On this 31 day of October, 2018, before me personally appeared Theo C Morrison, 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.

[Stamp or Seal]

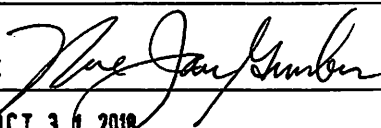
L.S.



Notary Public, State of Hawaii

Print Name: Noe Jan Gumboc

My commission expires: FEB 28 2020

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>Undated</u>	# Pages: <u>39</u>
Notary Name: <u>Noe Jan Gumboc</u>	Judicial Circuit: <u>2nd</u>
Doc. Description: <u>The Lahaina Restoration Foundation Lease of County Recreational Space</u>	
[Stamp or Seal] L.S.	
Notary Signature: 	
Date: <u>OCT 31 2018</u>	

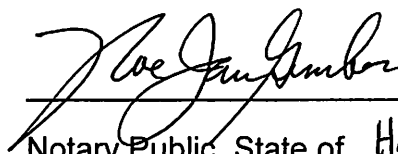
STATE OF Hawaii }  
County of Maui } SS.

On this 31 day of October, 2018, before me personally appeared Louisa V.D.L. Shelton, 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.

[Stamp or Seal]


L.S.



Notary Public, State of Hawaii

Print Name: Noe Jan Gumboc

My commission expires: FEB 28 2020

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>Undated</u>	# Pages:	<u>39</u>
Notary Name:	<u>Noe Jan Gumboc</u>	Judicial Circuit:	<u>2nd</u>
Doc. Description:	<u>The Lahaina Restoration Foundation Lease of County Recreational Space</u>		
Notary Signature:			
Date:	<u>OCT 31 2018</u>		

[Stamp or Seal]  
L.S.



COUNTY OF MAUI  
DEPARTMENT OF PARKS AND RECREATION

MAUI COUNTY GRANTS OF REAL PROPERTY

**APPLICANT**

Legal Name of Organization: The Lahaina Restoration Foundation

Address: 120 Dickenson St., Lahaina, HI 96761

Director/Manager: Theo Morrison, Executive Director

Phone: (808) 661-3262 Fax: \_\_\_\_\_

Organization President: David Allaire

Email: \_\_\_\_\_ Phone: (808) 661-3262 Fax: \_\_\_\_\_

Contact Person (Grant Writer): Theo Morrison

Email: theo@lahainarestoration.org Title: Exec. Director 808-661-3262

Total annual budget of organization: \$1,279,487

Has the applicant applied for funds from the County of Maui this fiscal year?

☐ Yes Source: OED, DPR ☐ No

Requesting Lease of entire parcel ☐ Requesting License to Occupy a portion of a parcel ☐

TERM OF LEASE/LICENSE REQUESTED: 20 Years Annual Fee Requested \_\_\_\_\_

TYPE OF REQUEST: ☐ New ☐ Renewal ☐ Extension

**DESCRIPTION OF PROPERTY: TMK:**

1. **Banyan Tree Park/Old Courthouse:** TMK: 460010090000, Address: 648 Wharf St., Lahaina., Area, 1.94 acres of real estate for which lease is being requested.
2. **Keawaiki Park:** TMK: 460010010000, Address: 0 Wharf St. Lahaina. Area: .2796

In one (1) sentence, DESCRIBE THE INTENDED USAGE of the facility/site for which the lease/license is being requested.

1. The current use of the Old Lahaina Courthouse will remain, per the Old Lahaina Courthouse Task Force, as a museum, visitor center, offices, meeting room/video theater, art galleries, with Banyan Tree Park continuing to be used for recreation and as a site for events and festivals.
2. The use of the Keawaiki Park will remain as park use.

EXHIBIT " A "

## APPLICANT SUBMITTAL

Lahaina Restoration Foundation (Applicant) submits this application to receive a grant of real property lease/license to occupy for Banyan Tree Park, Old Lahaina Courthouse, Courthouse Park (Project Title) and hereby agrees to utilize and manage the real property according to the terms and conditions of the lease/license to occupy agreement. The Department of Parks and Recreation reserves the right to revoke the lease/license to occupy agreement at any time the applicant/grantee is not in compliance with the terms of said agreement and in accordance with the cancellation provisions contained in said agreement. It is the policy of the County of Maui and for those who do business with the County to provide equal employment opportunities to all persons regardless of race, physical disabilities, color, religion, sex, age or national origin as mandated by Federal Civil Rights Act, as amended, and any other federal state laws relating to equal employment opportunities.

## AUTHORITY AND CAPACITY OF APPLICANT

The applicant assures that it has the authority and capacity to develop and submit the application, and to manage the real property for which a lease/license to occupy is being requested and to carry out programs pursuant to the application.

## QUALIFYING STANDARDS FOR APPLICANTS

An applicant making a request for a grant of real property shall meet all of the following standards: (Please check all boxes which your organization complies with)

- Be a profit organization incorporated under the laws of the State of Hawaii, or a nonprofit organization determined to be exempt from federal income tax by the Internal Revenue Service and in good standing with the State Department of Commerce and Consumer Affairs;
- As a nonprofit organization have a board of directors whose members have no conflict of interest and serve without compensation;
- Have signed bylaws, charter of incorporation and policies which describe the manner in which business is conducted. Such documents shall include provisions relating to nepotism, potential conflict of interest situations, non discrimination and financial audit requirements;
- Be licensed and accredited in accordance with applicable requirements of federal, state and county governments, as necessary;
- Be current in all state, federal and local tax payments and;
- Post and maintain the following drug free policy for staff and program participants, "This is a tobacco, alcohol and drug free work place and program." Wherever appropriate, the applicant also agrees to integrate alcohol, tobacco, and other drug free messages and prevention materials, information and activities into programs/activities it conducts at the County property for which a lease/license to occupy is being requested.

## RECORDS AND REPORTS

The applicant shall submit an annual report using the prescribed format as appended to the lease/license to occupy agreement.



## **GRANT CONDITIONS**

The applicant agrees to comply with the following conditions before receiving a grant of real property:

- A. Employ and/or have under contract such person(s) as are qualified to manage the real property for which a lease/license to occupy is requested:
- B. Employ and/or have under contract such person(s) as are qualified to engage in the activity to be conducted in the County facility for which a lease/license to occupy is requested; and provided that for nonprofit organizations, no two or more members of a family or kin of the first or second degree shall be employed or under contract by the organization:
- C. Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, physical handicap, marital status, parental status, arrest and court record, National Guard participation, or HIV infection:
- D. Provide certification of necessary insurance:
- E. Comply with such other requirements to ensure adherence by the provider or recipient with applicable federal, state, and county laws; and
- F. Allow the Department of Parks and Recreation and County Auditors full access to records, reports, files, and other related documents in order that the program, management, administrative and fiscal practices of the recipient may be monitored and evaluated to assure the proper and effective administration of the program/activities for which use of County real property is being requested.

## **RECOGNITION**

The grant recipient will give the County of Maui appropriate recognition in all County-funded programs, audio/visual, publicity and advertising, and printed materials.

## **GRIEVANCE PROCEDURE**

The applicant will adopt a grievance procedure to assure proper accounting for any concerns and complaints about its programs or services that may arise from its members, employees, clients or from other members of the public.

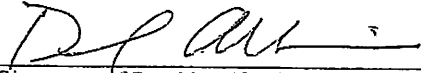
## **DISCLOSURE OF INFORMATION**

All information, data, or any other material provided to the County by virtue of this application shall be subject to the Uniform Practice Act (UIPA), Chapter 92F, Hawaii Revised Statutes. All such material is deemed government record, open to the public and may be provided to other public and/or private funding sources.

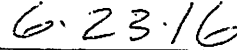
## **CONTINUED ELIGIBILITY**

Any recipient or provider who withholds or omits any material facts or deliberately misrepresents such facts to the County of Maui shall be in violation of the terms of this agreement. Such recipient or provider shall be prohibited from receiving any grant, subsidy, purchase of service, or lease/license agreement from the County of Maui for a period of up to five years.

**UNSIGNED PROPOSALS WILL NOT BE ACCEPTED!**

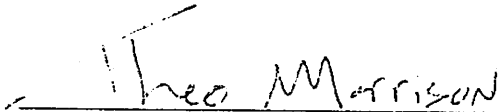


Signature of President/Chairperson/Other Authorized Officer

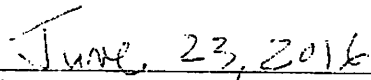


Date

David Allaire President, Lahaina Restoration Foundation  
Print Name and Title



Signature of Director/Manager Authorized Officer



Date

Theo Morrison, Executive Director, Lahaina Restoration Foundation  
Print Name and Title

# **NARRATIVE APPLICATION**

## **INSTRUCTIONS:**

- 1. Description of the nature and purpose of the agency requesting the lease.**

### **Goals and Objectives:**

Lahaina Restoration Foundation is a 501c3 non profit organization chartered in 1962. The mission statement of the LRF reads “ LRF exists to restore, preserve and protect the physical, historical and cultural legacies of Lahaina, and honor the era of the Hawaiian monarchy”.

“Our vision is that Lahaina’s prominent place in Hawaii’s history and rich cultural traditions are celebrated and, through authentic preservation of significant sites, buildings and artifacts, its story is shared.

### **Services Provided:**

The Foundation oversees and maintains 13 major historic structures in Lahaina and operates 6 museums. The Foundation maintains several collections of artifacts, manuscripts, maps, photographs, logs and other materials representative of Lahaina’s rich history. These collections and archives are available to the public and researchers by request.

The Foundation operates and maintains the Baldwin Home Museum, Hale Pa’i Museum and Research Center, Lahaina Heritage Museum, Lahaina Plantation Museum, Old Lahaina Prison and the Wo Hing Museum which are open to the public on a daily basis (Hale Pa’i is open M – W from 10 – 4 pm). The Foundation manages the Old Lahaina Courthouse and maintains public parks and open spaces in Historic Lahaina Town.

Public events are an important component of Lahaina Restoration Foundation’s out reach into the community. LRF conducts the monthly, free Hawaiian Music Series on the Baldwin Home Lawn, a free, weekly taro patch education program, a weekly candlelit tour of the Baldwin Home and four, free, two - day Chinese cultural events at the Wo Hing Museum. LRF also participates in the Na Kamehameha Parade, Maui Matsuri, the (new) Plantation Festival at Queen Ka’ahumanu Center. LRF organized the popular two day Lahaina Plantation Days for seven years.

### **Annual Number of people served (estimate):**

Museum Attendance: 50,000

Special Events: 8,000

Public parks and open space: 700,000

**Sources of funding and support:**

Lahaina Restoration Foundation has multiple sources of funding which provide a strong and secure financial base for the organization. LRF owns the Baldwin Home compound and receives income from rentals, the parking lot and museum admissions. Additionally, LRF owns the Seaman's Hospital and Plantation House from which LRF receives rental income. LRF also receives income from membership, grants, donations, sponsors and gift store sales.

LRF has a robust volunteer program with volunteers providing a major part of the labor at all public events and outreach programs.

**Administrative/management structure:**

The day to day operations of LRF are managed by the executive director who reports to the Board of Directors. The executive assistant provides administrative support. The Baldwin Home, Hale Pa'i and Wo Hing museum are staffed with docents. The chief engineer is responsible for the maintenance of the buildings, a grounds keeping crew maintains the parks and open spaces and an exhibit designer builds the museum and traveling displays. Graphics, accounting, marketing and other services are provided by independent contractors,

**2. The intended usage of the Banyan Tree Park, Old Lahaina Courthouse, Keawaiki Park.**

**Specific uses/activities to be conducted at the site**

1. We plan to continue the uses and activities that are currently being conducted at Banyan Tree Park and in the Old Lahaina Courthouse. We will be following the CRC regulations for the festivals in the park and following the Old Lahaina Courthouse Task Force Report for uses and activities in the building.
2. Keawaiki Park was executive ordered to the County for park use only and we intend to keep it for park use.

**Justification of need for these activities:**

1. The current activities at the Old Lahaina Courthouse were identified by the community, during the meetings of the Old Lahaina Courthouse Task Force in 1995, as important services the community would like to see continue at this location. The Lahaina Arts Society has been in the building for more than 40 years, LahainaTown Action Committee has been a tenant since 1995. LRF has been managing the museum

and the building since 1997. Activities at Banyan Tree Park have been on-going for numerous years and are sanctioned and regulated by the CRC.

2. Keawaiki Park serves the community as a great place to watch the activities of the Lahaina Harbor as well as a place to wait for friends and family arriving from Lanai or Molokai , or to board a ferry to Molokai or Lanai.

**Target populations to be served:**

1. The target groups Banyan Tree Park and the Old Courthouse will serve include both resident and visitors. The resident population includes student at King Kamehameha III School, residents of the nearby housing areas, visitors and residents shopping, dining or engaging in recreational activities in Lahaina. There are also over 50 cruise ships which anchor in Lahaina each year and thousands of passengers visit the Old Lahaina Courthouse and Banyan Tree Park.
2. The target population to be served at Keawaiki Park consists of anyone traveling to Lanai or Molokai, or waiting for passengers from there to disembark. Others use the park to watch the harbor activities or wait for a fishing or charter boat to arrive.

**Estimated average number of people using the facility and site on a weekly basis:**

1. With an estimated 500,000 people a year coming to both the Banyan Tree Park and the Courthouse there are approximately 9,615 facility users on a weekly basis.
2. With an estimated 200,000 people a year using the Keawaiki Park, there are approximately 3,846 weekly users.

**Frequency of use:**

1. The Banyan Tree Park closes at midnight and the Old Courthouse is open from 9 to 5 daily, seven days a week including most holidays.
2. The Keawaiki Park is open daily and is most heavily used from dawn to dusk.

**3. Current delivery of services**

1. After the County restoration of the Old Lahaina Courthouse in 1997, the recommendations of the Old Lahaina Courthouse Task Force were put into place. Thus, LRF became the building manager and a variety of improvements, such as daily cleaning of all common areas and public restrooms, maintenance of landscaping next to the building, painting of interior walls, oversight of sprinklers, basement pumps, electrical systems, elevator operations etc. was implemented. In addition, LRF staff is on call 7 days a week to deal with emergencies as they arise. LRF pays upfront for all maintenance services and repairs in the building and charges back the tenants on a monthly basis depending on the amount of space they occupy.

As the manager of the Old Lahaina Courthouse, LRF was able to obtain a \$650,000 grant in 2010 from the National Marine Sanctuary Foundation for a restoration of the interior and the build out of the Lahaina Heritage Museum and the Video Theater. LRF received another grant, in 2012, of \$50,000 from the Freeman Foundation for the repair and replacement of all the wooden doors and windows in the building and the repair of a large crack on the north exterior wall of the building.

LRF maintains the Courthouse Park and Banyan Tree Park through the historic district groundskeeping grant from the County of Maui DPR. Additionally County of Maui DPR provided funding for the current improvement project at Keawaiki Park.

**Predicted improvement if LRF obtains the lease for the Old Courthouse, Banyan Tree Park & Keawaiki Park.**

LRF has managed the Old Lahaina Courthouse since 1999.

With the addition of Banyan Tree Park and Keawaiki Park to the LRF responsibilities, these parks would attain the same level of excellence that is now seen at the Courthouse. As the leaseholder for the Banyan Tree Park, LRF will provide oversight for all the events and festivals while ensuring that the user fees generated from these events are used to further improve the park.

**4. Management Plan for the facility and site:**

We will continue with the successful management plan for the courthouse that is currently in place.

Management Plan for Old Lahaina Courthouse (current):

The Chief Engineer of LRF is responsible for the following:

- Inspection of the courthouse common areas M – F morning.
- Oversight of all needed building repairs, routine maintenance.
- Purchase of all supplies for public restrooms
- Inspection of daily cleaning of common areas and restrooms
- Inspection to ensure building is safe for all users
- Approval of all receipts for goods and services used at the courthouse
- Response to emergency calls from tenants

Chief Engineer reports to the Executive Director

The LRF Executive Assistant is responsible for:

- Inputting approved receipts for courthouse maintenance costs.
- Billing tenants for their % of common area costs based on the % of space they occupy in the building.

The LRF Executive Assistant reports to the Executive Director

The Executive Director is responsible for oversight of staff and the procurement of new funding for building improvements.

#### Management Plan for Banyan Tree Park

The LRF Head Grounds Crew is responsible for the following:

- Ensuring that the park is cleaned of leaves and rubbish daily
- Trash barrels are emptied daily
- Irrigation and landscaping are maintained
- Lighting is maintained
- Safety hazards are reported to the Executive Director
- Violations of the Historic District Ordinances are reported to the Executive Director

The LRF Executive Assistant is responsible for the following:

- Billing all festival organizers for the park user fee
- Note: The existing Historic Districts Groundskeeping Grant funds the maintenance of Banyan Tree Park.

#### Management Plan for Banyan Tree Festivals and Events:

The LRF Executive Assistant is responsible for the following:

- Working with festival organizers to schedule an annual calendar of events
- Working with festival organizers to solve scheduling disputes
- Ensuring that all festival organizers follow the CRC event guidelines for Banyan Tree Park.

#### Management Plan for Keawaiki Park:

The LRF Head Grounds Crew is responsible for the following:

- Ensuring that the park is cleaned of leaves and rubbish daily
- Trash barrels are emptied daily
- Irrigation and landscaping are maintained
- Lighting is maintained
- Safety hazards are reported to the Executive Director
- Violations of the Historic District Ordinances are reported to the Executive Director
- Note: The existing Historic Districts Groundskeeping Grant funds the maintenance of Keawaiki Park
- State DLNR Boating Division is responsible for maintenance and repair of public restroom facility located at site.

Executive Director is responsible for oversight of all staff, appropriation of festival park fees to park improvements, and obtaining additional funds for park improvements.

With this lease, LRF would be responsible for all maintenance and repair of the Old Lahaina Courthouse, Banyan Tree Park and Keawaiki Park **with the exception of:** 1. Tree trimming (Coconut, Banyan, Monkeypod trees), 2. Major repairs (\$5,000+) to the electric, sewer, water service 3. Major repairs (\$5,000+) to the exterior of the courthouse including roof, walls, stairs, lanai etc. 4. Replacement of outdoor lamps to conform to new federal standards. 5. Major damage from natural disaster such as earthquake, tidal wave, wind event etc. 6. Maintenance and repair of Harbor public restrooms located next to Keawaiki Park.

**5. Impact to services/activities at the site if lease is not granted.**

Without the expertise and experience of LRF management at the Old Lahaina Courthouse the building would revert, very quickly, to what it was in the 1980s – a dirty, unkempt public space with overflowing toilets, safety violations, maintenance issues and tenant disputes. There would be a huge public outcry.

Without LRF's management and oversight, Banyan Tree Park and Keawaiki Park would quickly become undesirable places with safety, security and cleanliness issues and the quality of the public's recreational experience at these two parks would plummet.

6. There are no major improvements planned on the requested sites at this time with the exception of the already in progress– Banyan Tree Paver Project , and Lahaina Harbor Front Improvement Project both of which are funded by the County of Maui Parks and Recreation.



C O P Y

## EXECUTIVE ORDER NO. 16.

## SETTING ASIDE LAND FOR PUBLIC PURPOSES.

I, WALTER F. BREAR, Governor of the Territory of Hawaii, by virtue of the authority vested in me by the last paragraph of Section 5 of the Act of Congress approved May 27, 1910, entitled "An Act to Amend An Act Entitled 'An Act to Provide a Government for the Territory of Hawaii,' approved April Thirtieth, Nineteen Hundred", and every other authority me hereunto enabling, do hereby order that the following described land be and the same is hereby set aside for public purposes, to-wit, for the uses and purposes of the County of Maui:

1. That certain lot, now used mainly for court house and jail purposes, situated at Wailuku, Island and County of Maui, and bounded as follows:

Beginning with the Southwest corner of property of R. A. Wadsworth on the east side of High Street, which corner is by the true azimuth  $356^{\circ} 21' 275.1$  ft. from the center of a wall known large stone in the curb line at the southwest corner of the Pioneer Store property, and running thence by true azimuths:

1.  $354^{\circ} 52'$  205.0 ft. along inner edge of concrete sidewalk to the Northwest corner of the "County Building" lot formerly the Wailuku Union Protestant Church lot.
2.  $273^{\circ} 20'$  302.2 ft. along said county building lot, to an iron bar driven under stone wall and fence at west corner of ancient taro patch.
3.  $134^{\circ} 04'$  267.5 ft. along properties of F. Sommerfield & Mrs. Rodriguez along fence on West side of Kuleana ditch to corner of W. J. Robinson's fence.
4.  $83^{\circ} 43'$  101.0 ft. along fence on south side of W. J. Robinson's property.
5.  $81^{\circ} 30'$  204.9 ft. along picket fence along properties of W. J. Robinson & R. A. Wadsworth to S. E. Corner of office building.
6.  $84^{\circ} 10'$  36.3 ft. along southeast side of office building to initial point and containing an area of 75,766 sq. ft. or 1.74 acres.

excepting and reserving for the use of the Territory so long as it may require the same so much of the court house building now on said lot as it now uses for tax or other purposes.

EXHIBIT "B"

Post-it® Fax Note	7671	Date	8/16/99	# of pages	5
To	PAT NITTA	From	FLO40		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #	7878	Fax #			

2. That certain lot, now used mainly for court house and park purposes, situated at Lahaina, Island and County of Maui, and bounded as follows:-

Beginning at the west corner of this lot, from which the W. E. corner of the N. E. iron leg of light house bears 124° 19' 140.9 and the center of the court house flag pole bears 352° 13' 142.3 feet, and running thence by true azimuths:-

1. 330° 21' 303.9 ft. along edge of road,
2. 240° 30' 268.4 ft. along edge of road,
3. 150° 18' 319.8 ft. along edge of road,
4. 57° 09' 268.5 ft. along edge of road to point of beginning and containing 1.94 Acres,

excepting and reserving for the use of the Territory so long as it may require the same so much of the court house building now on said lot as it now uses for tax or other purposes,

✓ 3. That certain lot, now used mainly for jail purposes, situated at Lahaina, Island and County of Maui, and bounded as follows:-

Beginning at the east corner of this lot, from which north corner of the county stable lot bears 60° 19' 568.3 ft. and running thence by true azimuths:-

1. 64° 02' 185.8 ft. along road.
2. 153° 42' 206.4 ft.
3. 245° 02' 161.4 ft.
4. 327° 01' 205.1 ft. along road to point of beginning and containing 0.82 Acre.

4. That certain lot, now used mainly for stable purposes, situated at Lahaina, Island and County of Maui, and bounded as follows:-

Beginning at the north corner of this lot, on the east edge of road, the direct azimuth and distance to the east corner of Lahaina Court House lot being 111° 41' 436.4 ft. and running thence by true azimuths:-

1. 337° 23' 93.0 ft. along stable building.
2. 58° 29' 118.6 ft. along fence.
3. 152° 05' 102.6 ft. along W. Decote's land to edge of road.
4. 243° 15' 126.9 ft. along road to point of beginning and containing 11988 sq. ft. or 0.275 Acres.

5. That certain lot, now used mainly for court house purposes, situated at Makawao, Island and County of Maui, and bounded as follows:-

Beginning at the west corner of this lot, the co-ordinates from H. A. Cos., Trig. Station "28" being 245.0 ft. south and 245.6 ft. east, and running thence by true azimuths:-

1. 221° 17' 170.8 ft. along Kawapae House lot.
2. 157° 54' 44.0 ft. along wire fence.
3. 257° 00' 22.0 ft. along road.
4. 324° 05' 296.0 ft. along wire fence to Ohia post.
5. 59° 35' 197.5 ft. along wire fence.
6. 143° 25' 198.0 ft. along fence to point of beginning and containing 1.05 acres.

6. That certain lot, now used mainly for court house purposes, situated at Hana, Island and County of Maui, being that portion of L. C. A. 419 to Kapaemahu, conveyed in deed of A. Unna to Minister of Interior, dated Oct. 11, 1871, Liber 33, P. 252; and bounded as follows:-

Beginning at the southeast corner of this lot whose coordinates from the H. G. S. Trig. Station, Kauiki are 665.8 feet north and 1271.5 feet west, and running thence by true azimuths:

1. 70° 28' 102.5 ft. along fence along properties of W. F. Haia & A. Y. Aiona.
2. 161° 20' 83.3 ft. along stone wall along land of H. Osted.
3. 156° 42' 150.5 ft. along stone wall along land of H. Osted.
4. 245° 33' 72.0 ft. along stone wall along Kaelapu Sugar Co.
5. 331° 06' 243.0 ft. along government road to initial point and containing an area of 20188 sq.ft. or 0.464 Acres.

7. That certain lot, now used mainly for court house purposes, situated at Kipahulu, Island and County of Maui, and bounded as follows:-

Beginning at the northeast corner of this lot whose coordinates from H. G. S. "Kipahulu" Protestant Church Station said station being an iron pipe at edge of bluff, makai of church are 215.0 ft. south and 526.3 ft. west, and running thence by true azimuths:-

1. 79° 25' 202.0 ft. along stone wall along school lot.
2. 341° 00' 85.5 ft. along stone wall.
3. 257° 15' 164.5 ft. along stone wall.

4. 187° 15' 82.3 ft. along stone wall along government road  
initial point and containing 14888.0  
sq. ft. or 0.34 acre.

5. That certain lot, now used mainly for Court House purposes,  
situated at Pukoo, Island of Molokai, County of Maui, being that  
portion of Grant 678 conveyed in deed of Peter H. Treadway to  
Minister of Interior dated Jan. 5, 1869, and bounded as follows:

Beginning at Southeast corner of this lot, whose coordi-  
nates from H. G. S. Trig Station, Kapulehu are 1416.5 ft. north  
and 640.8 ft. East, and running thence by true azimuths:-

1. 68° 10' 100.0 ft. along remainder of Gr. 678
2. 158° 10' 264.5 ft. along remainder of Gr. 678 to edge of 40'  
rd.
3. 245° 48' 100.2 ft. along makai edge of road
4. 338° 10' 268.5 ft. along fish pond to point of beginning  
and containing 0.612 acres.

14-Key 5-7-07-64 Portion of Gr 678 - See Exec Order 675

IN WITNESS WHEREOF, I have hereunto  
set my hand and caused the Great Seal of  
the Territory to be affixed.

Done at the Capitol at Honolulu this  
24th day of August, Nineteen Hundred and  
twelve.

W. F. Frear

By the Governor

E. A. MOTT-SMITH

Secretary of Hawaii.

Executive Order No. 80

## Setting Aside Land for Public Purposes

J. C. J. McCarthy, Governor of the Territory of Hawaii, by virtue of the authority vested in me by the last paragraph of Section 5 of the Act of Congress approved May 27, 1910, entitled "An Act to Amend an Act Entitled 'An Act to Provide a Government for the Territory of Hawaii,' approved April Thirtieth, Nineteen Hundred," and every other authority me hereunto enabling, do hereby order that the following described land be and the same is hereby set aside for public purposes, to-wit, for

### Park Purposes.

The said piece of land hereinafter described shall be exclusively and continuously used by the County of Maui for park purposes. The piece of land hereby set aside for the foregoing public purpose is situated in the Town of Lahaina, County of Maui, opposite the Lahaina Court House Lot, and is more particularly described by metes and bounds as follows:

"Beginning at a 3/4 inch twisted steel bar on Wharf Street, the coordinates of which referred to Government Survey Triangulation Station 'Laina' are 8796.2 feet South and 3459.4 feet West, and which bears by true azimuth and distance from the Maui County Street Monument at the intersection of Wharf and Hotel Streets, 347° 53' 49.7 feet, and running by true azimuths:-

1. 330° 14' 275.9 feet along chain fence along Wharf Street;
2. 59° 28' 80.6 feet along chain fence along Canal Street to a low stonewall;
3. 152° 12' 277.0 feet along stonewall along beach;
4. 240° 33' 41.0 feet along chain fence to point of beginning.

AREA 12,640 SQUARE FEET.

Together with all the beach fronting above described lot, and lying Northwest and between same and high-water mark."

EXHIBIT " C "

IT IS PROVIDED, HOWEVER, and this Order is made upon the express condition that if the County of Maui shall fail to maintain and/or use said tract of land for the public purpose herein described, or shall use said land for purposes other than park purposes, then the right of use hereby granted shall immediately cease, and the same shall revert and revert in and to the Territory of Hawaii.

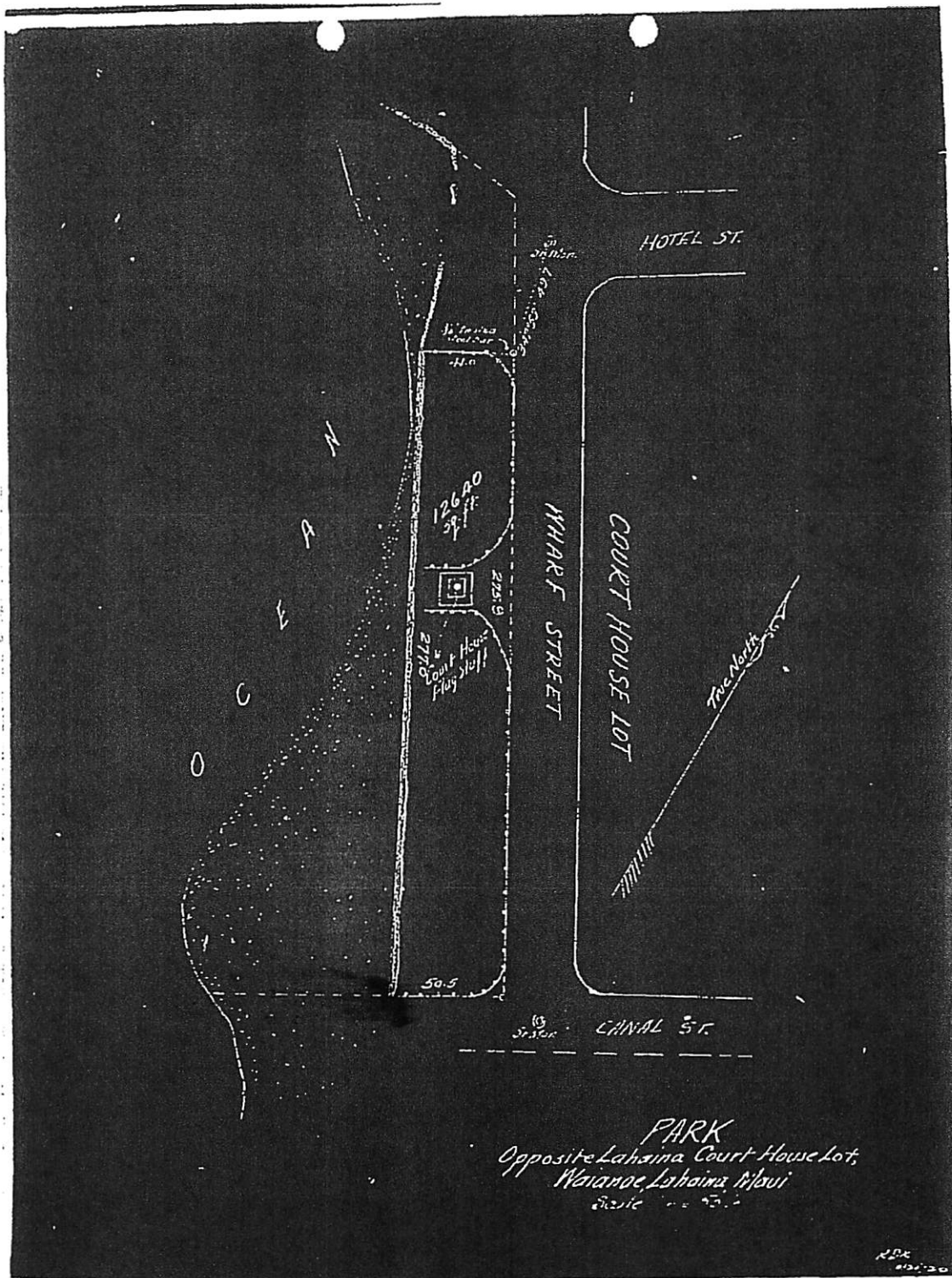
IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the Territory of Hawaii to be affixed.

DONE AT THE CAPITOL at Honolulu this 27th day of October, Nineteen Hundred and Twenty.

By the Governor,

*Chris P. Iaukea*  
Secretary of Hawaii.

*John A. King*







## RESERVATIONS, COVENANTS, TERMS AND CONDITIONS

### RESERVING UNTO THE STATE OF HAWAII THE FOLLOWING:

#### 1. Minerals and Waters.

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

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

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

### LESSEE HEREIN COVENANTS AND AGREES WITH LESSOR AS FOLLOW:

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

### **EXHIBIT "E"**

of the foregoing, Lessees shall also be responsible for the payment of any Hawaii general excise tax (or successor tax) imposed upon the payment of all sums by Lessee under this Lease. Lessee shall remain current in payment of all taxes, rents, or other obligations to the United States, the State of Hawaii, or any of its political subdivisions, including the County of Maui.

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

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

4. Indemnification. To the extent permitted by law, Lessee shall indemnify, release, and hold harmless the County and State of Hawaii, its departments, agencies, officers, directors, employees, and agents from any and all manner of actions and claims, suits, damages, judgments, costs and expense, including reasonable attorney's fees, arising from the Lessee's use of the Premises or arising from the construction of Lessee's improvements, from the failure of Lessee to observe and perform any of the covenants, obligations, rules, regulations, provisions, terms and conditions of this Lease, or from any act or negligence or omission to act of Lessee, its agents, contractors, servants, employees, concessionaires or licensees in or about the demised Premises or in any connection with this Lease. In case any action or proceeding be brought against Lessor, the State of Hawaii, or both (in addition to the Lessee) by reason of any such claim, even though such claim be based on alleged fault of Lessor, the State of Hawaii, or both, Lessee agrees to pay the reasonable costs and expenses thereof, secured against Lessee by reason of such action or proceeding. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

5. Costs of Litigation. In case Lessor without any fault on their part, is made a party to any litigation commenced by or against Lessee (other than condemnation proceedings), Lessee shall pay all costs and expenses, including attorney's fees, incurred by or imposed on Lessor. Lessee shall pay all costs and expenses, including attorney's fees, which may be incurred by or paid by Lessor in enforcing the covenants, obligations, rules, regulations, provisions, terms and conditions of this Lease, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

6. Assumption of Risk and Liability. Lessee, as a material part of the consideration to Lessor for this Lease, does hereby assume all risk of bodily injury, wrongful death and/or property damage, business interruption or economic loss occasioned by any accident, fire, or nuisance made or suffered on the Premises, and hereby waives any and all claims against Lessor and the State of Hawaii. All inventory, property, vehicles, approved improvements and equipment of Lessee shall be kept, placed or stored at the sole risk of Lessee, and Lessor shall not be responsible or

liable for any damage thereto or loss or theft thereof, including subrogation claims by Lessee's insurance carriers.

7. "As Is" Condition. Lessor has not made and shall not make, any representation or warranty, implied or otherwise, with respect to the condition of the premises, including but not limited to (a) any express or implied warranty of merchantability or fitness for any particular purpose or (b) any dangerous or defective conditions existing upon the premises, whether or not such conditions are known to Lessor or reasonably discoverable by Lessee. Lessee accepts the Premises in a completely "as is" condition, with full assumption of the risks, and consequences of such conditions.

8. Mortgage. Lessee may mortgage or create a security interest in the demised premises or any portion thereof with the prior written approval of the Director, Department of Parks and Recreation and the BLNR, provided that, in the case of default the leasehold interest may be foreclosed only by judicial action pursuant to Chapter 667, Hawaii Revised Statutes, and the leasehold interest shall be transferred to the purchaser by assignment of lease for the remainder of the lease term only.

9. Liens. Lessee shall not commit or suffer any act of neglect whereby the Premises, or any part thereof, or the estate of Lessee in the same, shall become subject to any attachment, judgment, lien, charge, or encumbrance (hereinafter collectively called "Lien"), whatsoever. In the event that any Lien shall attach to or encumber the Premises, or if an application for a Lien is filed in any court of competent jurisdiction, Lessee shall bond against or discharge the same within ten (10) days after written request by Lessor. Lessee shall indemnify and hold harmless the Lessor and the State of Hawaii from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom, including attorney's fees.

10. Rules and Regulations. Lessor excepts and reserves the right, from time to time, to adopt reasonable rules and regulations pertaining to Lessee's use of the Premises, which rules and regulations shall be binding upon Lessee upon notice thereof to Lessee. For enforcement of such rules and regulations, if any, Lessor shall have all remedies in this Agreement and any other remedies allowed by law.

11. Alterations and Improvements. Lessee shall make no alterations to any structure on the Premises or construct any building or make any other improvements on the Premises without the prior written approval of the Director, Department of Parks and Recreation. Alterations or improvements on the Premises approved by the Director, Department of Parks and Recreation and the BLNR, made by and paid for by Lessee, with the exception of fixtures which cannot be removed without damage to the Premises, shall, unless otherwise provided by written agreement between the Parties, be the property of Lessee.

12. Fixed Improvements. Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind or description except with the prior written approval of Lessor and upon those conditions the Lessor may impose, including any adjustment of rent, unless otherwise provided in this Lease. All improvements of whatever kind or nature located on the Premises prior to, or on the commencement date of this

Lease shall be, and at all times remain, the property of the Lessor.

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

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

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

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

16. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental regulation (hereinafter collectively referred to as <sup>11</sup> hazardous substances"). Prior to commencing use of the Premises for any activity involving the storage, use, or distribution of (a) any hazardous substance, or (b) products or materials which (i) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of this Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Premises and disposed of in accordance with applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the Premises which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of cognizant governmental authorities; and (d) surrender possession of the Premises to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Premises during the term of this Lease. Lessee shall indemnify and hold harmless Lessor and the State of Hawaii from and against any and all claims relating to hazardous materials arising from this

Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

17. Rights of Way and Easements. Lessor reserves the right, to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes, whatsoever, without limitation, including the right to enter to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Lessee's operations; provided further, that, in any such event, any improvements made by Lessee which were damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry. Lessor further reserves the right to authorize public access over, across, under and through the Premises.

18. Access to Information. Lessee shall provide Lessor and the BLNR with access to Lessee's books, records, assets, facilities, and all other information relative to the use of the Premises, as deemed necessary in the judgment of Lessor and, if applicable, the BLNR.

19. Liability Insurance, Required Coverage. In order to protect itself as well as the County and the State of Hawaii under the indemnification agreement set forth herein, the Lessee shall obtain, pay for, and keep in force throughout the period of this Lease comprehensive liability insurance issued by an insurance company (the "Carrier") authorized to do business in the State of Hawaii (an "Admitted Carrier") or by a company not authorized to do business in the State of Hawaii (a "non-Admitted Carrier") only through a general insurance agent or broker licensed in the State of Hawaii. The Carrier shall be rated no less than "A -" as established by "AM Best" or "Standard and Poor" ratings.

The insurance policy, as evidenced by issuance of a Policy Endorsement shall name the County of Maui and the State of Hawaii, their departments, agencies, officers, directors, employees and agents as "Additional Insured" and shall include a duty to defend the County, and the State of Hawaii, their departments, agencies, officers, directors, employees and agents against any loss, liability, claims, and demands for injury or damage, including but limited to, claims for property damage, personal injury, or wrongful death, arising out of, or in connection with Lessee's actions and/or use of Premises.

Unless otherwise agreed to through the joint decision and discretion of the Director of the Department of Parks and Recreation and the Director of Finance, the insurance policy shall contain the following minimum requirements:

- 1) No less than a Combined Single Limit ("CSL") of liability coverage of \$1,000,000;
- 2) No erosion of limit by payment of defense costs; and
- 3) Minimum annual aggregate limit of \$2,000,000.

Prior to or upon the execution of this Agreement, Lessee shall furnish the Lessor with a copy of the insurance policy certificate together with the required endorsements verifying such insurance coverage. If the scheduled expiration date of a

current insurance policy is sooner than the specified termination date of this Lease, the Lessee shall, upon renewal of the insurance policy, provide the County with a copy of the renewed insurance policy certificate together with the required endorsements throughout the term of this Lease. Unless waived by the County and the State of Hawaii, the insurance policy shall expressly state that the coverage provided under such policy shall not be cancelled or terminated, unless the Carrier has first given Lessor thirty (30) calendar days prior written notice of the intended cancellation or termination.

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

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

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

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

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

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

26. Lessee's Right to Terminate. If Lessee is not in default of the terms of this Lease to be observed and performed, Lessee may terminate this Lease by giving Lessor at least sixty (60) days prior written notice of such termination.

27. Surrender of Premises. At the expiration, revocation, cancellation or termination of this Lease, Lessee shall peaceably surrender the Premises, together with all improvements existing or constructed thereon, unless provided otherwise. On or before the last day of the term or the sooner termination thereof, Lessee, if not then in default, shall remove all trade fixtures, operating equipment and other personal property of Lessee from the Premises and repair any damage occasioned by any such removal. Property not so removed shall be deemed abandoned by Lessee.

28. Termination. If Lessee becomes bankrupt, dissolves, becomes inactive, or abandons the leased Premises for a period of four (4) consecutive months, or if this Lease and the leased Premises shall be attached or otherwise taken by operation of law, or if any assignment be made of Lessee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, obligations, rules, regulations, provisions, terms and conditions, and such failure shall continue for a period of more than thirty (30) days after delivery by Lessor of a written notice of such breach or default,

by personal service, registered mail or certified mail to Lessee at Lessee's last known address, all rights granted hereunder to Lessee shall cease and this Lease shall terminate without prejudice to any other remedy or right of action for arrears of rent or damages or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of Lessor, subject to any valid mortgages against the property.

29. Covenant Against Discrimination. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, sex, sexual orientation, age, religion, color, ancestry, national origin, disability, marital status, arrest and court record, assignment of income for child support obligations, and National Guard participation.

30. ADA Compliance. Lessor makes no representations or warranties, express or implied, as to the Premises or any existing improvements thereon, regarding compliance with the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§12101-12213 (2000), as amended. Lessee shall be responsible for complying with the ADA and Lessee shall defend, indemnify and hold harmless Lessor against any and all claims regarding non-compliance with any requirement of the ADA. All costs relating to any required improvements or modifications to the Premises, and any existing improvements thereon, shall be borne by Lessee. Notwithstanding any other provision of this Lease to the contrary, any improvements to the Premises constructed by Lessee shall be in compliance with the ADA.

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

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

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

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

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

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



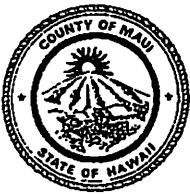
party shall have designated for such purpose by notice to the other party or parties.

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

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

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

**END OF EXHIBIT "E"**



## 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.

### INSTRUCTIONS

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 " E "