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Mike White

Vice-Chair  
Don S. Guzman

Presiding Officer Pro Tempore  
Michael P. Victorino

Councilmembers  
Gladys C. Baisa  
Robert Carroll  
Elle Cochran  
Don Couch  
Stacy Crivello  
Riki Hokama



Director of Council Services  
David M. Raatz, Jr., Esq.

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

September 22, 2015

MEMO TO: Patrick K. Wong  
Corporation Counsel

F R O M: Don S. Guzman, Chair   
Economic Development, Energy, Agriculture, and Recreation  
Committee

SUBJECT: **LEASE AND LICENSE OF COUNTY-CONTROLLED PARCELS TO FRIENDS OF MOKU`ULA, INC. (LAHAINA)** (EAR-2)

On January 2, 2002, the County of Maui executed two agreements in favor of Friends of Moku`ula, Inc. ("FOM"): (1) a lease for 35 years over a parcel of approximately 2 acres for rent of \$1 per year; and (2) a license for 20 years over a parcel of approximately 2.7 acres for rent of \$1 per year. The leased property is identified as tax map key (2) 4-6-007:001, and the licensed property, as tax map key (2) 4-6-007:002 (por.) and 036.

At the time of the lease and license, the properties included an existing parking lot.

On May 1, 2003, the County and FOM executed amendments to both the lease and license to allow FOM to operate a parking concession on the premises as an incidental use, subject to review and approval by the Council at the end of the first three years, and then every five years thereafter, during the term of the lease and license, respectively.

To date, the Council has not completed any review and approval of FOM's operation of the parking concession.

By letter dated October 24, 2011, two proposed resolutions authorizing FOM to continue operation of the parking concessions were referred to the Economic Development, Energy, Agriculture, and Recreation Committee. Copies of the resolutions, with the lease, license, and amendments, are attached.

Patrick K. Wong  
September 22, 2015  
Page 2

At its meeting of September 15, 2015, the Committee initiated its overdue review of FOM's operation of the parking concession from its inception in 2002, and raised a number of questions. To assist the Committee, may I please request that you provide responses to the following:

1. Given FOM's operation of the parking concession has not been reviewed and approved by the Council as required by Section 10 of the first amendments to the lease and license, is it proper for Friends of Moku'ula, Inc. ("FOM") to operate the concession now? If not, has FOM's right to use the parking concession automatically terminated, or does it continue until the Council takes action to disapprove and terminate it?
2. Assuming the parking concession is operated by a contractor, Diamond Parking Services, pursuant to a contract with FOM's wholly-owned for-profit subsidiary, Ka Lua O Kiha, Inc. ("KLK"), does the operation comport with FOM's obligations under the lease and license, as amended? A copy of a 2009 contract, received from the Department of Parks and Recreation, is attached.
3. Please provide a general explanation of the parameters of permissible use by a nonprofit of a wholly-owned for-profit subsidiary, in the context of FOM's structure and operation with KLK. In your response, please consider whether it is lawful for a nonprofit to confer direct financial benefits to a for-profit or vice versa; and for the two entities to commingle of funds or share staff, officers, directors, gross income and expenses.

I would appreciate receiving a response by **October 2, 2015**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Sharon Brooks at ext. 7137, or Pauline Martins at ext. 8039).

ear:ltr:002acc01:scb

Attachments

ALAN M. ARAKAWA  
Mayor



GLENN T. CORREA  
Director

RECEIVED  
TRICK T. MATSUI  
Deputy Director

2011 OCT 26 AM 11:04  
(808) 270-7230  
OFFICE OF THE MAYOR (808) 270-7934

**DEPARTMENT OF PARKS & RECREATION**

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

October 24, 2011

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

RECEIVED  
2011 OCT 31 AM 11:04  
OFFICE OF THE  
COUNTY CLERK

For Transmittal to:

Honorable Danny A. Mateo, Chair  
and Members of Maui County Council  
200 South High Street  
Wailuku, Hawaii 96793

**APPROVED FOR TRANSMITTAL**

*Alan Arakawa* 10/24/11  
\_\_\_\_\_  
Mayor Date

Dear Chair Mateo and Members:

**SUBJECT: PROPOSED RESOLUTIONS AUTHORIZING THE CONTINUED OPERATION OF PARKING LOT CONCESSIONS BY THE FRIENDS OF MOKU'ULA INC., PURSUANT TO THE FIRST AMENDMENTS TO LEASE AND LICENSE DATED MAY 1, 2003**

I am transmitting two proposed resolutions entitled, "AUTHORIZING THE CONTINUED OPERATION OF A PARKING LOT CONCESSION BY THE FRIENDS OF MOKU'ULA, INC., PURSUANT TO THE FIRST AMENDMENT TO LEASE DATED MAY 1, 2003" and "AUTHORIZING THE CONTINUED OPERATION OF A PARKING LOT CONCESSION BY THE FRIENDS OF MOKU'ULA, INC., PURSUANT TO THE FIRST AMENDMENT TO LICENSE DATED MAY 1, 2003".

The purpose of the proposed resolutions is to allow the Friends of Moku'ula, Inc (FOM) to continue the operation of the parking lot concessions on the properties leased [Tax Map Key No. (2) 4-6-007:001] and licensed [Tax Map Key No. (2) 4-6-007:36].

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

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

Sincerely,

*Glenn T. Correa*  
GLENN T. CORREA  
Director of Parks and Recreation

Attachments  
C: Roxanne Teshima, Special Events/Grants Coordinator  
GTC:rt

**COUNTY COMMUNICATION NO. 11-30A**

# Resolution

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

AUTHORIZING THE CONTINUED OPERATION OF A PARKING LOT CONCESSION BY THE FRIENDS OF MOKU`ULA, INC., PURSUANT TO THE FIRST AMENDMENT TO LEASE DATED MAY 1, 2003

WHEREAS, the County of Maui and the Friends of Moku`ula, Inc. ("FOM") entered into that Lease agreement dated January 2, 2002, attached hereto as Exhibit "1" of Exhibit "a", for the area identified as Tax Map Key No. (2)4-6-007:001; and

WHEREAS, said Lease was amended on May 1, 2003 by the First Amendment to Lease, attached hereto and by reference incorporated herein as Exhibit "1"; and

WHEREAS, the First Amendment to Lease allows for the operation of a parking lot concession on the Leased area and FOM now desires to construct and operate a parking lot concession on the Leased area; and

WHEREAS, the License requires that the Council of the County of Maui periodically review FOM's ability to utilize the Leased area for parking lot concession purposes; now, therefore,

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

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

1. That it hereby authorizes the use of the area Leased to the Friends of Moku`ula, Inc., under the Lease dated January 2, 2002, as a parking lot concession; and

2. That certified copies of this resolution be transmitted to the Mayor; the Director of Finance; the Department of Parks and Recreation; and the Friends of Moku`ula, Inc.

APPROVED AS TO FORM  
AND LEGALITY:



JEFFREY UEOKA  
Deputy Corporation Counsel  
County of Maui

S:\ALL\JTU\RESOS\Friends of Mokuula Parking Resolution (Lease).wpd



NOW, THEREFORE, for and in consideration of the mutual promises and conditions set forth in the Agreement, the parties hereby agree as follows:

Section 10., Use of Premises., is amended in its entirety to read as follows:

"10. Use of Premises. That the Lessee shall use or allow the Premises hereby demised to be used solely to restore and preserve Moku'ula and the ponds of Mokuhinia. As an incidental use thereto, for the first three (3) years of the Lease term, Lessee shall be permitted to operate a parking concession on the Premises, the net proceeds of which shall be used by Lessee for restoration and preservation purposes. Such incidental use to operate a parking concession shall be reviewed and, in its discretion, approved by the Maui County Council by separate resolution at the end of the first three (3) years and then every five (5) years thereafter during the term of the Lease. If not approved by the Maui County Council, such incidental use shall not be permitted. Other uses shall be subject to approval in writing by the Lessor and the State of Hawaii through its Board of Land and Natural Resources."

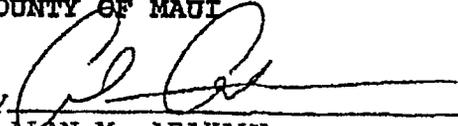
All other terms, conditions, provisions and covenants of the Lease not herein modified by this First Amendment, including the covenant to pay rent, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed these presents the day and year first above written.

LESSOR:

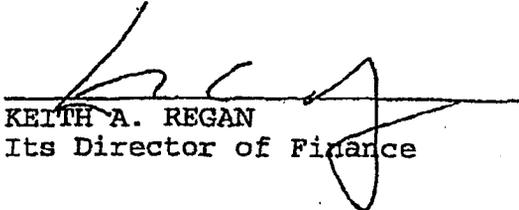
COUNTY OF MAUI

By



ALAN M. ARAKAWA  
Its Mayor

By

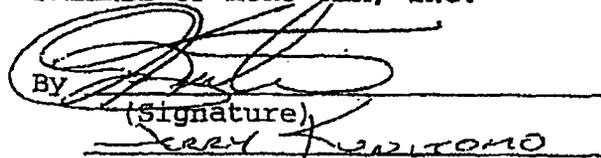


KEITH A. REGAN  
Its Director of Finance

LESSEE:

FRIENDS OF MOKU'ULA, INC.

By



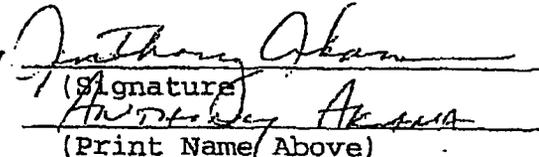
(Signature)

TERRY FURUTOMO  
(Print Name Above)

Its

PRESIDENT  
(Title)

By

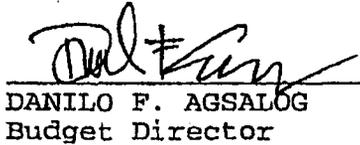


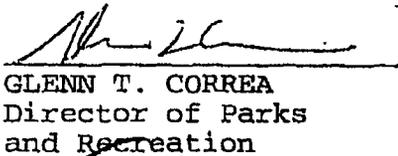
(Signature)

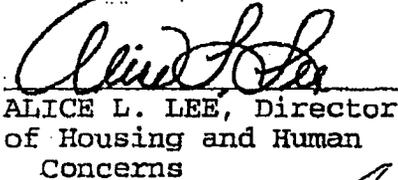
ANTHONY AKANA  
(Print Name Above)

Executive Director  
(Title)

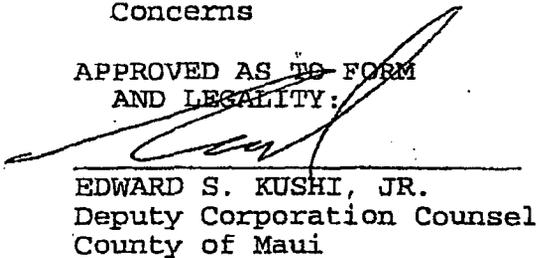
APPROVAL RECOMMENDED:

  
DANILO F. AGSALOG  
Budget Director

  
GLENN T. CORREA  
Director of Parks  
and Recreation

  
ALICE L. LEE, Director  
of Housing and Human  
Concerns

APPROVED AS TO FORM  
AND LEGALITY:

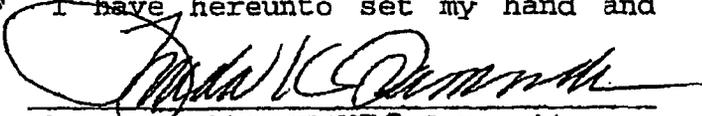
  
EDWARD S. KUSHI, JR.  
Deputy Corporation Counsel  
County of Maui

S:\ALL\ESK\PARKS\Agreements\mokuula lease amendment 2.wpd

STATE OF HAWAII )  
 : SS.  
COUNTY OF MAUI )

On this        day of MAY 1 2003, 200      , 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 by authority of its Charter; 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.

  
\_\_\_\_\_  
Notary Public, State of Hawaii  
**LINDA K. TAMASHIRO**  
Print Name  
My commission expires: 10/19/06

15

STATE OF HAWAII )  
 : SS.  
COUNTY OF MAUI )

On this 30<sup>th</sup> day of APRIL, 2003, before me personally appeared **KEITH A. REGAN**, to me personally known, who, being by me duly sworn, did say that he is the Director of Finance of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said **KEITH A. REGAN** 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.

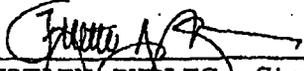
  
\_\_\_\_\_  
Notary Public, State of Hawaii  
**Jeanette R. Kinaka**  
Print Name  
My commission expires: 04/09/2007

15

STATE OF HAWAII )  
 ) SS.  
COUNTY OF Maui )

On this 28th day of April, 2003, before me personally appeared Jerry Kunitomo, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

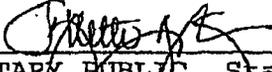
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
NOTARY PUBLIC, State of Hawaii.  
Print Name LYNETTE A. SAKAMOTO  
My commission expires May 23, 2003

STATE OF HAWAII )  
 ) SS.  
COUNTY OF Maui )

On this 28th day of April, 2003, before me personally appeared Anthony F. Akana, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

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

  
NOTARY PUBLIC, State of Hawaii.  
Print Name LYNETTE A. SAKAMOTO  
My commission expires May 23, 2003

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup ( ) To:  
Department of Finance  
County of Maui  
200 South High Street  
Wailuku, Maui, HI 96793

Affects TMK: (2) 4-6-007:001

LEASE

THIS INDENTURE OF LEASE made this 2nd day of January, 2002, by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter referred to as the "Lessor", and FRIENDS OF MOKU'ULA, INC., a Hawaii nonprofit corporation, whose address is 505 Front Street, Suite 234, Lahaina, Maui, Hawaii 96761, hereinafter referred to as the "Lessee";

W I T N E S S E T H :

THAT the Lessor, for and in consideration of the rent to be paid and of the terms, covenants and conditions contained herein, all on the part of the Lessee to be kept, observed and performed, does hereby demise and lease unto the Lessee, and the Lessee does hereby lease and hire from the Lessor, that certain parcel identified as Tax Map Key No. (2) 4-6-007:001, under the

EXHIBIT 1

control and custody of Lessor under that certain Executive Order No. 3430, located at Lahaina, Maui, Hawaii, and shown on Exhibit "A" attached hereto and made a part hereof (hereinafter called the "Premises"), together with right of access to the Premises.

TO HAVE AND TO HOLD the Premises unto the Lessee for the term of THIRTY-FIVE (35) YEARS, commencing on the 2nd day of January 2002, up to and including the 1st day of January 2037, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor a rental of ONE NO/100 DOLLARS (\$1.00) per annum, payable in advance of the lease term upon the execution hereof, to the County of Maui, Department of Finance, at Lessor's address designated herein or as otherwise designated in writing by Lessor to Lessee.

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 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, diaspore, boehmite, laterite, gibbsite, alumina, all ores of

aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the Premises and not for sale to others.

B. All surface and ground waters appurtenant to the 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 the Lessee for any of Lessee's improvements taken.

2. Ownership of Fixed Improvements. At the end of the lease term, all improvements of whatever kind or nature, located on the land or constructed during the term of this lease, shall be the property of the Lessor.

SUBJECT TO regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including Chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the Premises.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS  
FOLLOWS:

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

2. Taxes, Assessments, Etc. That the Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which said Premises or any part thereof, or any improvements thereon, or the Lessor or Lessee in respect thereof, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during said term.

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

4. Covenant Against Discrimination. That the use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex,

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

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

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

7. Compliance with Laws. That the Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws pertaining to the said Premises, now in force or which may hereinafter be in force.

8. Inspection of Premises. That the Lessee will permit the Lessor and its agents, at all reasonable times during the said term, to enter the Premises and examine the state of repair and condition thereof.

9. Liens. That the Lessee will not commit or suffer any act to neglect whereby the Premises or any improvement thereon or the estate of the Lessee in the same shall become subject to any attachment, lien, charge or encumbrance whatsoever, except as

hereinafter provided, and shall indemnify and hold harmless the Lessor from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

10. Use of Premises. That the Lessee shall use or allow the Premises hereby demised to be used solely to restore and preserve Moku'ula and the ponds of Mokuhinia. Other uses shall be subject to approval in writing by the Lessor and the State of Hawaii through its Board of Land and Natural Resources.

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

12. Costs of Litigation. That in case the Lessor and/or the State of Hawaii shall, without any fault on its/their part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall and will

pay all costs and expenses incurred by or imposed on the Lessor and/or the State of Hawaii; furthermore, the Lessee shall and will pay all costs and expenses which may be incurred by or paid by the Lessor and/or the State of Hawaii in enforcing the covenants and agreements of this lease, in recovering possession of the Premises or in the collection of delinquent rental, taxes and any and all other charges.

13. Liability Insurance. That the Lessee shall procure, at its own cost and expense, and maintain during the entire period of this lease, a policy or policies of comprehensive public liability insurance, in an amount of at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00), insuring the Lessee, Lessor and the State of Hawaii against all claims for personal injury and/or death, and in an amount of at least ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) for property damage, or in amounts and for types of coverage as otherwise designated in writing by Lessor or Lessee; that the policy or policies shall cover the entire Premises, including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the Premises in the control or use of the Lessee. The Lessee shall furnish the Lessor with a certificate showing the policy to be initially in force and shall furnish a like certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel the policy prior to actual cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this

lease as set forth herein or limit the amount of its liability under this lease. The notice to cancel shall be sent to the Lessor sixty (60) days prior to the date of cancellation.

14. Fire Insurance. That the Lessee will, at its own expense, at all times during the term of this lease, keep insured all buildings and improvements erected on the land hereby demised in the joint names of Lessor, Lessee and Mortgagee, if any, as their interest may appear, against loss or damage by fire including perils specified in the extended coverage endorsement and in an amount equal to the maximum insurable value thereof, and will pay the premiums thereon at the time and place the same are payable; that the policy or policies of insurance shall be made payable in case of loss to the Lessor, Lessee and Mortgagee, if any, as their interests may appear, and shall be deposited with the Lessor and the Mortgagee; and that any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible, be used by the Lessee for rebuilding, repairing, or otherwise reinstalling the same buildings in a good and substantial manner according to the plans and specifications approved in writing by the Lessor; provided, however, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage and the Lessee shall then receive that portion of said proceeds which the unexpired term of this lease at the time of said loss or damage bears to the whole of said term, the Lessor to retain the balance of said proceeds.

The Lessee shall furnish to the Lessor and Mortgagee, if any, a certificate showing such policy or policies to be initially in force and shall furnish a like certificate upon each renewal of such policy or policies, each such certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor and Mortgagee, if any, of any intention to cancel any such policy or policies, prior to actual cancellation.

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

16. Repair and Maintenance. Lessee will at its own expense from time to time and at all times during the term, well and substantially repair and maintain, and keep all improvements now or hereafter built or made on the Premises in good and safe repair, order and condition, reasonable wear and tear excepted.

17. Lessee shall construct a parking area on the Premises to replace the parking area on TMK (2) 4-6-007:por. 036, which is subject to a License to Lessee. Such replacement parking area shall be at least equivalent to the area and construction of

the parking area being replaced and shall comply with all applicable ordinances. Before construction, Lessee shall submit the plans and specifications to Lessor and the State of Hawaii through its Chairperson of the Board of Land and Natural Resources for their respective approval.

18. Breach. That time is of the essence of this agreement and if the Lessee shall fail to pay such rent or any part thereof at the times and in the manner aforesaid within thirty (30) days after delivery by the Lessor of a written notice of such breach or default, or if the Lessee shall become bankrupt, or shall abandon the said Premises, or if this lease and said Premises shall be attached or otherwise be taken by operation of law, or if any assignments be made of the Lessee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and such failure shall continue for a period of more than ten (10) days after delivery by the Lessor of a written notice of such breach or default, by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or holder of record having a security interest in the Premises, the Lessor may at once re-enter the Premises or any part thereof, and upon or without such entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the

property of the Lessor; furthermore, Lessor shall retain all rent paid in advance as damages.

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

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

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

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

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

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

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

23. Extension of Time. That notwithstanding any provision contained herein to the contrary, wherever applicable,

the Lessor may for good cause shown, allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions and covenants contained herein.

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

withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until such consent be granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation hereunder.

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

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

27. Non-Warranty. The Lessor does not warrant the conditions of the leased Premises, as the same is being leased in "as is" condition.

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

29. Assignability, Etc. That the Lessee shall not transfer, assign, sublet or permit any other person to occupy or use the said Premises or any portion thereof, or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, and any transfer or assignment so made shall be void; provided, that with the prior written approval of the Lessor and the State of Hawaii through its Board of Land and Natural Resources, the assignment or transfer of this lease may be made.

30. Termination. Both the Lessor and the Lessee have the right to terminate this lease with thirty (30) days written notice to the other party.

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

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

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

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

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

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

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

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

32. Annual Reports. The Lessee shall make annual reports to the Lessee on the forms specified by the Lessor.

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

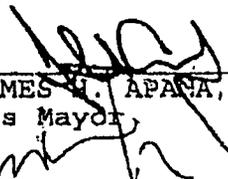
34. Paragraph Headings. The paragraph headings throughout this lease are for the convenience of the Lessor and the Lessee and are not intended to construe the intent or meaning of any of the provisions thereof.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 2nd day of January, 2002.

LESSOR:

COUNTY OF MAUI

By

  
\_\_\_\_\_  
JAMES H. APANA, JR.  
Its Mayor

By

  
\_\_\_\_\_  
WESLEY P. LO  
Its Director of Finance

LESSEE:

FRIENDS OF MOKU'ULA, INC.

By [Signature]  
(Signature)  
Jesse Kunitomo  
(Print Name)  
Its PRESIDENT  
(Title)

APPROVAL RECOMMENDED:

[Signature]  
ALICE L. LEE  
Director of Housing  
and Human Concerns

APPROVAL RECOMMENDED:

[Signature]  
FLOYD S. MIYAZONO  
Director of Parks  
and Recreation

APPROVED AS TO FORM  
AND LEGALITY:

[Signature]  
EDWARD S. KUSHI, JR.  
Deputy Corporation Counsel  
County of Maui

APPROVED BY THE BOARD OF LAND  
AND NATURAL RESOURCES AT ITS  
MEETING HELD ON AUGUST 10, 2001.

APPROVED AS TO FORM:

[Signature]  
Deputy Attorney General  
Dated: 1/16/02

APPROVAL RECOMMENDED:

[Signature]  
Chairperson  
Department of Land and  
Natural Resources

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

On this 19th day of December, 2001,  
before me appeared JERRY KUNDOMO to me  
personally known who, being by me duly sworn, did say that he is  
the PRESIDENT of FRIENDS OF MOKU'ULA, INC., a Hawaii non-  
profit corporation, in the capacity shown, having been duly  
authorized to execute such instrument in such capacity, and that  
said instrument was signed and sealed on behalf of said corporation  
by authority of its Board of Directors, and the said officers  
acknowledged said instrument to be the free act and deed of said  
corporation.

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

15.

Rocéphine G. Badua  
Notary Public, State of Hawaii

Print Name  
My commissioner expires: \_\_\_\_\_  
ROCEPHINE G. BADUA, NOTARY PUBLIC  
MY COMMISSION EXPIRES 12/31/2004

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

On this 19th day of December, 2001,  
before me appeared Anthony P. Akana to me  
personally known who, being by me duly sworn, did say that he is  
the Executive Director of FRIENDS OF MOKU'ULA, INC., a Hawaii non-  
profit corporation, in the capacity shown; having been duly  
authorized to execute such instrument in such capacity, and that  
said instrument was signed and sealed on behalf of said corporation  
by authority of its Board of Directors, and the said officers  
acknowledged said instrument to be the free act and deed of said  
corporation.

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

LS

Rocéphine G. Badua  
Notary Public, State of Hawaii

Print Name  
My commissioner expires: \_\_\_\_\_  
ROCEPHINE G. BADUA, NOTARY PUBLIC  
MY COMMISSION EXPIRES 12/31/2004

STATE OF HAWAII )  
 : SS.  
COUNTY OF MAUI )

On this 2nd day of January, 2002, before me personally appeared JAMES H. APANA, JR., 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 JAMES H. APANA, JR. 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.

Kay A. Ogasawara  
Notary Public, State of Hawaii  
Kay A. Ogasawara  
Print Name  
My commission expires: 7/1/05

STATE OF HAWAII )  
 : SS.  
COUNTY OF MAUI )

On this 4th day of January, 2002, before me personally appeared WESLEY P. LO, 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 WESLEY P. LO 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.

Kleerlene Tai  
Notary Public, State of Hawaii  
Danielle Tai  
Print Name  
My commission expires: January 19, 2003

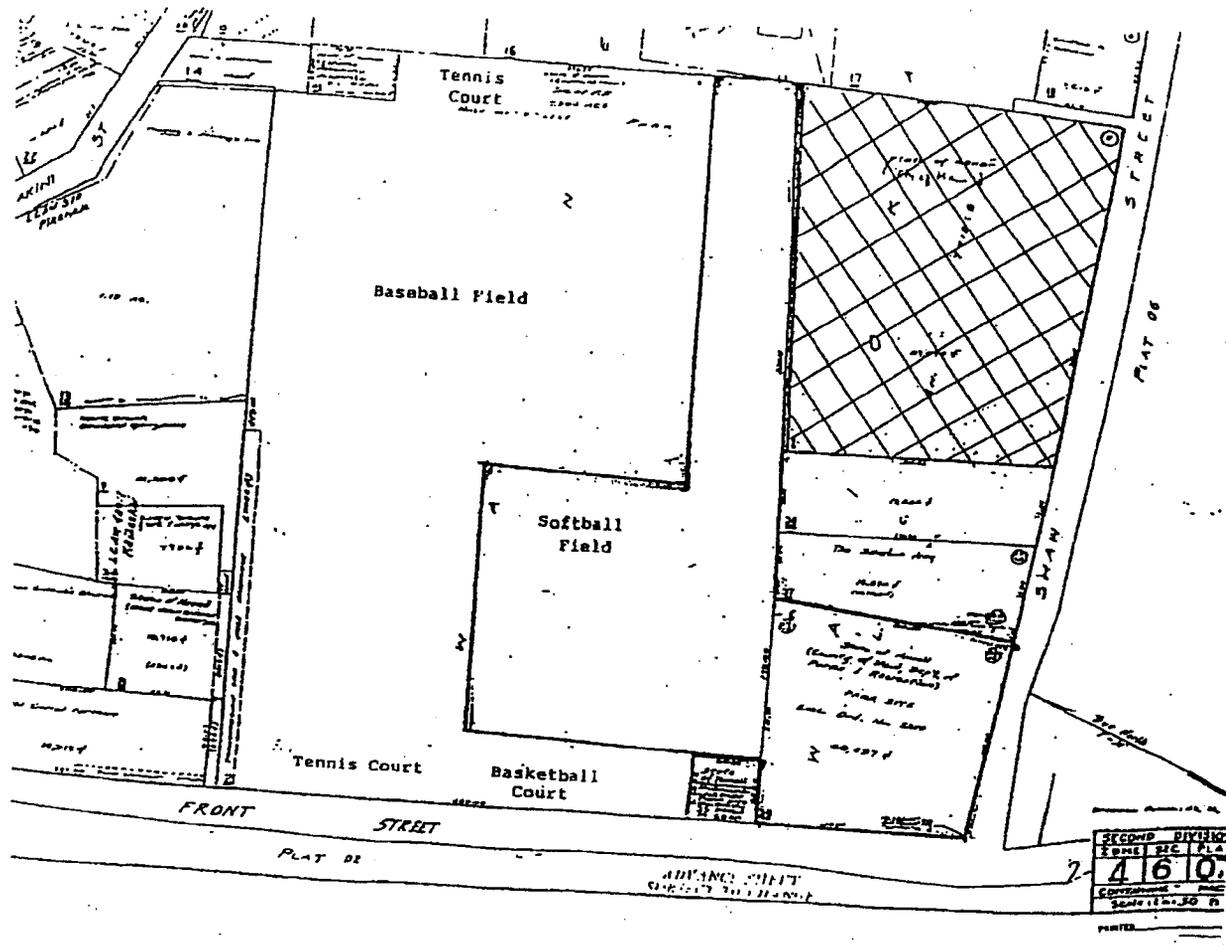


EXHIBIT "A"

SECOND DIVISION  
 FORM 502 (PLA)  
 41610  
 SCALE 1/8" = 1'-0"  
 PRINTED

# Resolution

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

AUTHORIZING THE CONTINUED OPERATION OF A PARKING LOT CONCESSION BY THE FRIENDS OF MOKU`ULA, INC., PURSUANT TO THE FIRST AMENDMENT TO LICENSE DATED MAY 1, 2003

WHEREAS, the County of Maui and the Friends of Moku`ula, Inc. ("FOM") entered into that License agreement dated January 2, 2002, attached hereto as Exhibit "1" of Exhibit "a", for use of the areas identified as Tax Map Key No. (2)4-6-007:002(por) and 036; and

WHEREAS, said License was amended on May 1, 2003 by the First Amendment to License, attached hereto and by reference incorporated herein as Exhibit "1"; and

WHEREAS, the First Amendment to Licence allows for the operation of a parking lot concession on the Licensed area and FOM has operated a parking lot concession on the area identified as TMK (2)4-6-007:036; and

WHEREAS, the License requires that the Council of the County of Maui periodically review FOM's use of the Licensed area as a parking lot concession; now, therefore,

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

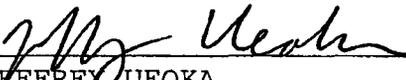
1. That it hereby authorizes the continued use of the area Licensed to the Friends of Moku`ula, Inc., under the

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

License dated January 2, 2002, as a parking lot concession;  
and

2. That certified copies of this resolution be transmitted to the Mayor; the Director of Finance; the Department of Parks and Recreation; and the Friends of Moku'ula, Inc.

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_

JEFFREY UEOKA  
Deputy Corporation Counsel  
County of Maui

S:\ALL\JTU\RESOS\Friends of Mokuula Parking Resolution (License).wpd

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup ( ) To:  
Department of Finance  
County of Maui  
200 South High Street  
Wailuku, Maui, HI 96793

Affects TMK: (2) 4-6-007:por. 002 and 036

FIRST AMENDMENT TO LICENSE

THIS FIRST AMENDMENT TO LICENSE made this        day of  
MAY 1 2003, 20      , by and between the COUNTY OF MAUI, a  
political subdivision of the State of Hawaii, whose address is 200  
South High Street, Wailuku, Maui, Hawaii 96793, hereinafter  
referred to as the "LICENSOR", and FRIENDS OF MOKU'ULA, INC., a  
Hawaii non-profit corporation, whose address is 505 Front Street,  
Suite 234, Lahaina, Maui, Hawaii 96761, hereinafter referred to as  
the "LICENSEE";

W I T N E S S E T H :

WHEREAS, LICENSOR and LICENSEE entered into that certain  
License dated January 2, 2002 ("License"), a copy of which is  
attached hereto as Exhibit "1"; and

WHEREAS, LICENSOR and LICENSEE desire to amend said License to  
authorize LICENSEE to operate a parking concession on the premises;

NOW, THEREFORE, for and in consideration of the mutual promises and conditions set forth in the Agreement, the parties hereby agree as follows:

Section 10., Use of Premises., is amended in its entirety to read as follows:

"10. Use of Premises. That the Licensee shall use or allow the Premises hereby licensed to be used solely to restore and preserve Moku'ula and the ponds of Mokuhinia. As an incidental use thereto, for the first three (3) years of the License term, Licensee shall be temporarily permitted to operate a parking concession on the Premises, the net proceeds of which shall be used by Licensee for restoration and preservation purposes. Such incidental use to operate a parking concession shall be reviewed and, in its discretion, approved by the Maui County Council by separate resolution at the end of the first three (3) years and then every five (5) years thereafter during the term of the License. If not approved by the Maui County Council, such incidental use shall not be permitted. Other uses shall be subject to approval in writing by the Licensor and the State of Hawaii through its Board of Land and Natural Resources."

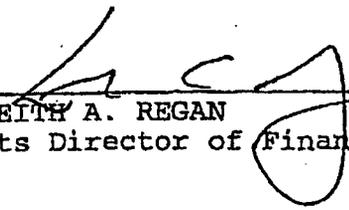
All other terms, conditions, provisions and covenants of the Lease not herein modified by this First Amendment, including the covenant to pay rent, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed these presents the day and year first above written.

LICENSOR:

COUNTY OF MAUI

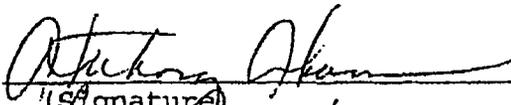
By   
ALAN M. ARAKAWA  
Its Mayor

By   
KEITH A. REGAN  
Its Director of Finance

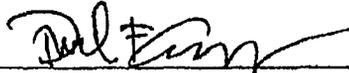
LICENSEE:

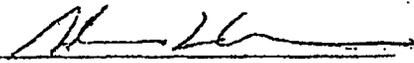
FRIENDS OF MOKU'ULA, INC.

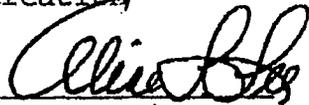
By   
(Signature)  
JERRY KUNITOMO  
(Print Name Above)  
Its RESIDENT  
(Title)

By   
(Signature)  
Anthony Akana  
(Print Name Above)  
Executive Director  
(Title)

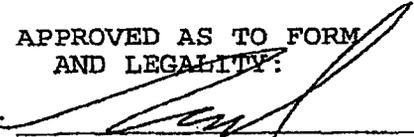
APPROVAL RECOMMENDED:

  
DANILO F. AGSALOG  
Budget Director

  
GLENN T. CORREA  
Director of Parks  
and Recreation

  
ALICE L. LEE, Director  
of Housing and Human  
Concerns

APPROVED AS TO FORM  
AND LEGALITY:

  
EDWARD S. KUSHI, JR.  
Deputy Corporation Counsel  
County of Maui

S:\ALL\ESK\PARRS\Agreements\mokuula license.amendment 2.wpd

STATE OF HAWAII )  
 : SS.  
COUNTY OF MAUI )

On this        day of MAY 1 2003, 200      , 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 by authority of its Charter; 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.

*Linda K. Tamashiro*  
Notary Public, State of Hawaii  
**LINDA K. TAMASHIRO**  
Print Name  
My commission expires: 10/19/06

15

STATE OF HAWAII )  
 : SS.  
COUNTY OF MAUI )

On this 30<sup>th</sup> day of APRIL, 2003, before me personally appeared **KEITH A. REGAN**, to me personally known, who, being by me duly sworn, did say that he is the Director of Finance of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said **KEITH A. REGAN** 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.

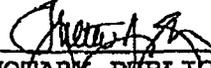
*Jeanette R. Kinaka*  
Notary Public, State of Hawaii  
Jeanette R. Kinaka  
Print Name  
My commission expires: 04/09/2007

15

STATE OF HAWAII )  
COUNTY OF Maui ) SS.

On this 28th day of April, 2003, before me personally appeared Anthony F. Akana, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

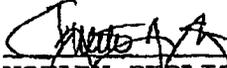
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
NOTARY PUBLIC, State of Hawaii.  
Print Name \_\_\_\_\_  
My commission expires LYNETTE A. SAKAMURA  
My commission expires: May 23, 2003

STATE OF HAWAII )  
COUNTY OF Maui ) SS.

On this 28th day of April, 2003, before me personally appeared Jerry Kunitomo, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

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

  
NOTARY PUBLIC, State of Hawaii.  
Print Name \_\_\_\_\_  
My commission expires LYNETTE A. SAKAMURA  
My commission expires: May 23, 2003

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup ( ) To:  
Department of Finance  
County of Maui  
200 South High Street  
Wailuku, Maui, HI 96793

Affects TMK: (2) 4-6-007:por. 002 and 036

LICENSE

THIS INDENTURE OF LICENSE made this 2nd day  
of January, 2002, by and between the COUNTY OF MAUI, a  
political subdivision of the State of Hawaii, whose address is 200  
South High Street, Wailuku, Maui, Hawaii 96793, hereinafter  
referred to as the "Licensor", and FRIENDS OF MOKU'ULA, INC., a  
Hawaii nonprofit corporation, whose address is 505 Front Street,  
Suite 234, Lahaina, Maui, Hawaii 96761, hereinafter referred to as  
the "Licensee";

W I T N E S S E T H :

THAT the Licensor, for and in consideration of the rent  
to be paid and of the terms, covenants and conditions contained  
herein, all on the part of the Licensee to be kept, observed and  
performed, does hereby demise and license unto the Licensee, and  
the Licensee does hereby license from the Licensor, the exclusive  
use of that certain area of land, and any improvements now or

**EXHIBIT " 1 "**

hereafter thereon, identified as Tax Map Key No. (2) 4-6-007:por. 002 and 036, in the control and custody of the Licensor under Executive Orders 52 and 2889, located at Lahaina, Maui, Hawaii, and shown in red on Exhibit "A" attached hereto and made a part hereof (hereinafter called the "Premises"), together with right of access to the Premises.

TO HAVE AND TO HOLD the Premises unto the Licensee for the term of TWENTY (20) YEARS, commencing on the 2nd day of January 2002, up to and including the 1st day of January 2022, unless sooner terminated as hereinafter provided, the Licensor reserving and the Licensee yielding and paying to the Licensor a rental of ONE NO/100 DOLLARS (\$1.00) per annum, payable in advance of the license term upon the execution hereof, to the County of Maui, Department of Finance, at Licensor's address designated herein or as otherwise designated in writing by Licensor to Licensee.

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 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, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Licensee's permitted activities on the Premises and not for sale to others.

B. All surface and ground waters appurtenant to the licensed 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 the Licensee for any of Licensee's improvements taken.

2. Ownership of Fixed Improvements. At the end of the license term, all improvements of whatever kind or nature, located on the land or constructed during the term of this license, shall be the property of the Licensor.

SUBJECT TO regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including Chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the Premises.

THE Licensee COVENANTS AND AGREES WITH THE Licensor AS FOLLOWS:

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

2. Taxes, Assessments, Etc. That the Licensee shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which said Premises or any part thereof, or any improvements thereon, or the Licensor or Licensee in respect thereof, are now or may be assessed or become liable by authority of law during the term of this license; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Licensee shall be required to pay only such installments, together with interest, as shall become due and payable during said term.

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

4. Covenant Against Discrimination. That the use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex,

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

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

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

7. Compliance with Laws. That the Licensee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws pertaining to the said Premises, now in force or which may hereinafter be in force.

8. Inspection of Premises. That the Licensee will permit the Licensor and its agents, at all reasonable times during the said term, to enter the Premises and examine the state of repair and condition thereof.

9. Liens. That the Licensee will not commit or suffer any act to neglect whereby the Premises or any improvement thereon or the estate of the Licensee in the same shall become subject to any attachment, lien, charge or encumbrance whatsoever, except as

hereinafter provided, and shall indemnify and hold harmless the Licensor from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

10. Use of Premises. That the Licensee shall use or allow the Premises hereby licensed to be used solely to restore and preserve Moku'ula and the ponds of Mokuhinia. Other uses shall be subject to approval in writing by the Licensor and the State of Hawaii through its Board of Land and Natural Resources.

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

12. Costs of Litigation. That in case the Licensor and/or the State of Hawaii shall, without any fault on its/their part, be made a party to any litigation commenced by or against the Licensee (other than condemnation proceedings), the Licensee shall

and will pay all costs and expenses incurred by or imposed on the Licensor and/or the State of Hawaii; furthermore, the Licensee shall and will pay all costs and expenses which may be incurred by or paid by the Licensor and/or the State of Hawaii in enforcing the covenants and agreements of this license, in recovering possession of the Premises or in the collection of delinquent rental, taxes and any and all other charges.

13. Liability Insurance. That the Licensee shall procure, at its own cost and expense, and maintain during the entire period of this license, a policy or policies of comprehensive public liability insurance, in an amount of at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00), insuring the Licensee, the Licensor, and the State of Hawaii against all claims for personal injury and/or death, and in an amount of at least ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) for property damage, or in amounts and for types of coverage as otherwise agreed to in writing by Licensor and Licensee; that the policy or policies shall cover the entire Premises, including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the Premises in the control or use of the Licensee. The Licensee shall furnish the Licensor with a certificate showing the policy to be initially in force and shall furnish a like certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the Licensor of any intention to cancel the policy prior to actual cancellation. The procuring of this policy shall not release or

relieve the Licensee of its responsibility under this license as set forth herein or limit the amount of its liability under this license. The notice to cancel shall be sent to the Licensor sixty (60) days prior to the date of cancellation.

14. Fire Insurance. That the Licensee will, at its own expense, at all times during the term of this license, keep insured all buildings and improvements erected on the land hereby licensed in the joint names of Licensor, Licensee and Mortgagee, if any, as their interest may appear, against loss or damage by fire including perils specified in the extended coverage endorsement and in an amount equal to the maximum insurable value thereof, and will pay the premiums thereon at the time and place the same are payable; that the policy or policies of insurance shall be made payable in case of loss to the Licensor, Licensee and Mortgagee, if any, as their interests may appear, and shall be deposited with the Licensor and the Mortgagee; and that any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible, be used by the Licensee for rebuilding, repairing, or otherwise reinstalling the same buildings in a good and substantial manner according to the plans and specifications approved in writing by the Licensor; provided, however, that with the approval of the Licensor, the Licensee may surrender this license and pay the balance owing on any mortgage and the Licensee shall then receive that portion of said proceeds which the unexpired term of this license at the time

of said loss or damage bears to the whole of said term, the Licensor to retain the balance of said proceeds.

The Licensee shall furnish to the Licensor and Mortgagee, if any, a certificate showing such policy or policies to be initially in force and shall furnish a like certificate upon each renewal of such policy or policies, each such certificate to contain or be accompanied by an assurance of the insurer to notify the Licensor and Mortgagee, if any, of any intention to cancel any such policy or policies, prior to actual cancellation.

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

16. Repair and Maintenance. Licensee will at its own expense from time to time and at all times during the term, well and substantially repair and maintain, and keep all improvements now or hereafter built or made on the Premises in good and safe repair, order and condition, reasonable wear and tear excepted.

17. Breach. That time is of the essence of this agreement and if the Licensee shall fail to pay such rent or any

part thereof at the times and in the manner aforesaid within thirty (30) days after delivery by the Licensor of a written notice of such breach or default, or if the Licensee shall become bankrupt, or shall abandon the said Premises, or if this license and said Premises shall be attached or otherwise be taken by operation of law, or if any assignments be made of the Licensee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and such failure shall continue for a period of more than ten (10) days after delivery by the Licensor of a written notice of such breach or default, by personal service, registered mail or certified mail to the Licensee at its last known address and to each mortgagee or holder of record having a security interest in the Premises, the Licensor may at once re-enter the Premises or any part thereof, and upon or without such entry, at its option, terminate this license without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of the Licensor; furthermore, Licensor shall retain all rent paid in advance as damages.

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

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

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

B. The proportionate value of the Licensee's permanent improvements so taken in the proportion that it bears to the unexpired term of the License; provided, that the Licensee may, in the alternative, remove and relocate its improvements to the remainder of the lands occupied by the Licensee. The Licensee shall not by reason of the condemnation be entitled to any claim against the Licensor for compensation or indemnity for Licensee's interest and all compensation payable or to be paid for or on account of the Licensee's interest and all compensation payable or to be paid for or on account of the Licensee's interest by reason of the condemnation shall be payable to and be the sole property of the Licensor. The foregoing rights of the Licensee shall not be exclusive of any other to which Licensee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the land was licensed, the Licensee shall have the option to surrender this license and be discharged and relieved from any further liability therefor; provided, that Licensee may remove the permanent improvements constructed, erected

and placed by it within such reasonable period as may be allowed by the Licensor.

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

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

22. Extension of Time. That notwithstanding any provision contained herein to the contrary, wherever applicable, the Licensor may for good cause shown, allow additional time beyond the time or times specified herein to the Licensee, in which to comply, observe and perform any of the terms, conditions and covenants contained herein.

23. Justification of Sureties. Such bonds as may be required herein shall be supported by the obligation of a corporate

surety organized for the purpose of being a surety and qualified to do business as such in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justification shall be filed as provided in section 78-20, Hawaii Revised Statutes; provided, however, the Licensee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Licensor security in certified checks, certificates of deposit (payable on demand or after such period as the Licensor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to said Licensor a deed or deeds of trust of real property, all of such character as shall be satisfactory to said Licensor and valued in the aggregate at not less than the principal amount of said bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by the Licensor under the foregoing provision shall be determined by the Licensor, and the Licensee may, with the approval of the Licensor, exchange other securities or money for any of the deposited securities or money and shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Licensee, but only upon the written consent of the Licensor and that until such consent be granted, which shall be discretionary

with the Licensor, no surety shall be released or relieved from any obligation hereunder.

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

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

26. Non-Warranty. The Licensor does not warrant the conditions of the licensed Premises, as the same is being licensed in "as is" condition.

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

28. Assignability, Etc. That the Licensee shall not transfer, assign, sublet or permit any other person to occupy or use the said Premises or any portion thereof, or transfer or assign this license or any interest therein, either voluntarily or by operation of law, and any transfer or assignment so made shall be void; provided, that with the prior written approval of the Licensor and the State of Hawaii through its Board of Land and Natural Resources, the assignment or transfer of this license may be made.

29. Termination. Both the Licensor and the Licensee have the right to terminate this license with thirty (30) days written notice to the other party.

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

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

B. "Licensor" shall mean and include the County of Maui, its officers, agents and assigns. Wherever the prior written consent or approval of the "Licensor" is required in this license, such consent or approval shall include, but is not limited to, the consent or approval of the Mayor, the Director Finance, the Director of Housing and Human Concerns, and the Director of Parks and Recreation.

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

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

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

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

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

31. Annual Reports. The Licensee shall make annual reports to the Licensee on the forms specified by the Licensor.

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

33. Paragraph Headings. The paragraph headings throughout this license are for the convenience of the Licensor and the Licensee and are not intended to construe the intent or meaning of any of the provisions thereof.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 2nd day of January, 2002.

LICENSEE:

FRIENDS OF MOKULULA, INC.

By [Signature]  
(Signature)

CARY KUNITOMO  
(Print Name)

Its PRESIDENT  
(Title)

By [Signature]  
(Signature)

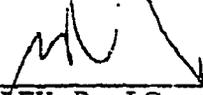
ANTHONY F. AKANA  
(Print Name)

Its Executive Director  
(Title)

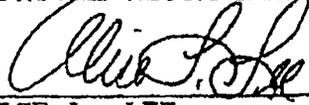
LICENSOR:

COUNTY OF MAUI

By   
JAMES H. APANA, JR.  
Its Mayor

By   
WESLEY P. LO  
Its Director of Finance

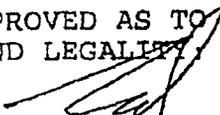
APPROVAL RECOMMENDED:

  
ALICE L. LEE  
Director of Housing  
and Human Concerns

APPROVAL RECOMMENDED:

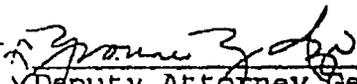
  
FLOYD S. MIYAZONO  
Director of Parks  
and Recreation

APPROVED AS TO FORM  
AND LEGALITY

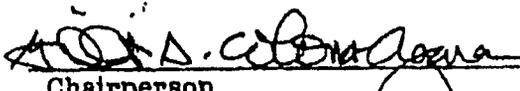
  
EDWARD S. KUSHI, JR.  
Deputy Corporation Counsel  
County of Maui

APPROVED BY THE BOARD OF LAND  
AND NATURAL RESOURCES AT ITS  
MEETING HELD ON APRIL 12, 2001.

APPROVED AS TO FORM:

  
Deputy Attorney General  
Dated: 1/16/02

APPROVAL RECOMMENDED:

  
Chairperson  
Department of Land and  
Natural Resources



STATE OF HAWAII )  
 :  
 COUNTY OF MAUI ) SS.

On this 2nd day of January, 2002, before me personally appeared JAMES H. APANA, JR., 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 JAMES H. APANA, JR. 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.

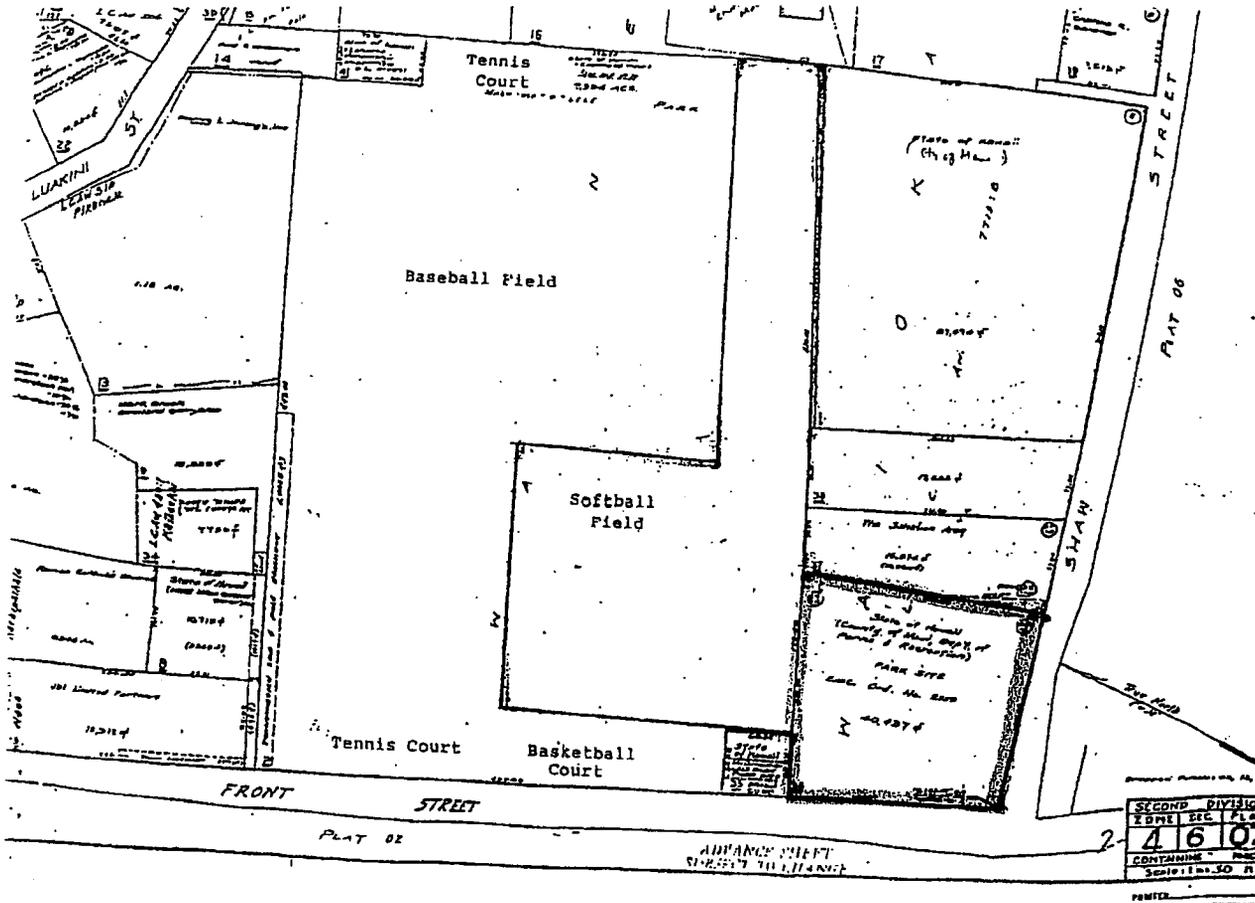
*Kay A. Ogasawara*  
\_\_\_\_\_  
Notary Public, State of Hawaii  
Kay A. Ogasawara  
Print Name  
My commission expires: 7/1/05

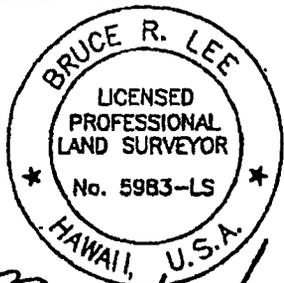
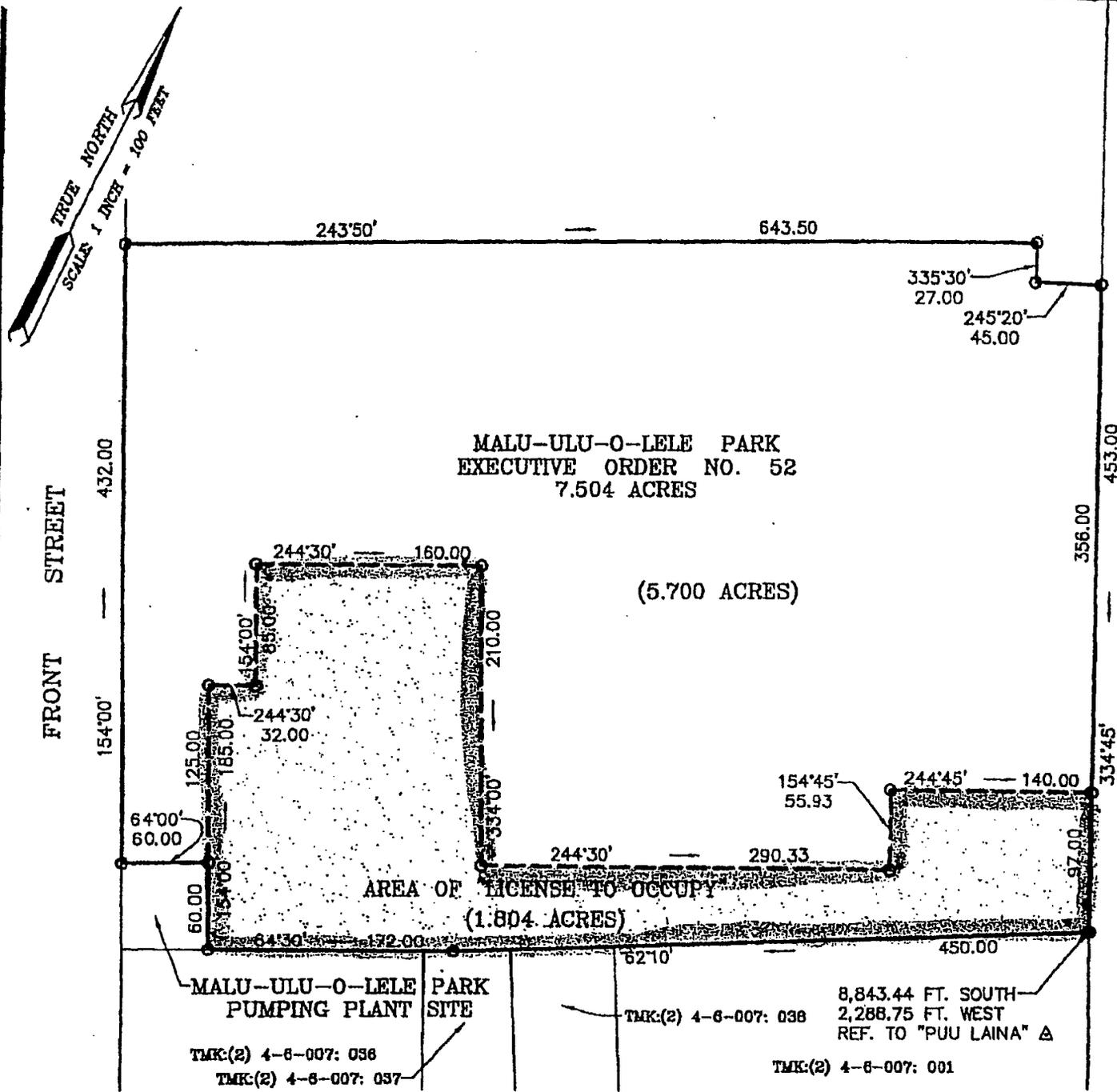
STATE OF HAWAII )  
 :  
 COUNTY OF MAUI ) SS.

On this 4<sup>th</sup> day of January, 2002, before me personally appeared WESLEY P. LO, 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 WESLEY P. LO 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.

*Katherine Tai*  
\_\_\_\_\_  
Notary Public, State of Hawaii  
Katherine Tai  
Print Name  
My commission expires: January 10, 2003





*Bruce R. Lee*

THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION.

PLAT SHOWING AREA OF  
"LICENSE TO OCCUPY"  
Portion of Malu-Ulu-O-Lele Park

SITUATED AT WAINEE, LAHAINA, MAUI, HAWAII

PREPARED FOR:  
FRIENDS OF MOKU'ULA, INC.  
505 FRONT STREET, SUITE 234  
LAHAINA, HI 96761

PREPARED BY:  
NEWCOMER - LEE  
LAND SURVEYORS, INC.  
1498 LOWES MAIN STREET, SUITE D,  
WAILUKU, MAUI, HAWAII 96783

T.M.K.:(2) 4-6-007: PORTION OF 002

SCALE: 1 INCH = 100 FEET

DATE: OCTOBER 26 2000

DESCRIPTION  
**AREA OF LICENSE TO OCCUPY  
PORTION OF MALU-ULU-O-LELE PARK  
(PORTION EXECUTIVE ORDER NO. 52)  
PORTION OF TAX MAP KEY: (2) 4-6-007: PARCEL 02**

All of that certain parcel of land, being a portion of the Malu-Ulu-O-Lele Park, (Portion of Executive Order No. 52), being a portion of Parcel 2 of Tax Map Key: (2) 4-6-007, situated at Wainee, Lahaina, Island and County of Maui, State of Hawaii and being more particularly described as follows:

Beginning at the east corner of this parcel of land, on the southwesterly boundary of the Wainee Protestant Church Lot and Grant 7151 to Board of Trustees of the Wainee Church of Lahaina, Maui, said point also being the east corner of said Malu-Ulu-O-Lele Park (Portion Executive Order No. 52) and the north corner of Parcel 1 of said Tax Map Key: (2) 4-6-007 and Royal Patent 7860, Land Commission Award 7715, Apana 3 to Lota Kamehameha (Certificate of Boundaries No. 48), the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAINA" being:

8,843.44 feet South  
2,288.75 feet West

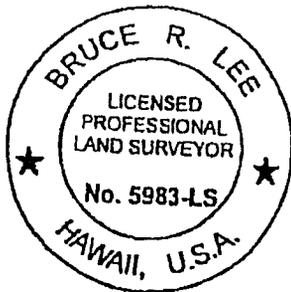
and running by azimuths measured clockwise from true South:

1. 62° 10' 00"            450.00 feet along Parcels 1, 38 and 37 of said Tax Map Key: (2) 4-6-007 and said Royal Patent 7860, Land Commission Award 7715, Apana 3 to Lota Kamehameha (Certificate of Boundaries No. 48);
2. 64° 30' 00"            172.00 feet along Parcels 37 and 36 of said Tax Map Key: (2) 4-6-007 and said Royal Patent 7860, Land Commission Award 7715, Apana 3 to Lota Kamehameha (Certificate of Boundaries No. 48) to the east corner of the Malu-Ulu-O-Lele Park Pumping Plant Site, being Parcel 35 of said Tax Map Key: (2) 4-6-007;
3. 154° 00' 00"           185.00 feet along said Malu-Ulu-O-Lele Park Pumping Plant Site, being Parcel 35 of said Tax Map Key: (2) 4-6-007 and along the remainder of said Malu-Ulu-O-Lele Park (Portion of Executive Order No. 52);
4. 244° 30' 00"           32.00 feet along the remainder of said Malu-Ulu-O-Lele Park (Portion of Executive Order No. 52);

5. 154° 00' 00"            85.00 feet along same;
6. 244° 30' 00"            160.00 feet along same;
7. 334° 00' 00"            210.00 feet along same;
8. 244° 30' 00"            290.33 feet along same;
9. 154° 45' 00"            55.93 feet along same;
10. 244° 45' 00"           140.00 feet along same to a point on the southwesterly  
boundary of said Wainee Protestant Church Lot;
11. 334° 45' 00"           97.00 feet along said Wainee Protestant Church Lot to the  
point of beginning and containing an area of 1.804  
Acres, more or less.

Prepared by:

**NEWCOMER-LEE**  
**LAND SURVEYORS, INC.**, a Hawaii Corporation



This description was prepared from record information filed in Job Folder 2000-4955.

A handwritten signature in cursive script, appearing to read "Bruce R. Lee", written over a horizontal line.

BRUCE R. LEE

Licensed Professional Land  
Surveyor Certificate No. 5983-LS

10/25/00  
FRIENDS OF MOKU'ULA, INC.  
File 2000-4955  
4955-friendsof-lease

# DIAMOND PARKING SERVICES LLC



*"Family Owned & Operated"*

KA LUA O KIHA, INC.  
MR. AKONI AKANA  
505 FRONT STREET, SUITE 234  
LAHAINA, HAWAII  
661-3659

CONFIDENTIAL, PLEASE  
NOT FOR PUBLICATION

Parking No. HM64  
Date 1/26/09

Re: T.M.K- 2-4-6-07 PARKING AGREEMENT

1. The effective date of this agreement is March 01, 2009.
2. This letter agreement sets forth in writing our understanding that Diamond Parking Services LLC ("Diamond Parking") will operate a parking facility on the above referenced property 24 hours a day, 7 days a week as an independent contractor under the terms and conditions set forth below.
3. It is our understanding that the Undersigned is the Owner or authorized representative of the above referenced property, hereinafter referred to as "Owner", and that there are no zoning or other restrictions that would prohibit the use of the property as a public parking facility.
4. Diamond Parking LLC will keep the parking facility in a neat and clean condition, and if available, will be allowed to enter 48 hours prior to the effective date for the purpose of installing signs and fixtures. Diamond Parking LLC will have the right to make any operating improvements that are necessary to operate the parking facility. All improvements such as trade fixtures, signs, lights, bumpers, pay boxes and attendant's facilities will remain the property of Diamond Parking LLC.
5. Capital improvements to the parking facility will remain the responsibility of the Owner. Funding for capital improvements is available through Violet Finance Company. Your Diamond Parking LLC representative can assist you in contacting a representative of Violet and arranging for the financing of capital improvements to the parking facility.
6. As rent, Diamond Parking LLC will pay to the Undersigned or as directed Twelve Thousand (\$12,000.00) dollars per month, GET included, commencing March 01, 2009 Diamond Parking LLC will pay you on a monthly basis. Rent will be paid by the 1<sup>st</sup> of each month.
7. This agreement may be terminated at any time by either of the parties by giving thirty- (30) days advance written notice to the other party. Owner will not terminate this agreement if the parking facility is to be operated or used for parking by a third party without first offering Diamond Parking LLC an opportunity to match the terms and conditions proposed by a third party.

Diamond Parking Services LLC  
Parking Facility Lease Agreement  
Fixed Rent

8. Upon termination of this agreement, Diamond Parking LLC will vacate the parking facility leaving it in good condition, less damage by fire, the elements, or ordinary wear and tear.
9. All personal property of Diamond Parking LLC or its effects of any kind or description whatsoever left on or about the Premises shall be at Diamond Parking LLC sole risk and Owner shall not be liable or responsible for any damage done to or loss of such personal property or effects. In addition, Owner shall not be liable or responsible for damage, loss or injury suffered by Diamond Parking LLC, its employees, agents, or guests arising from any manner whatsoever.

Diamond Parking LLC shall indemnify and hold Owner and its successors and assigns, and their respective officers, directors, employees, members, and agents harmless from and against any claim, demand, action, proceeding, loss, damage, suit, cost or expense, including but not limited to reasonable attorneys' fees and costs, arising exclusively from or related to Diamond Parking LLC negligent acts or omissions in the performance of its duties and/or responsibilities under this Agreement.

Except for Diamond Parking LLC negligent acts or omissions as provided in the immediately preceding paragraph, Owner agrees to indemnify and hold Diamond Parking LLC and its respective successors and assigns and their respective officers, directors, shareholders, employees, and agents harmless from and against any claim, demand, action, proceeding, loss, damage, suit, cost or expense, including but not limited to reasonable attorneys' fees and costs, arising from or related in any manner to the operation of the parking lot, including (but not limited to) Owner's negligent acts or omissions in the performance of their responsibilities under this Agreement.

Should any disputes arise with respect to the applicability and/or interpretation of the parties' respective rights to indemnification, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs in addition to any other remedy. The parties' rights regarding indemnification shall survive the expiration or earlier termination of this Lease.

Diamond Parking LLC shall purchase, and maintain at its sole cost and expense, comprehensive general liability and property damage insurance insuring the Premises and the parking operations, placed with a reputable and financially strong insurance carrier. The minimum limits of insurance shall be:

- (a) General Liability - \$1,000,000 combined single limit per occurrence and for those policies with aggregate limits, a \$2,000,000 aggregate limit;
- (b) Automobile Liability - \$1,000,000 combined single limit per accident for bodily injury and property damage;
- (c) Workers' Compensation: Statutory requirements of the state of residence or \$1,000,000 per occurrence, whichever is greater;

Diamond Parking Services LLC  
Parking Facility Lease Agreement  
Fixed Rent

Such policies shall name Owner as additional insured with a severability of interests endorsement and the carrier(s) shall be required to give Owner at least thirty- (30) days advance written notice of non-renewal or cancellation. Upon ten- (10) days of mutual execution of this Agreement, Diamond Parking LLC shall give Owner or its representative a Certificate(s) of Insurance, together with an additional insured endorsement, reflecting the required coverages.

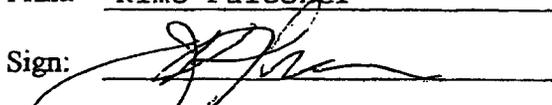
Both parties hereby waive all rights of recovery against the other on account of loss or damage to each party or its property or the property of others under its control to the extent that such loss or damage is insured under any insurance policies which either party is required to carry pursuant to the terms of this Agreement.

10. Structural, mechanical, or other installations and any alterations required by law or regulations pertaining to air quality, environmental protection, provisions required by the Americans with Disabilities Act, or other similar governmental rules or regulations will remain the responsibility of the Owner.
11. This agreement may be withdrawn by Diamond Parking LLC if not executed by Owner within sixty- (60) days.
12. Owner agrees that during this agreement, and for a period of two years following its termination or expiration, not to hire or have in the employ of Owner in any capacity, nor retain as an independent contractor, any employee, former employee or any person working for Diamond Parking LLC, without its prior written consent.
13. Your signature on a copy of this cancelable letter agreement will constitute your acceptance of these terms and conditions. Thank you.

It is AGREED this 8 day of February, 2009.

**KA LUA O KIHA, INC**

Print: Kimo Falconer

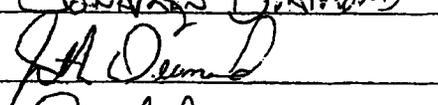
Sign: 

Title: President

Tax ID / Soc Sec #: 20-4656092

**DIAMOND PARKING  
SERVICES LLC**

Print: Jonathan Diamond

Sign: 

Title: President