

COUNCIL OF THE COUNTY OF MAUI
**ECONOMIC DEVELOPMENT, ENERGY,
AGRICULTURE, AND RECREATION
COMMITTEE**

July 7, 2015

**Committee
Report No. _____**

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Economic Development, Energy, Agriculture, and Recreation Committee, having met on June 16, 2015, makes reference to County Communication 15-92, from the Director of Parks and Recreation, transmitting a proposed resolution entitled "AUTHORIZING A GRANT OF A LEASE OF COUNTY RECREATIONAL SPACE TO LAE`ULA O KAI".

The purpose of the proposed resolution is to authorize the grant of a 14-year lease, for \$100 a year, of County recreational space consisting of approximately 6,470 square feet at Kanaha Beach Park, identified as TMK: (2) 3-8-001:119 (por.), in Kahului, Maui, Hawaii, to Lae`ula O Kai ("Club"), a nonprofit organization, for the purposes of perpetuating Hawaiian cultural practices and other related canoe club activities.

Your Committee notes the State of Hawaii is the owner of the property, and, through Executive Order No. 2358, assigned management and control of the property to the County.

Your Committee further notes Section 3.36.090, Maui County Code, requires Council approval of any grant of County real property at less than fair market value.

At the request of the Chair of your Committee, the Club's Head Coach provided an overview of the program's mission, activities and accomplishments. She informed your Committee the Club was founded at Kanaha Beach Park in Kahului, Maui, through an Adopt-A-Park program in 1991 as a multigenerational canoe club, and received nonprofit status in 2000.

COUNCIL OF THE COUNTY OF MAUI

ECONOMIC DEVELOPMENT, ENERGY, AGRICULTURE, AND RECREATION COMMITTEE

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**Committee
Report No.** _____

The Coach further informed your Committee the Club strives to live up to its name, Lae`ula O Kai, which, translated from Hawaiian to English, means "well-trained and wise in the ways of lowlands and seas." The Club coaches participants of all ages in paddling; supports community events, such as canoe making from Polynesia, Hawaiian traditional fish hook making, and rope making with bark from "kuala hau," a local tree; and provides opportunities for members to participate, with adult supervision, in related events (e.g., Paddle for Life, Cancer Awareness Paddle). The Coach stated the Club shares its canoes and paddles with others, including Maui Language Institute students from University of Hawaii Maui College, 8th-grade students from Kamehameha Schools Maui, the Department of Police, junior lifeguards, international paddling groups, and local high schools for use in Maui Interscholastic League activities.

The Coach stated the Club cares for the land, or malama aina, by planting trees, caring for the dunes, and doing volunteer cleanup work at Kaa Point and Maliko Gulch.

The Director of Parks and Recreation stated the Department fully supports the Club. He also advised your Committee the terms of leases for canoe clubs in the County are varied, and he would support a longer lease term for the Club.

A Deputy Corporation Counsel stated revising the lease term would require approval by the State Department of Land and Natural Resources, as the property is owned by the State, and recommended approving the lease then seeking to extend the lease term at a later time.

Your Committee commended the Club for its excellent work and expressed a willingness to consider amending the lease in the future to lengthen the term.

COUNCIL OF THE COUNTY OF MAUI

ECONOMIC DEVELOPMENT, ENERGY, AGRICULTURE, AND RECREATION COMMITTEE

Page 3

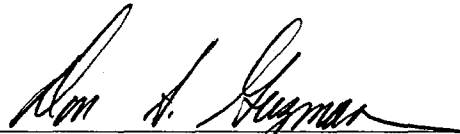
Committee
Report No. _____

Your Committee voted 5-0 to recommend adoption of the resolution and filing of the communication. Committee Chair Guzman, Vice-Chair Cochran, and members Couch, Crivello, and White voted "aye". Committee members Hokama and Victorino were excused.

Your Economic Development, Energy, Agriculture, and Recreation Committee RECOMMENDS the following:

1. That Resolution _____, attached hereto, entitled "AUTHORIZING A GRANT OF A LEASE OF COUNTY RECREATIONAL SPACE TO LAE'ULA O KAI", be ADOPTED; and
2. That County Communication 15-92 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



DON S. GUZMAN, Chair

Resolution

NO. _____

AUTHORIZING A GRANT OF A LEASE OF COUNTY
RECREATIONAL SPACE TO LAE`ULA O KAI

WHEREAS, Lae`ula O Kai desires to obtain a lease of the property identified as Tax Map Key No. (2)3-8-001:119 (por.), area approximately 6,470 square feet; and

WHEREAS, the State of Hawaii is the owner of that certain parcel of land which Lae`ula O Kai desires to lease; and

WHEREAS, the State of Hawaii, through Executive Order No. 2358, has assigned management and control of that certain parcel of land to the County of Maui; and

WHEREAS, the proposed Lease of County Recreational Space ("Grant Agreement"), has been 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 Section 3.36.090, Maui County Code, the grant of the Lease is hereby authorized; and

Resolution No. _____

2. That the Mayor and the Director of Finance or their authorized representatives may execute the Grant Agreement and Lease; and

3. That certified copies of this Resolution be transmitted to the Mayor, the Director of Finance, the Director of Parks and Recreation, and to Lae`ula O Kai.

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui

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)3-8-001:119(por.) Total No. of Pages: _____

LAE 'ULA O KAI
LEASE OF COUNTY RECREATIONAL SPACE

THIS LEASE, made this _____ day of _____, 2015, 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 LAE 'ULA O KAI, a Hawaii nonprofit corporation, whose mailing address is Post Office Box 898, Wailuku, Maui, Hawaii 96793 hereinafter referred to as "Lessee", and collectively referred to as the "Parties";

W I T N E S S E T H:

WHEREAS, the State of Hawaii is the owner of that certain parcel of land that Lessee desires to lease a portion of; and

WHEREAS, the State of Hawaii through Executive Order No. 2358 has assigned control and management of the area to the County of Maui; and

WHEREAS, Lessee has occupied the site since 1991 and has constructed its Halau Wa`a (open-air canoe house) on the site; and

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

Lessor, for and in consideration of Lessee's covenants and agreements set forth herein, does hereby agree to grant a lease to Lessee and Lessee hereby accepts said lease on the terms and conditions set forth below:

A. Premises. The leased area comprises a 6,470 square foot area, more or less, of Kanaha Beach Park, more particularly shown on Exhibit "a-1", attached hereto and by reference incorporated herein, that is a portion of Tax Map Key No. (2) 3-8-001:119, which is set aside by Governor's Executive Order No. 2358, attached hereto and by reference incorporated herein as Exhibit "a-2", hereinafter referred to as the "Premises."

B. Use of Premises. Lessee shall use the Premises for perpetuating Hawaiian cultural practices and other related canoe club purposes. 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 upon the 30th day of June 2029, unless sooner terminated as provided herein.

D. Cancellation. The Lease shall be subject to immediate cancellation in the event of disapproval of Executive Order 2358, by the Hawaii State Legislature pursuant to Section 171-11, Hawaii Revised Statutes.

E. Rent. Lessor reserving and the Lessee yielding and paying to the Lessor the nominal rental amount of ONE HUNDRED DOLLARS (\$100) per annum, the receipt and sufficiency of which is hereby acknowledged.

F. Kanaha Beach Park. Lessee may have temporary, non-exclusive use of areas of Kanaha Beach Park, other than the Premises, that are not being used by other parties and are not scheduled for use by other parties, for small events and daily activities without obtaining a permit from Lessor. Any use of areas of the Kanaha Beach Park, other than the Premises, shall not restrict the public's use and access of the park for outdoor recreation. Lessee shall indemnify, defend, and hold harmless the Lessor, the State of Hawaii, and their respective Lessor's officers, employees, and agents from and against any and all claims for bodily injury, wrongful death and/or property damage by any persons caused by, occasioned by, arising from, or resulting from this use of Kanaha Beach Park.

G. No Disturbance: Lessee acknowledges and confirms that the Premises is a part of a public park facility used by the

general public. Lessee and anyone claiming under Lessee, shall limit their activities to the Premises covered by this Agreement and will exercise its rights in a manner causing as little interference as reasonably possible with the use of the rest of Kanaha Beach Park by Lessor and the general public. Lessee and anyone claiming under Lessee shall obey reasonable rules, regulations, instructions and/or directions of Lessor and Lessor's officers, employees, or agents with respect to same.

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

I. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "a-3" 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 containing the following information for the quarter and for the fiscal year to date:

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

K. BLNR requirements.

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

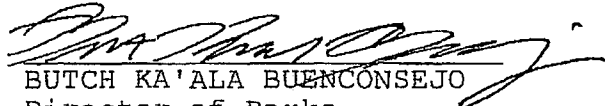
2. All uses by the Lessee shall not interfere with the functions and operations of the Kahului Airport.

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

LESSOR:

APPROVAL RECOMMENDED:


COUNTY OF MAUI


BUTCH KA'ALA BUENCONSEJO
Director of Parks
and Recreation

By _____
ALAN M. ARAKAWA
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:

By _____
DANILO F. AGSALOG
Its Director of Finance


JEFFREY OOKA
Deputy Corporation Counsel
County of Maui

S:\ALL\JTU\PARKS\AGREEMENTS\LEASES\Lae'ula O Kai\2015-02-02 rev. Lease.wpd

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LESSEE:

LAE 'ULA O KAI

By James M. Bailey
(Signature)

JAMES M. BAILEY
(Print Name)

Its PRESIDENT of LAOK
(Title)

By Sharon I. Balido
(Signature)

Sharon I. Balido
(Print Name)

Its Board of Director
(Title)

APPROVED BY THE BOARD OF LAND
AND NATURAL RESOURCES AT ITS
MEETING HELD ON: June 27, 2014
and December 12, 2014

APPROVED:

CARTY S. CHANG
Acting Chairperson
Board of Land and
Natural Resources

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STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

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

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

[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 personally appeared DANILO F. AGSALOG, to me personally known, who being by me duly sworn, did say that he is the Director of Finance of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 9-18 of the Charter of the County of Maui; and the said DANILO F. AGSALOG acknowledged the said instrument to be the free act and deed of said County of Maui.

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

[Stamp or Seal]

Notary Public, State of Hawaii

Print Name: _____

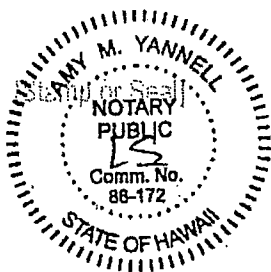
My commission expires: _____

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

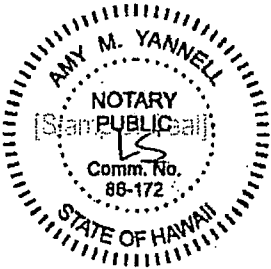
STATE OF Hawaii)
County of Maui) SS.

On this 20th day of February, 2015, before me personally appeared James H. Bailey, 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.



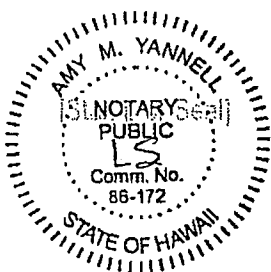
Amy M. Yannell
Notary Public, State of HAWAII
Print Name: Amy M. YANNELL
My commission expires: 4/23/18

NOTARY PUBLIC CERTIFICATION		
Doc. Date:	# Pages:	<u>12</u>
Notary Name: <u>Amy M. YANNELL</u>	Judicial Circuit:	<u>Second</u>
Doc. Description: <u>Dept. of Finance-Lease of County Recreational Space for Lae'ula O Kai</u>		
Notary Signature: <u>Amy M. Yannell</u>		
Date: <u>2-20-15</u>		

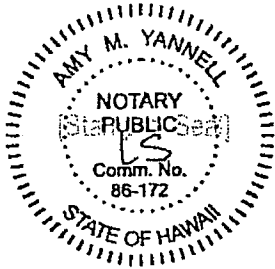
STATE OF Hawaii)
County of Maui) SS.

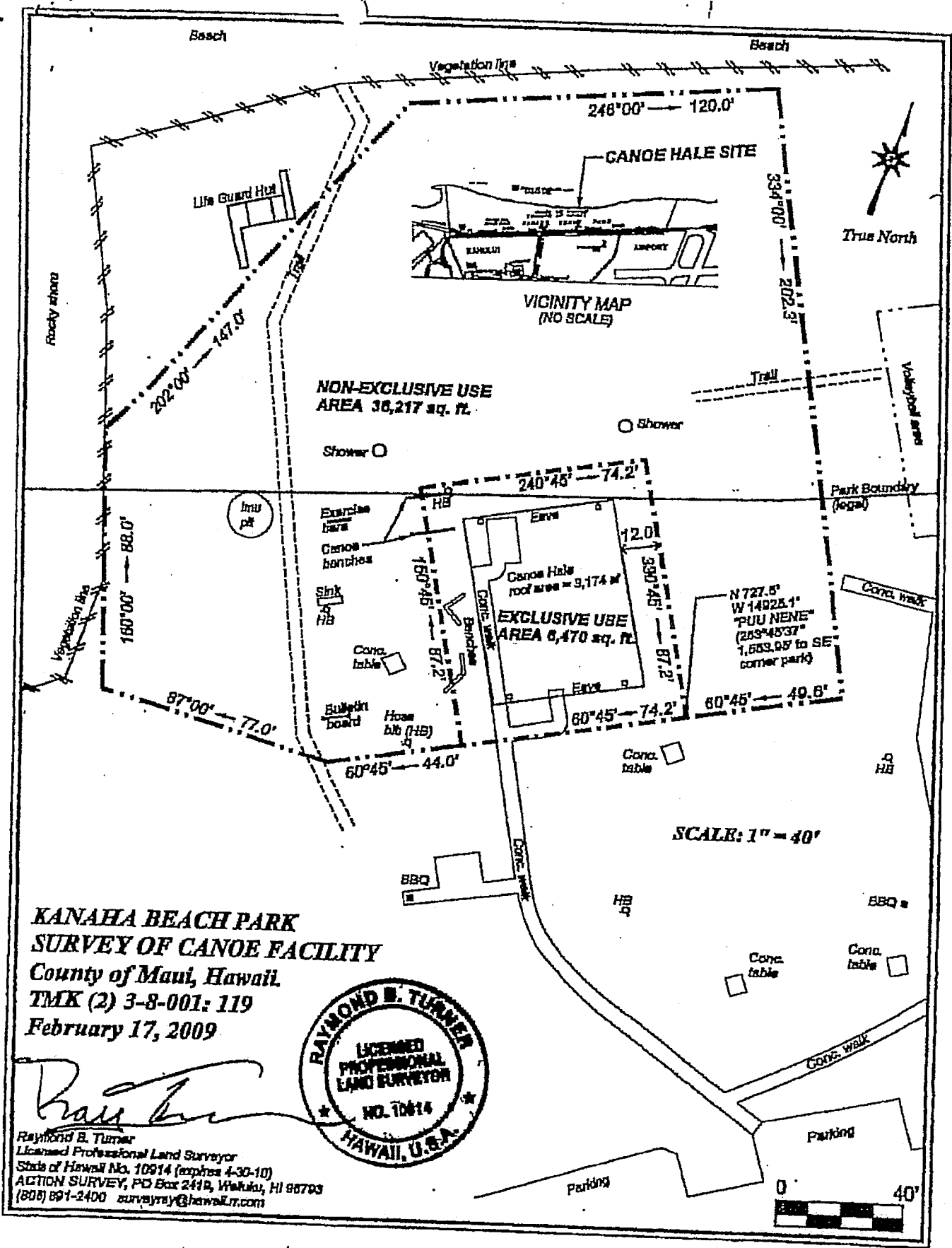
On this 20th day of February, 2015, before me personally appeared Sharon I. Balidoy, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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

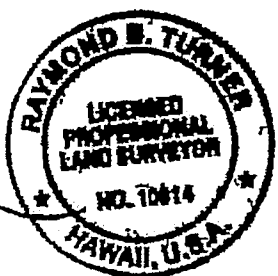


Amy M. Yannell
Notary Public, State of HAWAII
Print Name: Amy M. YANNELL
My commission expires: 4/23/18

NOTARY PUBLIC CERTIFICATION	
Doc. Date:	# Pages: <u>12</u>
Notary Name: <u>Amy M. Yannell</u>	Judicial Circuit: <u>Second</u>
Doc. Description: <u>Dept. of Finance - Lease of County Recreational Space for Lae'ula Okai</u>	
Notary Signature: <u>Amy M. Yannell</u>	
Date: <u>2-20-2015</u>	



KANAHA BEACH PARK
SURVEY OF CANOE FACILITY
 County of Maui, Hawaii
 TMK (2) 3-8-001: 119
 February 17, 2009



Raymond B. Turner
 Raymond B. Turner
 Licensed Professional Land Surveyor
 State of Hawaii No. 10614 (expires 4-30-10)
 ACTION SURVEY, PO Box 2418, Wailuku, HI 96793
 (808) 891-2400 surveysay@hawaii.com

Setting Aside Land for Public Purposes

By this Executive Order, I, the undersigned, Governor of the State of Hawaii, by virtue of the authority in me vested by Section 103A-11, Revised Laws of Hawaii 1955, as amended, and every other authority me hereunto enabling, do hereby order that the public land hereinafter described be, and the same is, hereby set aside for the following public purposes:

FOR PUBLIC BEACH PARK, to be operated and managed by the County of Maui, a political subdivision of the State of Hawaii, in a manner so as not to interfere with the operation of Kahului Airport.

KANAHA BEACH PARK

Kahului, Wailuku, Maui, Hawaii

Being a portion of Grant 3343 to Claus Spreckels

Being also a portion of Parcel 1 conveyed to the Territory of Hawaii by the United States of America by quitclaim Deed dated December 10, 1956, recorded in Liber 4250, Page 299 (Land Office Deed 16432) and modified by Deed dated August 11, 1965 (Land Office Deed S-18727)

Being also all of Parcels 1, 2 and 3 and portions of Parcels 7-A, 7-B and 8-A of Civil Action Number 564.

Beginning at the southeast corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU NENE" being 885.40 feet North and 13,354.36 feet West, thence running by azimuths measured clockwise from True South:-

1. 65° 00' 3950.00 feet along the remainder of Grant 3343 to Claus Spreckels;
2. 155° 00' 970.03 feet along the remainder of Grant 3343 to Claus Spreckels to highwater mark at seashore;

Thence along highwater mark at seashore for the next twelve (12) courses, the direct azimuths and distances between points on said highwater mark being:

- | | | |
|-----|--------------|---|
| 3. | 244° 50' | 197.53 feet; |
| 4. | 261° 30' | 650.00 feet; |
| 5. | 256° 00' | 770.00 feet; |
| 6. | 249° 10' | 940.00 feet; |
| 7. | 244° 44' | 315.10 feet; |
| 8. | 233° 40' | 460.00 feet; |
| 9. | 236° 36' | 199.93 feet; |
| 10. | 240° 00' | 110.00 feet; |
| 11. | 251° 24' | 91.77 feet; |
| 12. | 243° 28' 30" | 150.20 feet; |
| 13. | 243° 20' | 320.00 feet; |
| 14. | 253° 55' | 122.33 feet; |
| 15. | 360° 00' | 756.43 feet along the remainder of Grant
3343 to Claus Spreckels to the
point of beginning and contain-
ing an AREA OF 66.1 ACRES. |

SUBJECT, HOWEVER, to Easement 2 as reserved to the Hawaiian Commercial and Sugar Company, Limited, its successors and assigns, by that certain Order and Judgment on Declaration of Taking, filed August 10, 1945, in Civil Action Number 564 in the District Court of the United States for the State of Hawaii.

SUBJECT, ALSO, TO:

1. The rights of the Federal Government now existing or as they may hereafter exist and the responsibility of the State of Hawaii to comply with any and all of its obligations to the Federal Government.
2. The right of the State to withdraw said public land, in whole or in part, (a) for airport purposes; or (b) whenever said public land, or portion thereof, shall cease to be used for the purpose specified herein; or (c) whenever required by any agreement now in force or which may hereinafter be in force between the State of Hawaii and the United States of America, including but not limited to grant agreements and Land Office Deeds 16432 and S-18727, aforesaid.

3. Compliance with and observance of all State and Federal rules, regulations and statutes, including but not limited to Public Law 82-377, as amended by Public Law 87-654, pertaining to and affecting the use of said public land.

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

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of Hawaii to be affixed. Done at the Capitol at Honolulu this 9th day of January, Nineteen Hundred and 68.

Approved as to form:

Samuel M. Jimin
Deputy Attorney General

John A. Burns
Governor of the State of Hawaii

mm
Proofed by: W

Dated: 1/2/68

-3-

State of Hawaii

Office of the Lieutenant Governor

2358

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

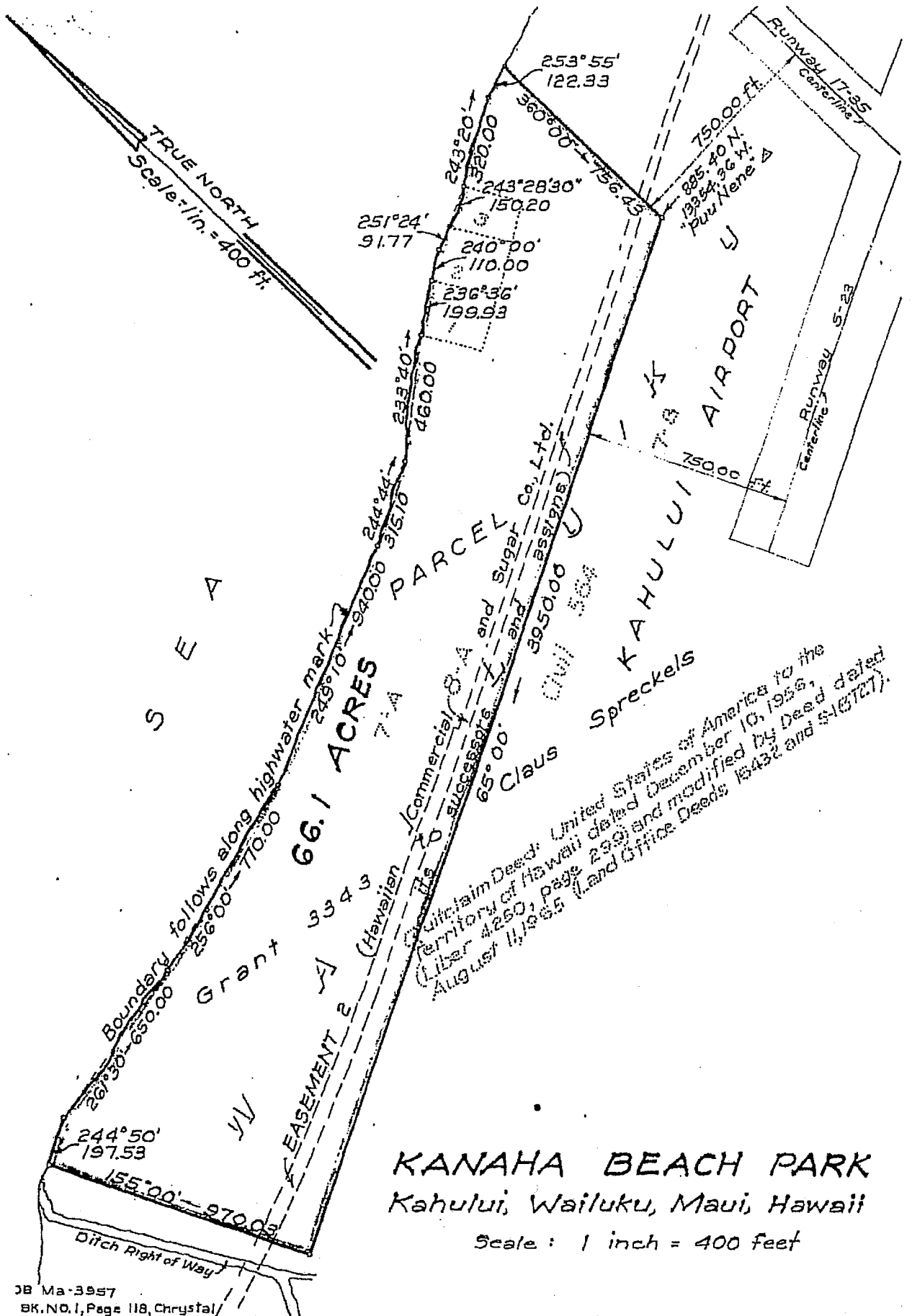
In Testimony Whereof, the Lieutenant Governor of the
State of Hawaii, has hereunto subscribed his name
and caused the Great Seal of the State to be affixed.

DONE in Honolulu, this day of
....., A.D. 19.....

Executive Order No. 2273

Setting Aside Land for
Public Purposes

Land
Purpose
Date



JB Ma-3957
BK. NO. 1, Page 118, Crystal

IX MAP 3-8-01

S. F. No. 15,430

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

J.C. Dec. 27 1967

EXHIBIT "a-3"

COVENANTS, TERMS AND CONDITIONS

RESERVING UNTO THE STATE OF HAWAII THE FOLLOWING:

1. Minerals and Waters.

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

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

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

LESSEE HEREIN COVENANTS AND AGREES WITH LESSOR AS FOLLOWS:

1. Taxes, Assessments, Etc. Lessee shall pay or cause to be paid, prior to delinquency, any taxes and assessments, of every description, as to said Premises, or any part thereof, including any improvements thereon; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay

only such installments, together with interest, as shall become due and payable during said term. Without limiting the generality of the foregoing, Lessees shall also be responsible for the payment of any Hawaii general excise tax (or successor tax) imposed upon the payment of all sums by Lessee under this Lease. Lessee shall remain current in payment of all taxes, rents, or other obligations to the United States, the State of Hawaii, or any of its political subdivisions, including the County of Maui.

2. Utility Services. Lessee shall pay, prior to delinquency, all charges for water, sewer, gas, electricity, telephone and other services or utilities used by Lessee on the Premises during the term of the Lease unless otherwise expressly agreed to in writing by Lessor.

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. Lessee shall indemnify, defend, and save Lessor and the State of Hawaii harmless against and from any and all suits, claims, damages, judgments, costs and expense, including reasonable attorney's fees, arising from the Lessee's use of the Premises or 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 Lessee) by reason of any such claim, even though such claim be based on alleged fault of Lessor, the State of Hawaii, or both, Lessee agrees to pay the reasonable costs and expenses thereof, secured against Lessee by reason of such action or proceeding. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

5. Costs of Litigation. In case Lessor and/or the State of Hawaii, without any fault on their respective parts, is made a party to any litigation commenced by or against Lessee (other than condemnation proceedings), Lessee shall pay all costs and expenses, including attorneys fees, incurred by or imposed on Lessor and/or the State of Hawaii. Lessee shall pay all costs and expenses, including attorneys fees, which may be incurred by or paid by Lessor and/or the State of Hawaii in enforcing the covenants,

obligations, rules, regulations, provisions, terms and conditions of this Lease, in recovering possession of the Premises, or in the collection of delinquent rent, taxes, and any and all other charges. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

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

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

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

9. Liens. Lessee shall not commit or suffer any act of neglect whereby the Premises, or any part thereof, or the estate of Lessee in the same, shall become subject to any attachment, judgment, lien, charge, or encumbrance (hereinafter collectively called "Lien"), whatsoever. In the event that any Lien shall attach to or encumber the Premises, or if an application for a Lien is filed in any court of competent jurisdiction, Lessee shall bond against or discharge the same within ten (10) days after written

request by Lessor. Lessee shall indemnify, defend and hold harmless the Lessor and the State of Hawaii from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom, including attorney's fees.

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

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

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

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

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

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

the Premises at the commencement of this Lease, as well as any trees that are growing on the Premises during the duration of the this Lease.

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

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

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

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

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

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

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

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

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

Prior to or upon the execution of this Agreement, Lessee shall furnish the Lessor with a copy of the insurance policy certificate together with the required endorsements verifying such insurance coverage. If the scheduled expiration date of a current insurance policy is sooner than the specified termination date of this Lease, the Lessee shall, upon renewal of the insurance policy, provide the County with a copy of the renewed insurance policy certificate together with the required endorsements.

Unless waived by Lessor 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 and the State of Hawaii thirty (30) calendar days prior written notice of the intended cancellation or termination.

If at any time, and from time to time, a higher limit or other requirements shall be deemed appropriate, customary, or necessary, in the reasonable discretion of the Director, the BLNR, or both, Lessee shall obtain and maintain such coverage.

20. Property Insurance. Lessee shall, unless otherwise agreed to through the joint decision and discretion of the Director of the Department of Finance and the Director, procure and, during the entire term of this Lease, keep in force and effect special form property insurance covering all of Lessee's leasehold improvements, trade fixtures, inventory, equipment and personal property from time to time in, on or upon the Premises, in an amount not less than the full replacement cost thereof without deduction for depreciation, providing protection against all risks of loss not otherwise excluded for the Premises, together with insurance against sprinkler damage, vandalism, and malicious mischief, including demolition and debris removal and extended coverage, hurricane/wind coverage, and with inflation guard endorsement, if available in any insurance company qualified to do business in the State of Hawaii and shall, from time to time, deposit promptly with Lessor the policy and premium receipts therefor or a current certificate that such insurance is in full force and effect and shall not be cancelled without written notice to Lessor sixty (60) days prior to the effective date of such cancellation. All such policies shall be made payable to Lessor

and Lessee as their interests may appear (it being understood and agreed that Lessor's interest shall be limited to permanent fixtures and other installations which are not removable by Lessee upon the termination of this Lease), and shall provide for a deductible of not more than \$5,000.00. All policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease shall cease and terminate in accordance with the provisions of this Lease.

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

22. Condemnation. If at any time during the term of this Lease any portion of the leased Premises should be condemned or required for public purposes by the State of Hawaii or the United States, Lessee shall be entitled to receive from the condemning authority the proportionate value of Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of this Lease; provided that Lessee may, in the alternative, remove and relocate Lessee's improvements to the remainder of the Premises occupied by Lessee. Lessee shall not by reason of the condemnation be entitled to any claim against Lessor for condemnation or indemnity for its interest in this Lease and all compensation payable or to be paid for or on account of this Lease by reason of the condemnation, except as aforesaid as to Lessee's improvements, shall be payable to and be the sole property

of Lessor. Where the portion taken renders the remainder unsuitable for the use or uses for which the land was leased, Lessee shall have the option to surrender this Lease and be discharged and relieved from any further liability therefor; provided that Lessee may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by Lessor. The foregoing right of Lessor shall not be exclusive of any other to which Lessor may be entitled by law.

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

24. Sublease. Lessee may, with written approval of the Director and the BLNR, sublease the demised premises.

25. 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.

26. 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.

27. 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 there on shall remain and become the property of Lessor, subject to any valid mortgages against the property, subject to the provisions of Section 171-21, Hawaii Revised Statutes.

28. 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.

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

30. 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.

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

32. 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.

33. 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.

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

35. 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 "a-3"