

REQUEST FOR LEGAL SERVICES

RECEIVED
CORPORATION COUNSEL

Date: November 18, 2016
From: DON S. GUZMAN, Chair
Economic Development, Energy, Agriculture, and Recreation Committee

2016 NOV 18 PM 2: 52

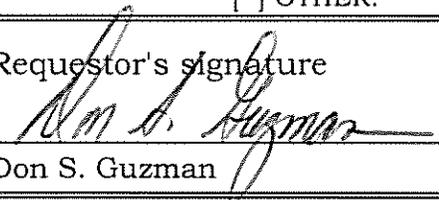
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Patrick K. Wong, Esq.

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

Background Data: Please review and, if appropriate, approve as to form and legality, the attached proposed resolution to disapprove the continued operation of a parking lot concession by Friends of Moku`ula, Inc. Please provide a hard copy response.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Don S. Guzman	Contact Person <u>Sharon Brooks</u> (Telephone Extension: <u>7137</u>)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): November 22, 2016
REASON: To meet posting deadline for the EAR Committee's November 29, 2016 meeting.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: <u>JLS</u>	ASSIGNMENT NO. <u>2014-3080</u>	BY: <u>LUV</u>
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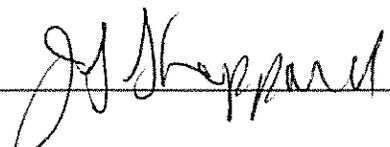
TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

Modified, as discussed with

DEPARTMENT OF THE CORPORATION COUNSEL

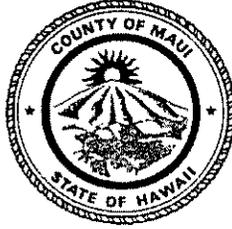
Date 11/21/2016

By 
(Rev. 7/03)

ear:ltr:002acc01:scb

Attachment

ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel

EDWARD S. KUSHI
First Deputy

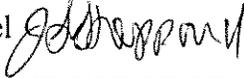
LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 270-1761

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

November 21, 2016

MEMORANDUM

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

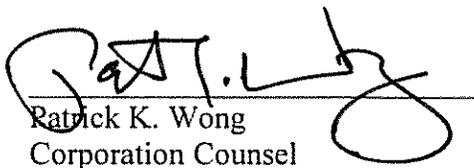
FROM: Jerrie L. Sheppard, Deputy Corporation Counsel 

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

We respond to your request dated November 18, 2016, which requested a reply by November 22, 2015, for a Resolution disapproving use of the County-controlled leased and licensed premises to Friends of Moku'ula for operation of a parking lot concession. The requested proposed Resolution, approved as to form and legality, is provided herewith.

Please note that the proposed Resolution omits Section 3. of your draft document which authorized the Mayor to take steps to transfer the parking lot concession from the Friends of Moku'ula to the County of Maui commencing on or before July 1, 2017. The proposed Resolution only disapproves the continued operation of a parking concession incidental to the Lease and License, it does not terminate those agreements, which were approved by the Board of Land and Natural Resources (BLNR). The current agreements, as amended, authorized the parking concession incidental to their primary use of restoring and preserving Moku'ula and the ponds of Mokuuhinia; the original agreements remain in force even if this one incidental use is disallowed. If the County were to operate a concession at this location, pursuant to Hawaii Revised Statutes, Section 171-11, the County's use of the premises to operate a parking concession and disposition of the proceeds therefrom would require BLNR approval, and either modification or termination of the original agreements with Friends of Moku'ula, in accordance with the terms and conditions of the original lease and license. Additionally, the County has no privity of contract with the concessions operator and the Friends of Moku'ula (or its subsidiary)'s contract.

Approved for transmittal:


Patrick K. Wong
Corporation Counsel

Resolution

No. _____

DISAPPROVING THE CONTINUED OPERATION OF A PARKING LOT CONCESSION BY THE FRIENDS OF MOKU'ULA, INC.

WHEREAS, the County of Maui and the Friends of Moku'ula, Inc. ("FOM") entered into two Agreements, dated January 2, 2002, as follows:

1. A Lease for 35 years over a parcel of approximately 2 acres, identified for real property tax purposes as tax map key (2) 4-6-007:001, for rent of \$1 per year, attached hereto as Exhibit "1"; and

2. A License for 20 years over a parcel of approximately 2.7 acres identified for real property tax purposes as tax map key (2) 4-6-007:002 (por.) and (2) 4-6-007:036, for rent of \$1 per year, attached hereto as Exhibit "2"; and

WHEREAS, both Agreements were amended on May 1, 2003, by a First Amendment to Lease, attached hereto as Exhibit "3", and by a First Amendment to License, attached hereto as Exhibit "4"; and

WHEREAS, the First Amendments to the Lease and the License allow for FOM's continued operation of the parking concession on the leased and licensed areas as an incidental use following the first three years of the terms of the Lease and License, respectively, subject to review and approval by the Council of the County of Maui ("Council") by separate resolution at the end of the first three years, and then every five years; and

Resolution No. _____

WHEREAS, the License requires that the Council periodically review FOM's incidental use to operate a parking concession, and, in its discretion, approve the continued ability to utilize the Leased area for parking lot concession purposes; and

WHEREAS, the Council has reviewed FOM's operation of the parking lot concession and found deficiencies, including:

1. Failure to provide documents requested by a Council committee;
2. Failure to provide a complete financial audit as requested by a Council committee;
3. Apparent commingling of parking concession proceeds with funds from other sources;
4. Apparent use of some or all parking concession proceeds for purposes other than restoration and preservation;
5. Failure to prepare and maintain regular, systematic business records; and
6. Failure to respond timely and candidly to questions and correspondence by a Council committee.

WHEREAS, the First Amendments to the Lease and the License provide that if the incidental use is not approved by the Council, it shall not be permitted; now, therefore,

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

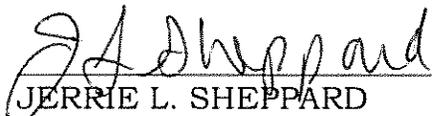
1. That it hereby disapproves of the incidental use of the area leased to the Friends of Moku`ula, Inc. under the Lease dated January 2, 2002, as amended, as a parking lot concession from and after July 1, 2017.

Resolution No. _____

2. That it hereby disapproves of the incidental use of the area licensed to the Friends of Moku`ula, Inc. under the License dated January 2, 2002, as amended, as a parking lot concession from and after July 1, 2017.

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

APPROVED AS TO FORM
AND LEGALITY:



JERRIE L. SHEPPARD
Deputy Corporation Counsel
County of Maui
LF 2014-3080

LAND COURT SYSTEM

REGULAR SYSTEM

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

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

LEASE

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

W I T N E S S E T H :

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

EXHIBIT ' 1 '

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

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

RESERVING UNTO THE STATE OF HAWAII THE FOLLOWING:

1. Minerals and Waters.

A. All minerals as hereinafter defined, in, on or under the Premises and the right, on the State of Hawaii's own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such materials by any means whatsoever, including strip mining. "Minerals" as used herein, shall mean any or all oil; gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of

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

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

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

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

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS
FOLLOWS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

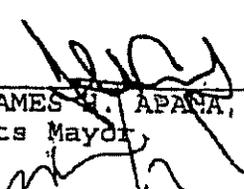
33. Gender. The use of any gender shall include all genders, and if there be more than one (1) lessee, then all words used in the singular shall extend to and include the plural.

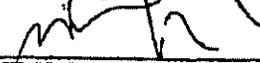
34. Paragraph Headings. The paragraph headings throughout this lease are for the convenience of the Lessor and the Lessee and are not intended to construe the intent or meaning of any of the provisions thereof.

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

LESSOR:

COUNTY OF MAUI

By 
JAMES H. APAPA, JR.
Its Mayor

By 
WESLEY P. LO
Its Director of Finance

LESSEE:

FRIENDS OF MOKU'ULA, INC.

By [Signature]
(Signature)
Jersey K. [unclear]
(Print Name)
Its PRESIDENT
(Title)

By [Signature]
(Signature)
Anthony [unclear]
(Print Name)
Its Executive Director

APPROVAL RECOMMENDED:

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

APPROVAL RECOMMENDED:

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

APPROVED AS TO FORM
AND LEGALITY:

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

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

APPROVED AS TO FORM:

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

APPROVAL RECOMMENDED:

[Signature]
Chairperson
Department of Land and
Natural Resources

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 19th day of December, 2001,
before me appeared JERRY KUNIFONO 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.

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 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.

U.S.

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.

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

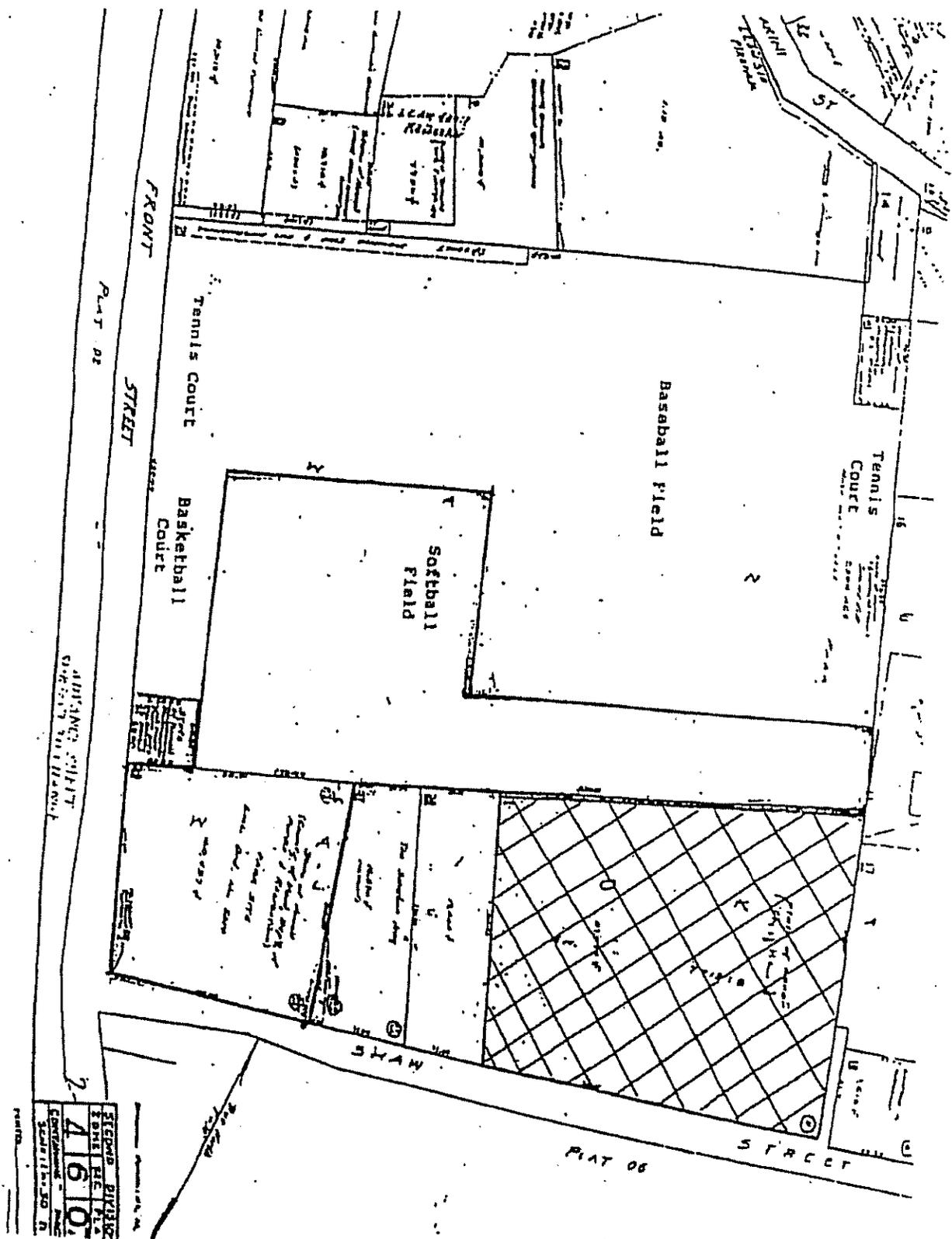


EXHIBIT " A "

LAND COURT SYSTEM

REGULAR SYSTEM

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

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

LICENSE

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

W I T N E S S E T H :

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

EXHIBIT ' 2 '

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 5E, 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 Licenser to retain the balance of said proceeds.

... The Licensee shall furnish to the Licenser 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 Licenser and Mortgagee, if any, of any intention to cancel any such policy or policies, prior to actual cancellation.

15. Licenser's Lien. That the Licenser 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 Licenser 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 MOKULUHLA, INC.

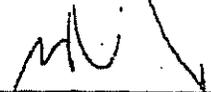
By [Signature]
(Signature)
CARY JUNIOR
(Print Name)
Its PRESIDENT
(Title)

By [Signature]
(Signature)
ANTHONY F. ARANA
(Print Name)
Its Executive Director
(Title)

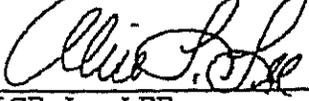
LICENSOR:

COUNTY OF MAUI

By 
JAMES H. APANA, JR.
Its Mayor

By 
WESLEY P. LO
Its Director of Finance

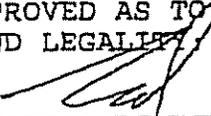
APPROVAL RECOMMENDED:


ALICE L. LEE
Director of Housing
and Human Concerns

APPROVAL RECOMMENDED:

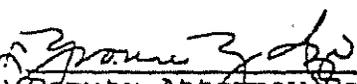

FLOYD S. MIYAZONO
Director of Parks
and Recreation

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.

L.S.

Rochelle M. Baden
Notary Public, State of Hawaii

Print Name
My commissioner expires: _____
ROCHELLE M. BADEN, NOTARY PUBLIC
MY COMMISSION EXPIRES 06/30/04

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.

L.S.

Rochelle M. Baden
Notary Public, State of Hawaii

Print Name
My commissioner expires: _____
ROCHELLE M. BADEN, NOTARY PUBLIC
MY COMMISSION EXPIRES 06/30/04

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.

Katherine Tai

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

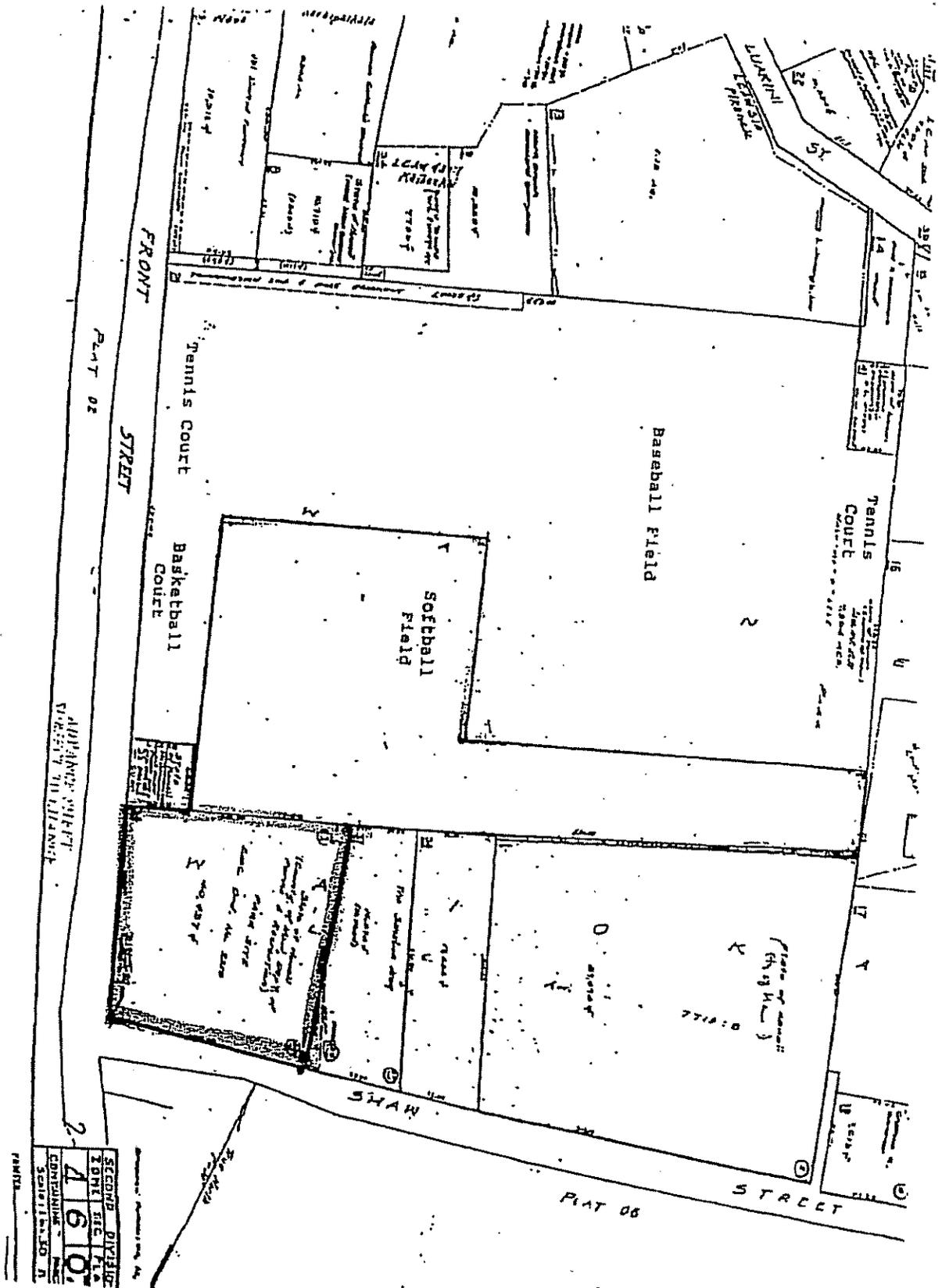
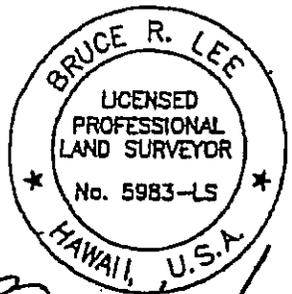
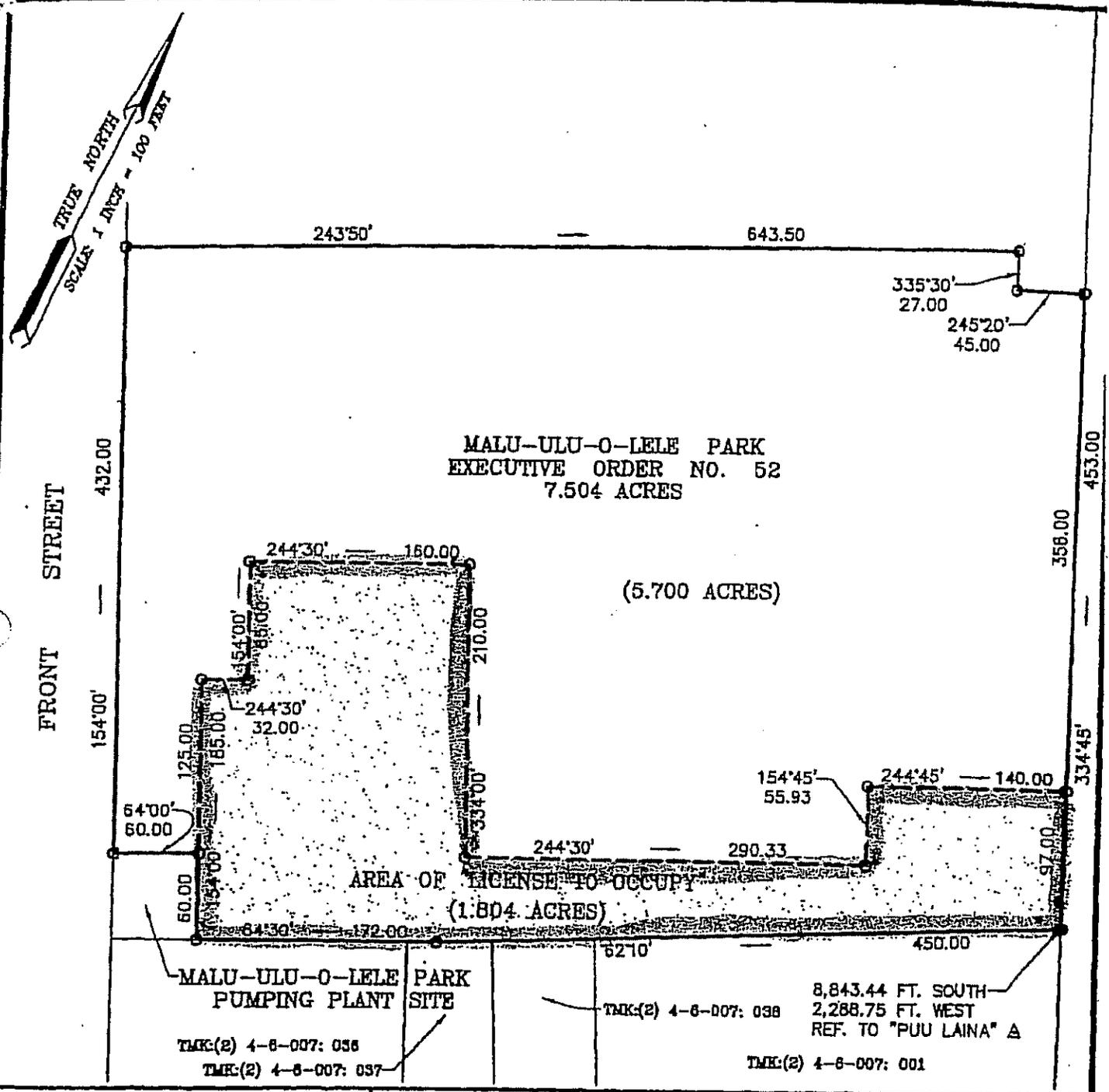


EXHIBIT "A"



Bruce R. Lee

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.
605 FRONT STREET, SUITE 234
LAHAINA, HI 96761

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

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

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

SCALE: 1 INCH = 100 FEET

DATE: OCTOBER 26 2000

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

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

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

8,843.44 feet South
2,288.75 feet West

and running by azimuths measured clockwise from true South:

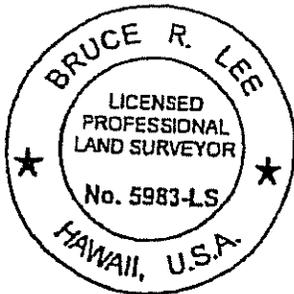
1. 62° 10' 00" 450.00 feet along Parcels 1, 38 and 37 of said Tax Map Key: (2) 4-6-007 and said Royal Patent 7860, Land Commission Award 7715, Apana 3 to Lota Kamehameha (Certificate of Boundaries No. 48);
2. 64° 30' 00" 172.00 feet along Parcels 37 and 36 of said Tax Map Key: (2) 4-6-007 and said Royal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

Page 1 of 2

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.

Bruce R. Lee

 BRUCE R. LEE
 Licensed Professional Land
 Surveyor Certificate No. 5983-LS

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

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 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;

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:

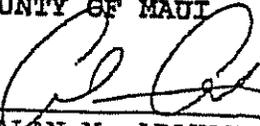
"10. Use of Premises. That the Lessee shall use or allow the Premises hereby demised to be used solely to restore and preserve Moku'ula and the ponds of Mokuhinia. As an incidental use thereto, for the first three (3) years of the Lease term. Lessee shall be permitted to operate a parking concession 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."

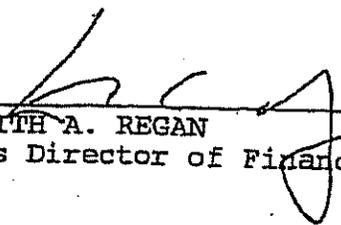
All other terms, conditions, provisions and covenants of the Lease not herein modified by this First Amendment, including the covenant to pay rent, shall remain unchanged and in full force and effect.

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

LESSOR:

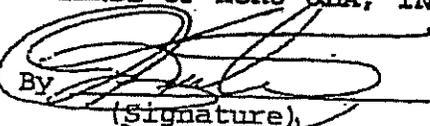
COUNTY OF MAUI

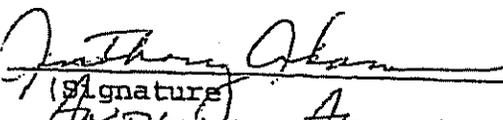
By 
ALAN M. ARAKAWA
Its Mayor

By 
KEITH A. REGAN
Its Director of Finance

LESSEE:

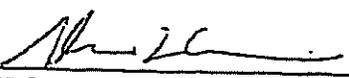
FRIENDS OF MOKU'ULA, INC.

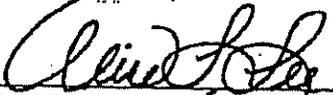
By 
(Signature)
CARY KURITOMO
(Print Name Above)
Its PRESIDENT
(Title)

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

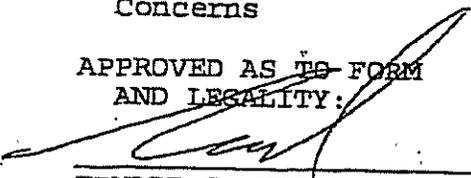
APPROVAL RECOMMENDED:


DANILO F. AGSALOG
Budget Director


GLENN T. CORREA
Director of Parks
and Recreation


ALICE L. LEE, Director
of Housing and Human
Concerns

APPROVED AS TO FORM
AND LEGALITY:

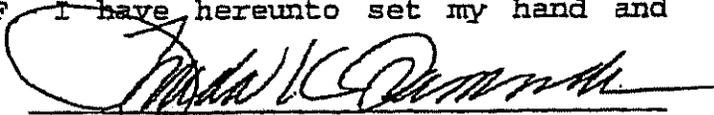

EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui

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

STATE OF HAWAII)
 : SS.
COUNTY OF MAUI)

On this day of MAY 1 2003, 200 , before me personally appeared ALAN M. ARAKAWA, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said ALAN M. ARAKAWA acknowledged the said instrument to be the free act and deed of said County of Maui.

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


Notary Public, State of Hawaii

LINDA K. TAMASHIRO

Print Name

My commission expires: 10/19/06

STATE OF HAWAII)
 : SS.
COUNTY OF MAUI)

On this 10th 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. Kinkaid

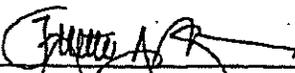
Print Name

My commission expires: 04/09/2007

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.

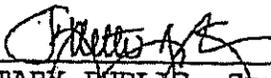
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


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

STATE OF HAWAII)
COUNTY OF Maui) SS.

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

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


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

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup () To:

Department of Finance

County of Maui

200 South High Street

Wailuku, Maui, HI 96793

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

FIRST AMENDMENT TO LICENSE

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

W I T N E S S E T H :

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

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

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

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

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

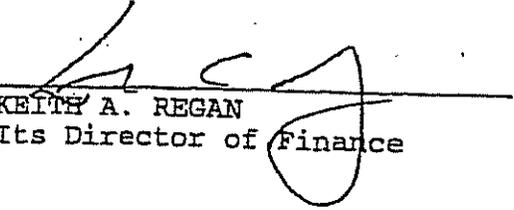
All other terms, conditions, provisions and covenants of the Lease not herein modified by this First Amendment, including the covenant to pay rent, shall remain unchanged and in full force and effect.

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

LICENSOR:

COUNTY OF MAUI

By 
ALAN M. ARAKAWA
Its Mayor

By 
KEITH A. REGAN
Its Director of Finance

LICENSEE:

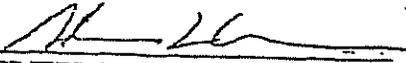
FRIENDS OF MOKU'ULA, INC.

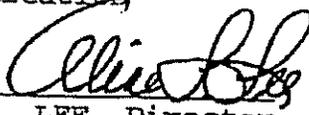
By 
(Signature)
SEENA KUSITONO
(Print Name Above)
Its PRESIDENT
(Title)

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

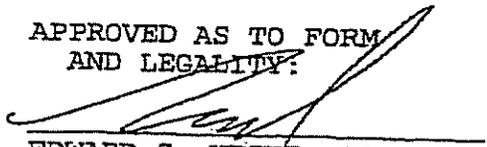
APPROVAL RECOMMENDED:


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:

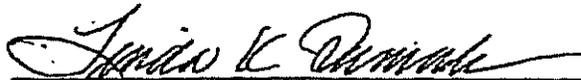

EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui

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

STATE OF HAWAII)
 : SS.
COUNTY OF MAUI)

On this _____ day of MAY 1 2003, 200____, before me personally appeared ALAN M. ARAKAWA, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said ALAN M. ARAKAWA acknowledged the said instrument to be the free act and deed of said County of Maui.

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

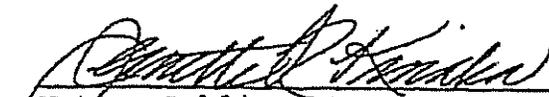


Notary Public, State of Hawaii
LINDA K. TAMASHIRO
Print Name
My commission expires: 10/19/06

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.

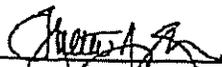


Notary Public, State of Hawaii
Jeanette R. Kinahan
Print Name
My commission expires: 04/09/07

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.

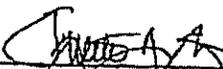
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


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

STATE OF HAWAII)
COUNTY OF Maui) SS.

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

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


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