

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

March 9, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF#07MD-077
Maui

Consent to Lease of Lands under Governor's Executive Order No. 4087 to The County of Maui at Waiohuli-Keokea Beach Homesteads, Maui, Hawaii, Tax Map Key: (2) 3-9-007:003 and Portion of 005.

CONTROLLING AGENCY:

County of Maui

APPLICANT:

Veterans of Foreign Wars of the United States Wilbert Wah Hutom Post 3850.

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes, as amended.

ZONING:

State Land Use District: Urban
County of Maui CZO: A-1, Apartment District (2- Story)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES _____ NO x

CURRENT USE STATUS:

Governor's Executive Order No. 4087 to The County of Maui for Veterans Center and Community Support Activity Purposes.

LEASE TERMS & CONDITIONS:

LOCATION:

Portion of Government lands of Waiohuli-Keokea Beach Homesteads situated at Kihei, Wailuku, Maui, identified by Tax Map Key: (2) 3-9-007:003 and portion of 005, as shown on the attached map labeled Exhibit A.

AREA:

1.880 acres, or 81,880 sq. ft., more or less.

Survey map of the proposed VFW lease area labeled Exhibit B.

CHARACTER OF USE:

Veterans Center and Community Support purposes.

TERM:

This lease shall commence upon execution and expire upon the 30th day of June 2026.

RENT AMOUNT:

\$100.00 per annum.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The controlling agency shall be responsible for ensuring compliance with Chapter 343, HRS.

DCCA VERIFICATION:

Place of business registration confirmed:	YES	<u> x </u>	NO	<u> </u>
Registered business name confirmed:	YES	<u> x </u>	NO	<u> </u>
Applicant in good standing confirmed:	YES	<u> x </u>	NO	<u> </u>

REMARKS:

Pursuant to the Board approval of December 15, 1972, Item F-1-d, the Veterans of Foreign Wars of the United States Wilbert Wah Hutom Post 3850, had occupied the subject premises under Revocable Permit No.S-4892. At its September 27, 1996 meeting the Land Board authorized the cancellation of Revocable Permit No. S-4892, and intended to replace the month-to-month permit with a long term disposition of a General Lease. However, due to changes in membership and leadership positions a lease agreement was never finalized.

Maui County Mayor Alan Arakawa expressed his support for the Veterans of Foreign Wars and the use of the subject facility. He then requested control over the property with the intent to negotiate a long-term lease agreement between the County of Maui and the VFW, to allow for their continued use of the facility.

At its September 24, 2004 meeting under agenda Item D-9, the Land Board approved to recommend to the Governor the issuance of a set aside to the County of Maui, for a Veterans Center and Community Support Activities. On November 29, 2004, the Governor signed Executive Order No. 4087.

On October 14, 2010, the Land Board approved a set aside of an additional 64,560 sq. ft. of State Beach Reserve land to the County of Maui for the expansion of the existing VFW facility. This increase in space now provides a new total area of 1.880 acres or 82,880 square feet, which will be managed by the VFW in support of their organization and a variety of community support activities.

The County of Maui is now requesting the Board's consent for a long-term lease agreement between itself and the Veterans of Foreign Wars of the United States Wilbert Wah Hutom Post 3850 under the terms and conditions of the attached lease labeled as Exhibit C. There will be no change in use of the subject area and it is consistent with the purpose of the set aside.

RECOMMENDATION:

That the Board consent to the lease between The County of Maui and the Veterans of Foreign Wars of the United States

Wilbert Wah Hutom Post 3850, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following:


1. Review and approval by the Department of the Attorney General; and
2. A public pedestrian access corridor from Uluniu Road to the shoreline, shall remain open and accessible along the southern boundary of the property.
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Larry Pacheco, Land Agent

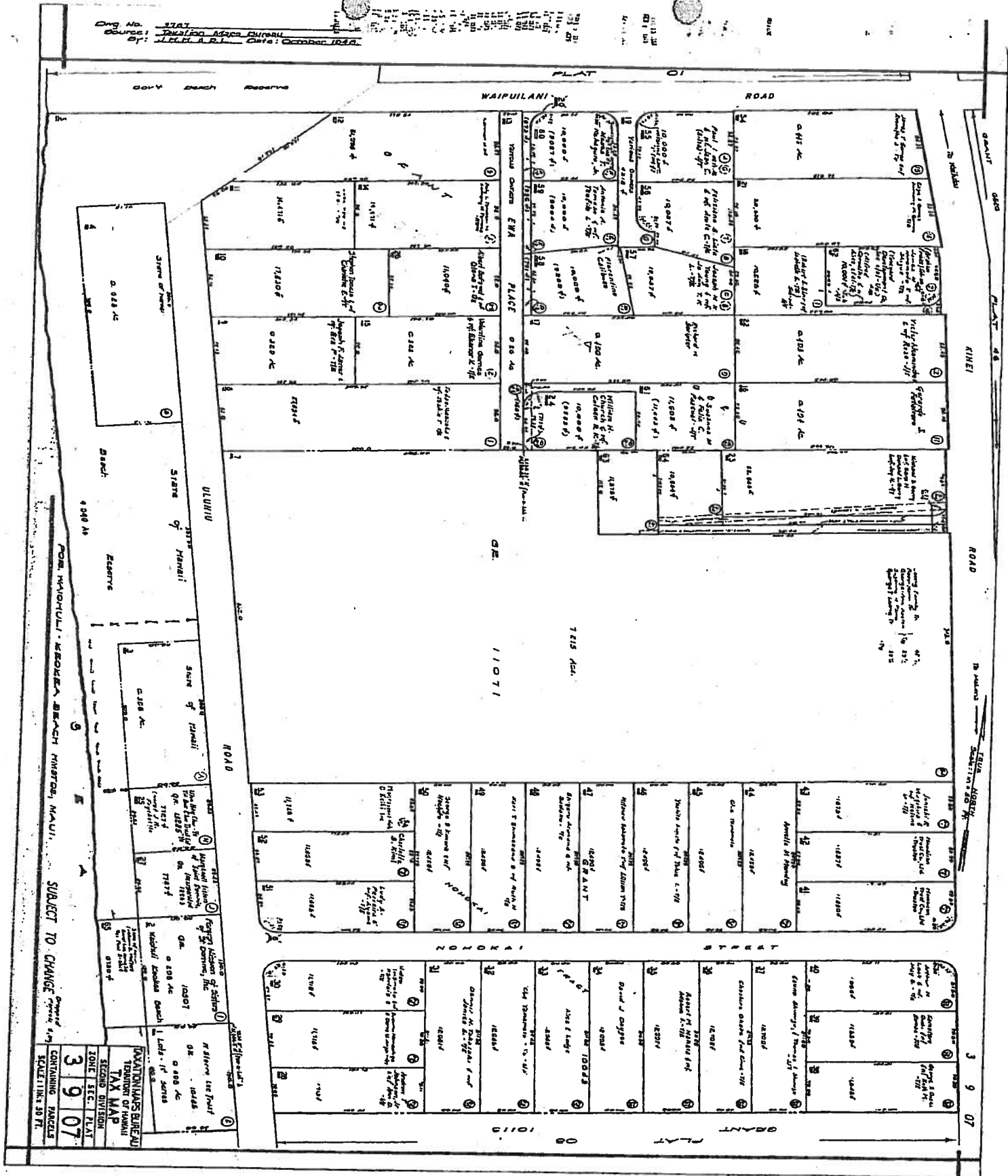
APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

✓

Orig. No. 3747
 Source: Division Maps Bureau
 Date: October 1924

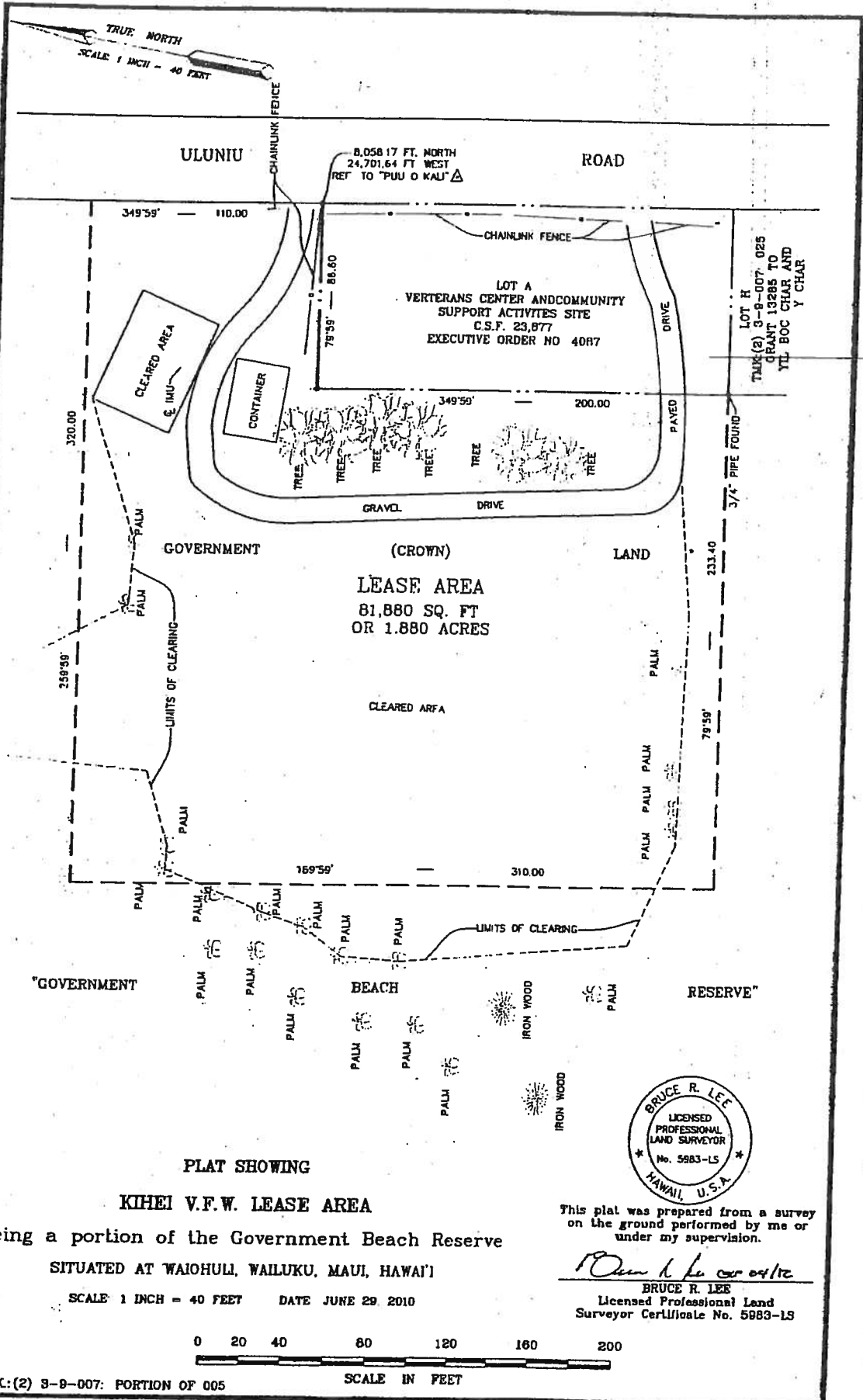


FOR KAHULUI BEACH RESERVE, MAUI

SUBJECT TO CHANGE

DAVIDSON MAPS BUREAU
 TENDERS OF HAWAII
 TAX MAP
 SECOND DIVISION
 ZONE SEC. PLAT
 3 9 07
 CONTAINING PARCELS
 SCALE 1:1000 30 FT.

EXHIBIT A



T.M.K.: (2) 3-9-007: PORTION OF 005

SCALE IN FEET

EXHIBIT "B"

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 Nos.: (2) 3-9-007:003
(2) 3-9-007:005 (por)

Total No. of Pages: _____

**VETERANS OF FOREIGN WARS
VETERANS CENTER
AND
COMMUNITY SUPPORT ACTIVITIES SITE
LEASE**

THIS LEASE, made this _____ day of _____, 2011, 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 VETERANS OF FOREIGN WARS OF THE UNITED STATES WILBERT WAH HUTOM POST 3850, a Hawaii nonprofit corporation, whose mailing address is 518 Hilinai Street, Wailuku, Maui, Hawaii 96793-9426 hereinafter referred to as "Lessee", and collectively referred to as the "Parties";

EXHIBIT " C "

W I T N E S S E T H:

WHEREAS, the State of Hawaii is the owner of those certain parcels of land that the Veterans of Foreign Wars "Veterans Center and Community Support Activities Site" and the "Addition to the Veterans Center and Community Support Activities Site" is on; and

WHEREAS, the Lessee has occupied the site since 1972 under a revocable permit issued by the State of Hawaii; and

WHEREAS, the State of Hawaii through Executive Order Nos. 4087 and 4342 has assigned control and management of the area to the County of Maui; and

WHEREAS, the County of Maui supports Lessee and hopes to assist Lessee by issuing this Lease so that Lessee may continue its occupation of 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 Premises shall comprise the area known as the "Veterans Center and Community Support Activities Site", situate at Waiohuli, Wailuku, Maui, Hawaii, and identified as Tax Map Key No. (2) 3-9-007:003, set aside by Governor's Executive Order No. 4087, containing an area of approximately 0.398 acres, more particularly described and shown on Exhibit "a-1", attached hereto and made a part hereof, along with the area known as the "Addition to the Veterans Center and Community Support Activities Site", situate at Waiohuli, Wailuku, Maui, Hawaii, and identified

as Tax Map Key No. (2) 3-9-007:005(por.), set aside by Governor's Executive Order No. 4342, containing an area of approximately 1.880 acres, more particularly described and shown on Exhibit "a-2", attached hereto and made a part hereof, hereinafter collectively referred to as the "Premises".

B. Use of Premises. Lessee shall use the Premises solely for Veterans Center and Community Support Activity 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 2026, unless sooner terminated as provided herein.

D. Cancellation. The Lease shall be subject to immediate cancellation in the event of disapproval of either Executive Order 4342 or Executive Order 4087, 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 a rental of ONE HUNDRED AND NO/100 DOLLARS (\$100.00) per annum, payable to the County of Maui, Department of Finance, at Lessor's address designated herein or as otherwise designated in writing by Lessor to Lessee.

F. 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.

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

GLENN T. CORREA
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 UEOKA
Deputy Corporation Counsel
County of Maui

S:\ALL\JTU\PARKS\AGREEMENTS\LEASES\VFW Lease\VFW Lease (with AG comments 2).wpd

LESSEE:

APPROVED BY THE BOARD OF LAND
AND NATURAL RESOURCES AT ITS
MEETING HELD ON: _____

VETERANS OF FOREIGN WARS OF THE
UNITED STATES WILBERT WAH HUTOM
POST 3850

APPROVED:

By _____
(Signature)

Chairperson
Board of Land and Natural
Resources

(Print Name)

Its _____
(Title)

By _____
(Signature)

(Print Name)

Its _____
(Title)

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: _____	

Notary Signature: _____	
Date: _____	

[Stamp or Seal]

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 20____, before me 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: _____	

Notary Signature: _____	
Date: _____	

[Stamp or Seal]

STATE OF _____)
) SS.
)
_____)

On this _____ day of _____, 20____, before me personally appeared _____, 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]

Notary Public, State of _____

Print Name: _____

My commission expires: _____

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

Notary Signature: _____	
Date: _____	

[Stamp or Seal]

STATE OF _____)
) SS.
)
_____)

On this _____ day of _____, 20____, before me personally appeared _____, 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]

Notary Public, State of _____

Print Name: _____

My commission expires: _____

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

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

EXHIBIT "a-3"
COVENANTS, TERMS AND CONDITIONS

RESERVING UNTO LESSOR THE FOLLOWING:

1. Minerals and Waters.

A. All minerals as hereinafter defined, in, on or under the Premises and the right, on the State of Hawaii's own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such materials by any means whatsoever including strip mining. "Minerals" as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver bauxite, bauxitic clay, 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 Lessor 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 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 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 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 arise 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, State of Hawaii, or both (in addition to Lessee) by reason of any such claim, even though such claim be based on alleged default 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. 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 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 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 and the State of Hawaii 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. 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.

9. 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.

10. 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.

11. 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 time remain, the property of the Lessor.

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

13. 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 the 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.

14. Hazardous Materials. Lessee shall at all times, at its own cost and expense, comply with all federal, state and local laws, ordinances, regulations and standards relating to the use, analysis, production storage, sale, disposal or transportation of any hazardous materials, including oil or petroleum products or their derivatives, solvents, PCB's, explosive substances, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, contaminating or polluting materials which are now or in the future subject to any governmental regulation (hereinafter collectively referred to as "hazardous substances"). Prior to commencing use of the Premises for any activity involving the storage, use, or distribution of (a) any hazardous substance, or (b) products or materials which (I) include any hazardous substance as a component and (ii) which, if an accident occurred, might result in the release or discharge of any hazardous substance, Lessee shall give written notice of such proposed use to Lessor. Such notice shall set forth (a) the proposed use and the hazardous substance involved, (b) a hazardous substance management plan describing the actions taken or proposed to be taken by Lessee to assure Lessee's compliance with the requirements of this Lease, and (c) evidence of insurance or other financial resources available to Lessee sufficient to assure Lessee's ability to comply with its obligations. Upon the expiration or earlier termination or revocation of this Lease, Lessee shall (a) cause all hazardous substances previously owned, stored, or used by Lessee to be removed from the Premises and disposed of in accordance with

applicable provisions of law; (b) remove any storage tanks or containers installed or used by Lessee to store any hazardous substances and repair any damage caused by such removal; (c) cause any soil or other portion of the Premises which has become contaminated by any hazardous substances stored or used by Lessee to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of cognizant governmental authorities; and (d) surrender possession of the Premises to Lessor free of the presence or effects of any hazardous substances generated or used by Lessee in, on, or about the Premises during the term of this Lease. Lessee shall indemnify and hold harmless Lessor and the State of Hawaii from and against any and all claims relating to hazardous materials arising from this Lease. The obligations of Lessee under this section shall survive the expiration or earlier termination of the Lease without limitation.

15. 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.

16. 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 operation Veterans Center and Community Support Activities Site, as deemed necessary in the judgment of Lessor and, if applicable, the BLNR.

17. 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 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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 or 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

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

32. 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.

33. 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"