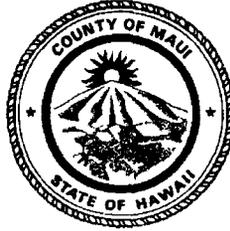


ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel

EDWARD S. KUSHI
First Deputy

LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

OFFICE OF THE
COUNTY COUNSEL

2016 FEB 29 09 41 22

RECEIVED

February 29, 2016

MEMORANDUM

TO: Don S. Guzman, Chair
Economic Development, Energy, Agriculture, and Recreation Committee

FROM: Jerrie L. Sheppard, Deputy Corporation Counsel *JL Sheppard*

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

We respond to your request dated February 24, 2016, which requested a reply by February 29, 2016.

I. QUESTIONS PRESENTED:

1. **Whether the concession is no longer permitted under the Lease and License?**
2. **If it is not permitted, and FOM has continued to use the concession unpermitted, what are the County's remedies?**

II. DISCUSSION:

My reply memo dated October 6, 2015, copy enclosed herewith as Exhibit 1, responded to these questions to the extent appropriate in a published reply memo. Please be advised that additional detailed discussion of the questions presented would entail attorney-client communication, which should be confidential.

We have been informed by Council Services Director Raatz that Council Services has no procedure to accept confidential, attorney-client privileged communications, therefore, a written reply is not provided herewith. As this matter is on the Agenda for the Environmental, Agriculture, and Recreation Committee meeting on March 1, 2016, with a notation that an executive session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, is anticipated, it is appropriate to discuss this matter at that proceeding.

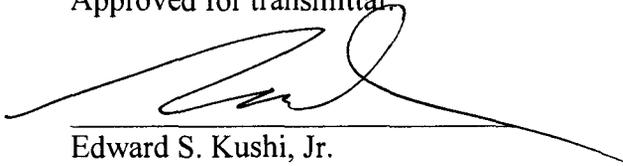
Councilmember Don S. Guzman

Page 2

February 29, 2016

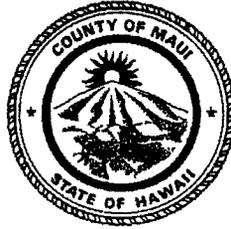
Please contact me if further advice on this matter is needed or should you have additional questions.

Approved for transmittal:

A handwritten signature in black ink, appearing to read 'Edward S. Kushi, Jr.', written over a horizontal line.

Edward S. Kushi, Jr.
First Deputy Corporation Counsel

ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel

EDWARD S. KUSHI
First Deputy

LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
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DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

October 6, 2015

MEMORANDUM

TO: Don S. Guzman, Chair
Economic Development, Energy, Agriculture, and Recreation Committee

FROM: Jerrie L. Sheppard, Deputy Corporation Counsel *J. Sheppard*

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

We respond to your request dated September 22, 2015, which you requested by October 2, 2015, and extended to October 6, 2015. To the extent we are able, given the limited period in which to reply, we provide the following information.

- 1. Given Friends of Moku'ula's operation of the parking concession has not been reviewed and approved by the Council as required by Section 10 of the first amendment to the lease and license, is it proper for Friends of Moku'ula ("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?**

As you noted, FOM's Lease and License were both amended to authorize their operation of a parking concession on the premises. These amendments were recommended by Corporation Counsel Memorandum dated April 9, 2003, attached hereto as Exhibit 1. The Lease and its first amendment are attached hereto as Exhibit 2. The License and its first amendment are attached hereto as Exhibit 3.

Both amendments provide that all other terms, conditions, provisions and covenants of the respective original agreement remain in full force and effect. Both the original Lease and License address Breach by the Lessor/Licensors (FOM). (See Paragraph 18. at page 10 of the Lease, and see Paragraph 17. at page 9 of the License.) Both Breach provisions require that, if FOM "shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed" the County shall provide written notice to FOM and allow FOM ten days after delivery to cure any noted failure to comply with the Lease or License. The written notice must be delivered by personal service, registered mail or certified mail.

In the absence of such notice to FOM, it is proper for FOM to continue their operations, including the parking concession, as authorized by the Lease and License and amendments thereto.

EXHIBIT " 1 "

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

Both the Lease and License altered Section 10. Use of Premises, by their respective amendment, to read, as summarized:

10. Use of Premises. That the FOM shall use or allow the Premises 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 term, FOM shall be temporarily permitted to operate a parking concession on the Premises, the net proceeds of which shall be used by FOM 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 agreement. 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.

The lack of review by Council at the designated three and five year markers does not automatically negate the Lease or License. If the matter was not on a Council agenda for review at the designated review periods, that is merely an oversight, and would not connote a breach by FOM. Absent any written notice to FOM that they were required to appear for a designated review, there would be no breach by FOM for not having undergone that review at the time designated in the respectively amended Sections 10.

At this point, it is appropriate for Council to conduct the 2015 review required by the amended Sections 10. to get this matter back on track. Council may ask for historical information to cover the prior periodic reviews, and FOM is obliged to provide that information as they are able.

- 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?**

The Lease and License do not specify how the parking concession shall be set up. Absent any restrictions or prohibitions, FOM is free to configure that operation as they deem appropriate given their non-profit tax exempt status.

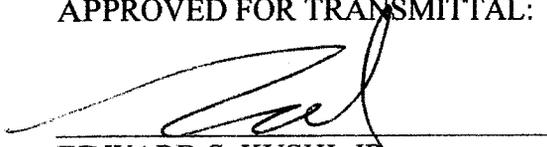
- 3. Please provide a general explanation of the parameters of permissible use by a nonprofit of a wholly-owned for-profit subsidiary, in the context of FOM's structure and operation with KLK. In your response, please consider whether it is lawful for a nonprofit to confer direct financial benefits to a for-profit or vice versa; and for the two entities to commingle funds or share staff, officers, directors, gross income and expenses.**

The business structures and relationship between FOM and KLK are not known at this time. This question may be appropriate to ask of FOM during Council's review as it seeks information about the relationship between FOM and KLK, only one of which holds tax exemption status.

**LEASE AND LICENSE OF COUNTY-CONTROLLED
PARCELS TO FRIENDS OF MOKU'ULA, INC (LAHATNA) (EAR-2)**

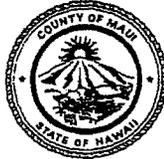
In order to conduct adequate and efficient research into the complex and intricate Internal Revenue Service tax code regarding businesses and the corporate structures they may employ, it is necessary to have very specific information and ask very specific questions. A general review of the IRS code at this time would consume an inordinate amount of time and may not produce appropriate answers. Perhaps this question can be revisited during Council's 2015 Section 10. review of FOM's operations, or after the review by Council, if the matter requires more detailed research, the questions can be more specifically phrased.

APPROVED FOR TRANSMITTAL:



EDWARD S. KUSHI, JR.
First Deputy Corporation Counsel
2014-3080

ALAN M. ARAKAWA
Mayor



BRIAN T. MOTO
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740 FAX 270-7152

April 9, 2003

MEMO TO: Honorable Alan M. Arakawa, Mayor
F R O M: Ed Kushi, Jr., Deputy Corporation Counsel 
SUBJECT: **FRIENDS OF MOKU'ULA; LEASE AND LICENSE OF COUNTY PROPERTY**

In response to your request of February 4, 2003, and Ms. Adele Rugg's request of February 11, 2003, we have reviewed our file notes and correspondence, the subject Lease and License, Resolution Nos. 00-171, and 00-172, respectively, approving the conveyances and Maui County Council minutes of the meeting that approved the Resolutions, the decision and order approving the Lease and License from the State of Hawaii Board of Land and Natural Resources, and discussed this matter with Mr. Don Couch of your office.

As we understand it, the instant issue/question is whether, in accordance with the terms and conditions of the Lease and License, the Friends of Moku'ula ("FOM") as the Lessee/Licensee can use the subject real properties to construct, maintain, and operate and/or concession out paid parking facilities, and thereafter keep the gross/net revenues derived therefrom?

SHORT ANSWER: As discussed further below, FOM may operate a parking concession **provided** that: (1) amendments to the Lease and the License are drafted to explicitly authorize FOM to operate a parking concession on the subject premises; and (2) said amendments are submitted for review by the Grants Review Committee, and for approval by the Council. We also recommend that the Board of Land and Natural Resources be informed of the amendments.

BACKGROUND:

Both the Lease and License are dated January 2, 2002. The Lease is for a term of 35 years, and covers a 2.00+ acre parcel designated as TMK (2) 4-6-007:001 (see area outlined in red on attached sketch). The License is for a term of 20 years, and covers all of TMK (2) 4-6-007:036 and a portion of TMK (2) 4-6-007:002 for a total area of 2.7+ acres (see area outlined in yellow on attached sketch).

EXHIBIT " 1 "

Honorable Alan M. Arakawa
April 9, 2003
Page 2

Both properties are owned by the State of Hawaii, but conveyed to the County by separate Executive Orders, which Orders specify the public purpose as "park purposes." The Council approved the License and Lease by resolutions dated December 1, 2000, and approval of the License and Lease was obtained from the State of Hawaii Board of Land and Natural Resources ("Board") on April 21, 2001, and August 10, 2001, respectively.

At page 6 in both the License and Lease, it states:

"10. Use of Premises. That the Licensee [Lessee] shall use or allow the Premises hereby licensed [leased] 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 [Lessor] and the State of Hawaii through its Board of Land and Natural Resources."

Similarly, in both documents the Licensor/Lessor is defined as:

"'Licensor' ['Lessor'] shall mean and include the County of Maui, its officers, agents and assigns. Whenever the prior written consent or approval of the 'Licensor' ['Lessor'] is required in this license [lease], such consent or approval shall include, but is not limited to, the consent or approval of the Mayor, the Director of Finance, the Director of Housing and Human Concerns, and the Director of Parks and Recreation." (Section 30, B, at page 16 of the License; Section 31, B, at page 16 of the Lease.)

Although there is no specific authorization concerning a parking lot in the "Use of Premises" sections, the Lease does contain a separate provision at Section 17, beginning at page 9, which states:

"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."

There is no similar or comparable section or authorization in the License concerning parking.

Honorable Alan M. Arakawa
April 9, 2003
Page 3

In approving the Lease at its August 10, 2001 meeting, the Board under "Remarks", acknowledged:

"The lease agreement will allow for the restoration of ancient royal fishponds that were covered in the early 1900's because of mosquito infestation. The subject area currently is used as a parking lot for the Malu-Ulu-o-Lele Park and will continue to be primarily a parking lot for the Friends of Moku'ula. The propose [sic] use will be consistent with the purpose of the set aside."

There is no mention or remark regarding parking in the Board's April 14, 2001 approval of the License.

In reviewing the minutes of the Council meeting of December 1, 2000, at which Resolution Nos. 00-171 and 00-172 were passed, we found no specific discussion concerning use of the premises for parking, paid and/or free, and no explicit authorization for grant of a parking concession. Rather, as discussed above, the Lease and the License reference the use of the subject premises "solely to restore and preserve Moku'ula and the ponds of Mokuhinia." The Lease and License do not address the operation by FOM of a parking concession involving the collection of parking fees from members of the public. According to the Council Budget and Finance Committee meeting minutes of January 30, 2001, and the resultant Committee Report No. 01-6 dated February 16, 2001, Council was informed by FOM (after its Lease and License had already been approved) of FOM's desire to conduct a parking concession to generate revenue for its proposed operations.

DISCUSSION:

Leases, licenses, rental, and/or concessions of County property are generally awarded in accordance with Chapter 3.40, Maui County Code ("MCC"), wherein specific bidding procedures are required. Section 3.40.030, MCC, defines "concession" as "the grant to a person of the privilege to conduct operations which are essentially retail in nature, involving the sale of goods, wares, merchandise, or services to the general public. . ." However, Section 3.40.200, MCC, specifically deems such awards that are without charge or at a charge below fair market value as grants of public property, and directs such awards to be considered pursuant to Chapter 3.36, MCC, entitled Maui County Grants Program. Section 3.36.090, MCC, states:

"3.36.090 Grants of real property. The committee shall transmit to the council any request for a grant of real property, including concessions at less than fair market value, and its recommendations with respect to the

request. The council may authorize the grant by resolution."

For State of Hawaii property set aside to a county under executive order, the county "shall be authorized to exercise all of the powers vested in the board in regard to the issuance of leases, easements, licenses, revocable permits, concessions, or rights of entry covering such lands for such use as may be consistent with the purposes for which the lands were set aside on the same terms, conditions, and restrictions applicable to the disposition of public lands, as provided by this chapter all such dispositions being subject to the prior approval of the board;..." Section 171-11, Hawaii Revised Statutes ("HRS").

Concessions awarded for State of Hawaii properties are covered under Chapter 102, HRS, entitled Concessions on Public Property. Similar to Chapter 3.40, MCC, above-referenced, specific bidding requirements are generally mandated. Section 102-2(a), HRS. Operation of a parking lot on state-owned or controlled property has been included in the definition of concessions. Section 102-1(2), HRS. However, the bidding requirements of Section 102-2(a), HRS, shall not apply to:

- "(b) . . .
- (5) For operation of concessions set aside without any charge;
 - (9) For operation of concessions at county zoos, botanic gardens, or other county parks which are environmentally, culturally, historically, or operationally unique and are supported, by nonprofit corporations incorporated in accordance with state law solely for purposes of supporting county aims and goals of the zoo, botanic garden, or other county park and operating under agreement with the appropriate agency solely for such purposes, aims, and goals; . . ." Section 102-2(b), HRS.

SUMMARY AND CONCLUSION:

Under certain circumstances, concessions on State of Hawaii-owned property conveyed to the County by executive order, including operation of a parking lot, may be permitted without complying with strict bidding procedures. Chapter 102, HRS, and Chapter 3.40, MCC. Such concessions, pursuant to a lease or license of County property without charge or for less than fair market value, are deemed grants. Chapters 3.40, and 3.36, MCC. Such leases and licenses must be approved by the State of Hawaii Board of Land and Natural Resources, and the Maui County Council. Section 171-11,

Honorable Alan M. Arakawa
April 9, 2003
Page 5

HRS, and Section 3.36.090, MCC. The subject Lease and License in favor of FOM were approved by both entities. Although the Lease allows a parking lot on TMK (2) 4-6-007:001, which parking lot is intended to replace the existing lot on TMK(2) 4-6-007: portion 036, neither the Lease nor the License explicitly granted to FOM a parking lot concession to be operated on the licensed or leased premises.

Based on the above, we conclude that the following issues and matters must be addressed and completed before the commencement of any parking concession by FOM:

- A. FOM should submit to County information clarifying the following:
1. The time frame/duration of the location of the parking concession on the licensed premises (*i.e.*, TMK 4-6-007:036 and portion 002).
 2. The time/frame duration of the relocation of said parking concession to the leased premises (*i.e.*, TMK 4-6-007:001).
 3. As represented to the Council, the accommodation and logistics thereof of not charging parking to park users.
- B. To formally document the proposed parking concession and obtain required approvals, amendments to the Lease and License should be drafted and submitted for review by the Grants Review Committee and for approval by the Council by resolution.

Further, the State of Hawaii Board of Land and Natural Resources should be informed of the proposed parking lot concession.

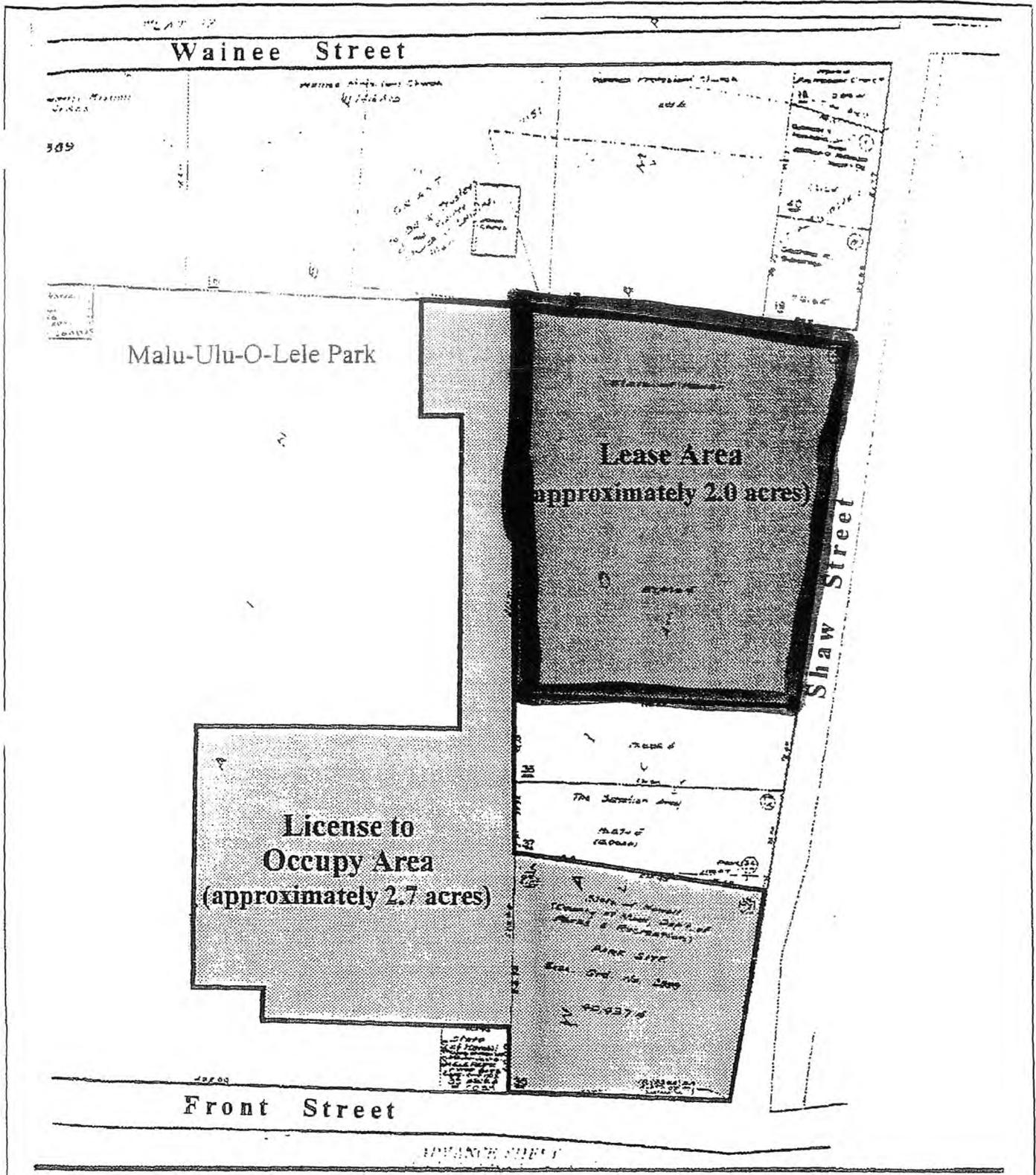
Call if further discussion/clarification is needed. We apologize for the length of this memo, however, we believed a full and reflective review was warranted.

APPROVED FOR TRANSMITTAL:



BRIAN T. MOTU
Corporation Counsel

S:\ALL\ESK\Advisory\mokuulis memo to mayor 2.wpd



Source: County of Maui

Figure 3

Replace Parking Lot at TMK
(2)4-6-07:01, pors. 02 and 36

NOT TO SCALE

Lease and License of Occupation Areas



RECORDED
COUNTY OF MAUI
JUN 13 10 14 44

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII

BUREAU OF CONVEYANCES

JUN 09 2003 802
DATE _____ TIME _____
DOCUMENT NO. 2003-124672

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

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE 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 "LESSOR", 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 "LESSEE";

W I T N E S S E T H :

WHEREAS, LESSOR and LESSEE entered into that certain
unrecorded Lease dated January 2, 2002 ("Lease"), a copy of which
is attached hereto as Exhibit "1"; and

WHEREAS, LESSOR and LESSEE desire to amend said Lease to
authorize LESSEE to operate a parking concession on the premises;

EXHIBIT " 2 "

copy to FOC, HC,
Finance 6/13/03

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.

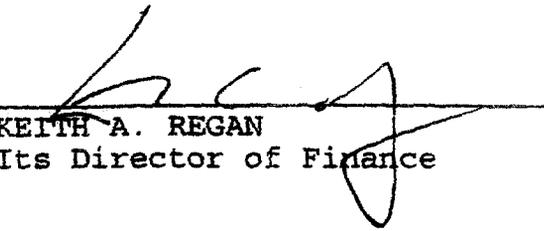
LESSOR:

COUNTY OF MAUI

By


ALAN M. ARAKAWA
Its Mayor

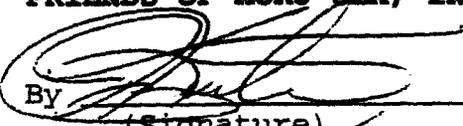
By


KEITH A. REGAN
Its Director of Finance

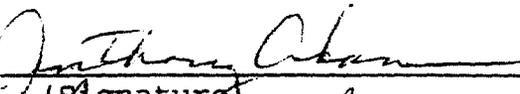
LESSEE:

FRIENDS OF MOKU'ULA, INC.

By


(Signature)
GARY KUNTORO
(Print Name Above)
Its PRESIDENT
(Title)

By


(Signature)
Anthony Adams
(Print Name Above)

Executive Director
(Title)

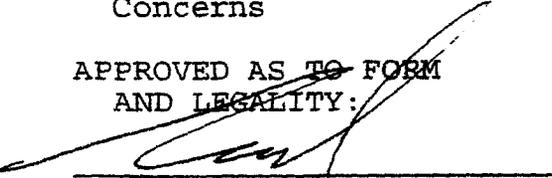
APPROVAL RECOMMENDED:


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

LS

STATE OF HAWAII)
 : SS.
COUNTY OF MAUI)

On this 30th 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.



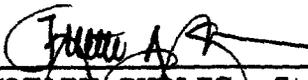
Notary Public, State of Hawaii
Jeanette R Kinaka
Print Name
My commission expires: 04/09/2007

LS

STATE OF HAWAII)
) SS.
COUNTY OF Maui)

On this 28th day of April, 2003, before me personally appeared Jerry Kurutomo, 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.

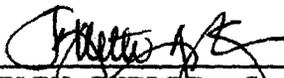
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


NOTARY PUBLIC, State of Hawaii.
Print Name LYNETTE H. CANTONIA
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 H. CANTONIA
My commission expires: May 23, 2003

COPY

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

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.

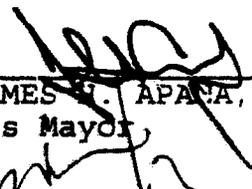
33. Gender. The use of any gender shall include all genders, and if there be more than one (1) lessee, then all words used in the singular shall extend to and include the plural.

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. APACA, JR.
Its Mayor

By 

WESLEY P. LO
Its Director of Finance

LESSEE:

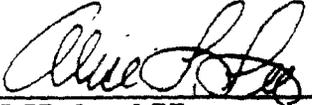
FRIENDS OF MOKU'ULA, INC.

By 
(Signature)

JERRY KENNEDY
(Print Name)

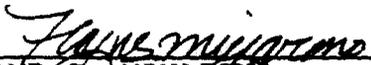
Its PRESIDENT
(Title)

APPROVAL RECOMMENDED:



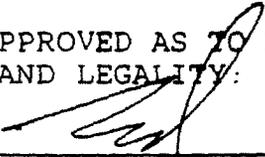
ALICE L. LEE
Director of Housing
and Human Concerns

APPROVAL RECOMMENDED:



FLOYD S. MIYAZONO
Director of Parks
and Recreation

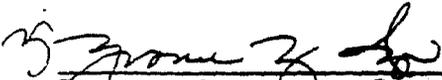
APPROVED AS TO FORM
AND LEGALITY:



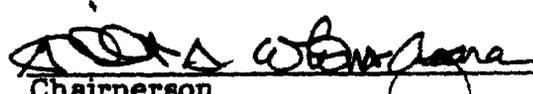
EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui

APPROVED BY THE BOARD OF LAND
AND NATURAL RESOURCES AT ITS
MEETING HELD ON AUGUST 10, 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 19th day of December, 2001,
before me appeared JERRY KUNOMO 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.

Rosephine G. Badua
Notary Public, State of Hawaii

Print Name
My commissioner expires: _____
ROSEPHINE G. BADUA, NOTARY PUBLIC
MY COMMISSION EXPIRES 12/31/2004

STATE OF HAWAII)
)
COUNTY OF MAUI)

SS.

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.

Rosephine G. Badua
Notary Public, State of Hawaii

Print Name
My commissioner expires: _____
ROSEPHINE 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.

L.S.

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

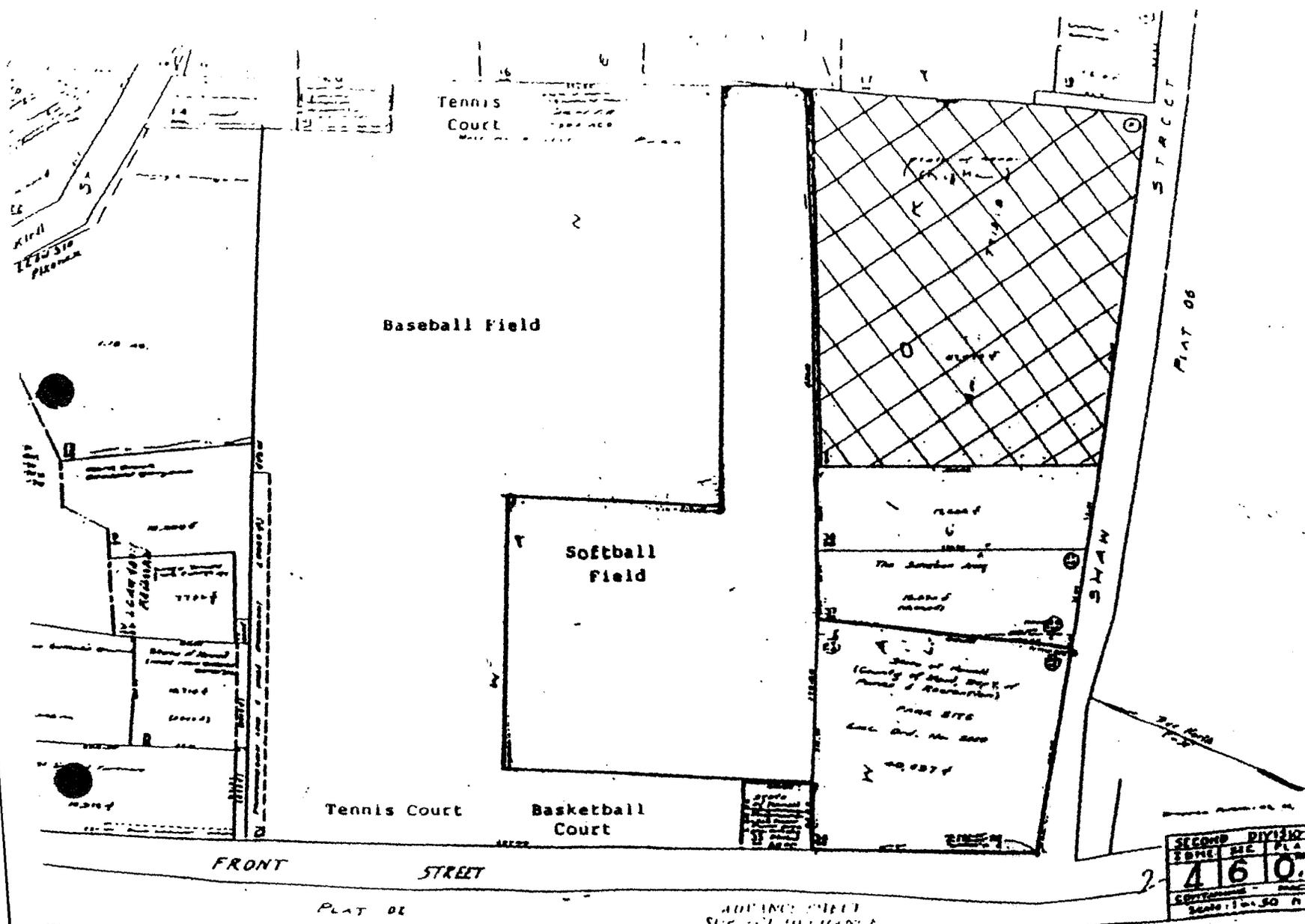


EXHIBIT "A"

RECORDED
INDEXED
JUN 12 2003 1:44

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII

BUREAU OF CONVEYANCES
DATE JUN 09 2003 TIME 802
DOCUMENT NO. 2003-14671

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
unrecorded 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;

EXHIBIT " 3 "

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."

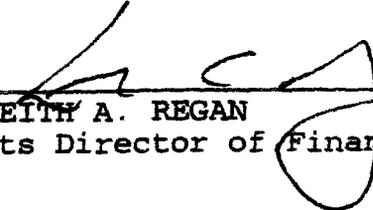
All other terms, conditions, provisions and covenants of the Lease not herein modified by this First Amendment, including the covenant to pay rent, shall remain unchanged and in full force and effect.

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

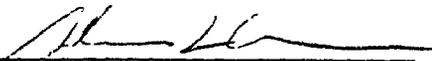
By 
KEITH A. REGAN
Its Director of Finance

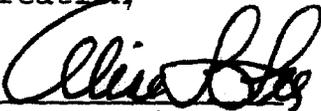
LICENSEE:

FRIENDS OF MOKU'ULA, INC.

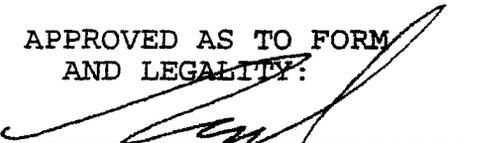
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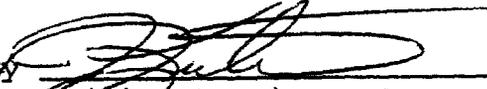

DANILO F. AGSALOG
Budget Director


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

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

By 
(Signature)
ANTHONY ARAKAWA
(Print Name Above)
Executive Director
(Title)

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

STATE OF HAWAII)
 : SS.
COUNTY OF MAUI)

On this 30th 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.

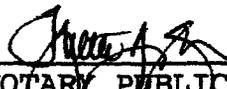
Jeanette R. Kinaka

Notary Public, State of Hawaii
Jeanette R. Kinaka
Print Name
My commission expires: 04/09/07

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.

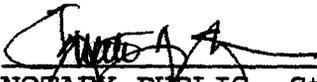
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


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

COPY

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

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 MOKIULULA, INC.

By [Signature]
(Signature)

ERRY ANTONIO
(Print Name)

Its PRESIDENT
(Title)

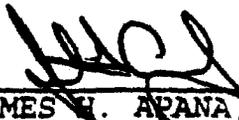
By [Signature]
(Signature)

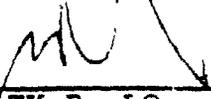
ANTONIO F. ANTONIO
(Print Name)

Its Executive Director
(Title)

LICENSOR:

COUNTY OF MAUI

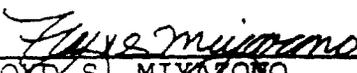
By 
JAMES H. APANA, JR.
Its Mayor

By 
WESLEY P. LO
Its Director of Finance

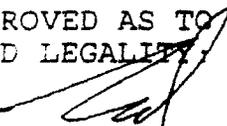
APPROVAL RECOMMENDED:


ALICE L. LEE
Director of Housing
and Human Concerns

APPROVAL RECOMMENDED:

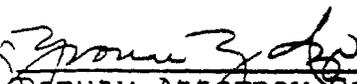

FLOYD S. MIYAZONO
Director of Parks
and Recreation

APPROVED AS TO FORM
AND LEGALITY:

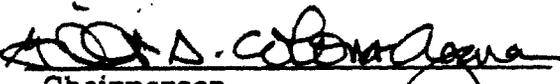

EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui

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 19th day of December, 2001,
before me appeared Jerry Kunitomo 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.

U.S.

Rocephine M. Gardner
Notary Public, State of Hawaii

Print Name
My commissioner expires: _____
ROCEPHINE M. GARDNER, Notary Public
MY COMMISSION EXPIRES 06/01/2004

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

On this 19th day of December, 2001,
before me appeared Anthony F. 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.

U.S.

Rocephine M. Gardner
Notary Public, State of Hawaii

Print Name
My commissioner expires: _____
ROCEPHINE M. GARDNER, Notary Public
MY COMMISSION EXPIRES 06/01/2004

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.

Kleone Lai
Notary Public, State of Hawaii
Kleone Lai
Print Name
My commission expires: January 19, 2003

L.S.

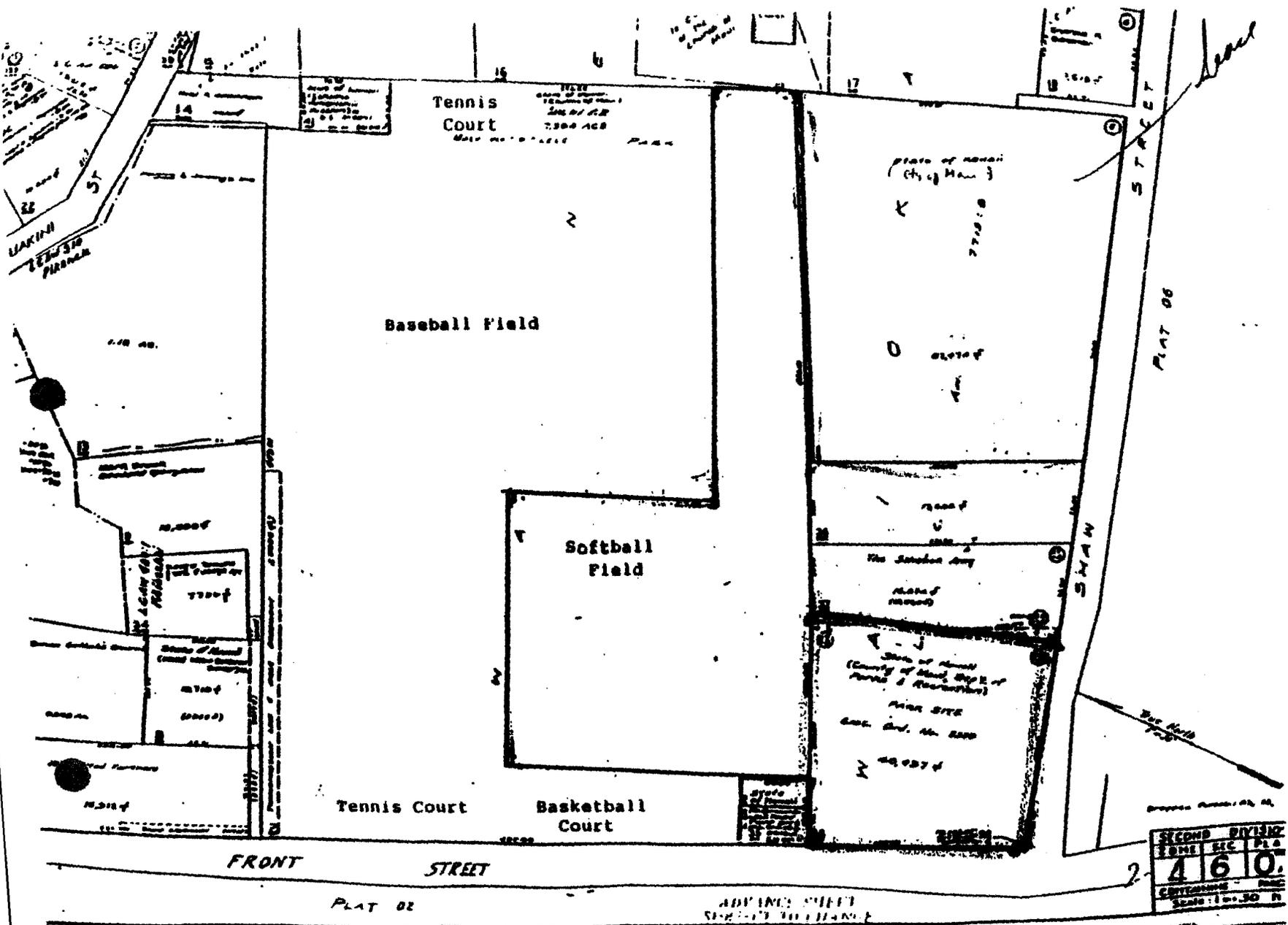
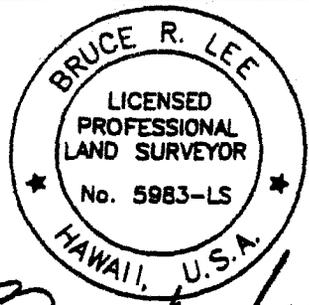
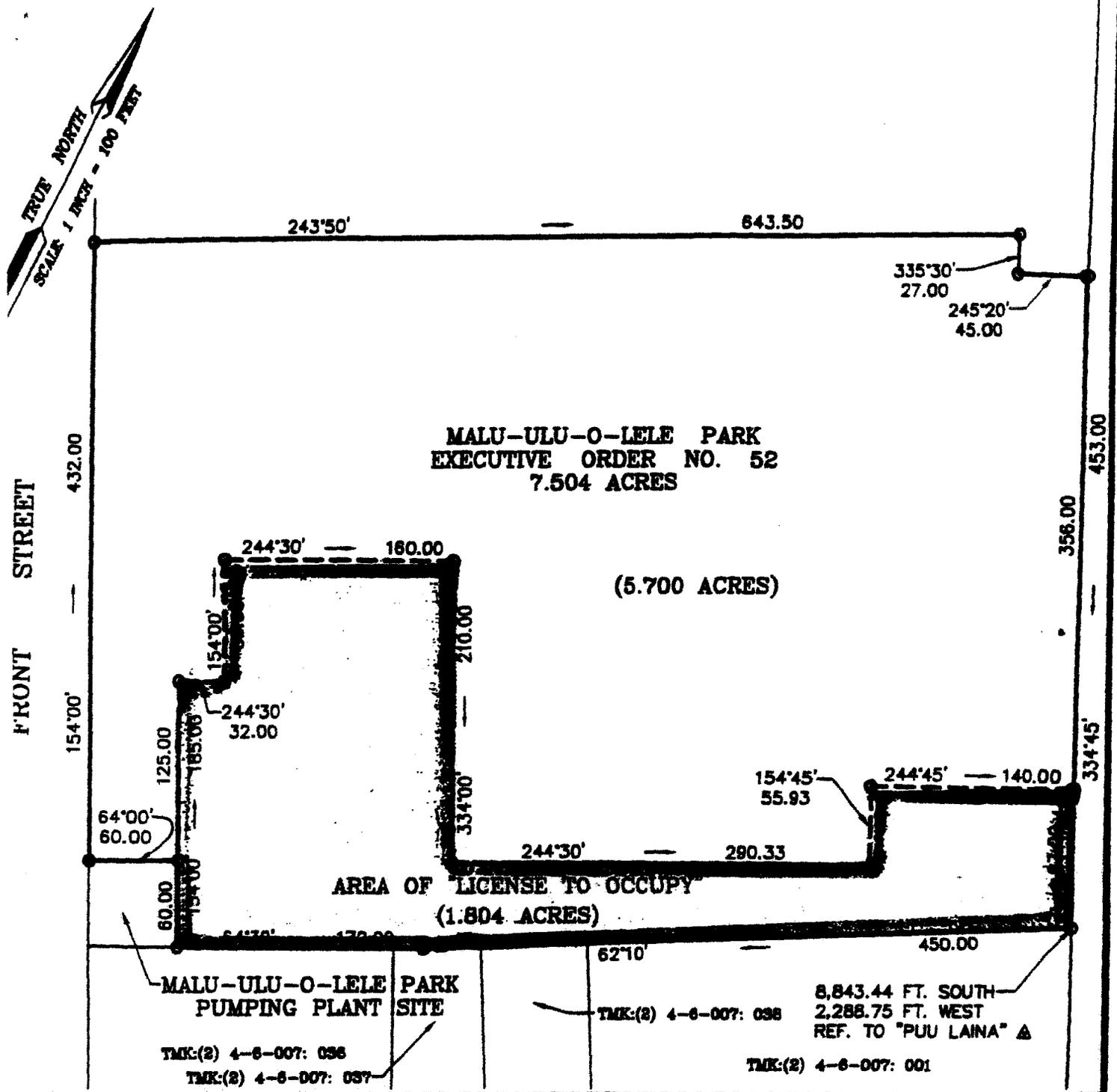


EXHIBIT "A"

SECOND DIVISION	
460	PLAT 02
CONTINUOUS	
SCALE: 1" = 50' N	
DRAWN	

ADVANCE SHEET
 SUBJECT TO CHANGE



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 LOWER MAIN STREET, SUITE D,
 WAILUKU, MAUI, HAWAII 96793

(2) 4-6-007: PORTION OF 002

SCALE: 1 INCH = 100 FEET

DATE: OCTOBER 25, 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

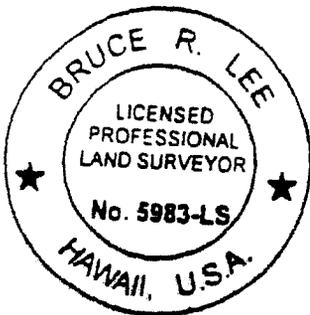
and running by azimuths measured clockwise from true South:

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-frrendssof-lease