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

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

February 24, 2016

MEMO TO: Patrick K. Wong
Corporation Counsel

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

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

At its meeting of November 3, 2015, the Council's Economic Development, Energy, Agriculture, and Recreation Committee continued its review of the Friends of Moku`ula, Inc.'s ("FOM") operation of the parking concession located on County property in Lahaina pursuant to a Lease and License, both dated January 2, 2002, as amended by First Amendments in 2003. We have previously provided to the Department copies of the Lease, License, and Amendments by letter dated September 22, 2015.

The First Amendments to the Lease and License of the property, state, respectively, as follows:

Lease:

10. Use of Premises. That the Licensee 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 License 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 Licensor and the State of Hawaii through its Board of Land and Natural Resources.

License:

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. [Italics added]

While the amendments state the incidental use is not permitted unless approved by the Council, the Council has not approved the use following the end of the first three years of the lease and license.

The legislative history of the amendments suggests the Council intended to limit the incidental use to an initial two years following the effective date of the amendments (to 2005), then require Council approval for the use to continue.

In 2003, Mayor Alan M. Arakawa proposed an amendment be made to both the lease and license that would grant concession rights to FOM for parking use. (Copy of County Communication No. 03-99, dated April 15, 2003, is attached.) As proposed in the First Amendments to the License and Lease, respectively, the parking concession on TMK Nos. (2) 4-6-007:002 (por.) and :036 would be temporary while the parking concession on TMK No. (2) 4-6-007:001 would be permanent. (See, Exhibit "A", p. 2, and Exhibit "B", p. 2, of County Communication No. 03-99.) As originally proposed, the concession did not expire and was not subject to Council review. The "temporary" nature of the use on Parcels :002 and :036 was in recognition that the location of the existing

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parking lot is within the reconstruction area of Moku`ula Island. (See, Minutes of the Council of the County of Maui, April 22, 2003, testimony of Mr. Jerry Kunitomo, Acting President of the Friends of Moku`ula.)¹

By letter dated April 22, 2003, Councilmember JoAnne Johnson, then Chair of the Parks and Agricultural Committee, proposed amendments to the license and lease to limit the parking concession to an initial five-year term renewable at the discretion of the Council for additional five-year terms throughout the term on the License and Lease. (See, Letter from JoAnne Johnson, Chair, Parks and Agriculture Committee, to Council Chair Dain P. Kane, dated April 22, 2003, Exhibit "A-1", p. 2.) If not approved by Council, the "incidental use [parking concession] shall not be permitted." Id.

At its meeting of April 22, 2003, the Council discussed Councilmember Johnson's proposed revisions to the First Amendments. The Council adopted the proposal with the exception that the initial time period was reduced from five to two years.² The FOM agreed to this initial two-year review date, which was three years from the date of the execution of the License and Lease.³ Resolution No. 03-54 adopted by the Council on April 22, 2003, reflects these changes. (See, copy of Resolution No. 03-54 attached.)

Given that the Council has never approved the incidental use following the first three years of FOM's operation of the parking concession, please opine as to the following:

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

I intend to schedule this matter for consideration by the Committee on March 1, 2016. I would, therefore, appreciate receiving a written response by **February 29, 2016**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

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February 24, 2016
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Should you have any questions, please contact me or the Committee staff (Sharon Brooks at ext. 7137, or Pauline Martins at ext. 8039).

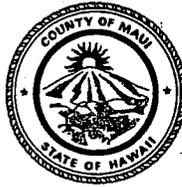
ear:ltr:002acc02:scb

¹ “MR. KUNITOMO: Thank you, Mr. Hokama. . . But it’s been sort of one step at a time. For example, the parking lot we talking about reviewing, the status of the funding in two years and five years. The reality is the parking lot exists on top of the island as best we know it. So, this is an interim window, this is a, a temporary window of time where the organization sees an opportunity to create funding for itself because in three or five years, depending on how this process goes, we may be digging there because that is where most of the archaeological artifacts at this point, that have been verified, exists. So at which time, then during Phase 1, we create the new parking area, which allows us the opportunity to excavate in this time. . .” Council Minutes, April 22, 2003, p. 40.

² Minutes, p. 41.

³ “COUNCILMEMBER JOHNSON: I just wanted to affirm also that I did speak with Mr. Akana and it is agreeable to him to have it for this two year period from today’s date.” Minutes, p. 43.

ALAN M. ARAKAWA
MAYOR



200 South High Street
Wailuku, Maui, Hawaii USA
96793-2155
Telephone (808) 270-7855
Fax (808) 270-7870
e-mail: mayors.office@co.maui.hi.us

OFFICE OF THE MAYOR
Ke'ena O Ka Meia

COUNTY OF MAUI
Kalana O Maui

2003 APR 15 AM 11:55

OFFICE OF THE
COUNTY CLERK

April 15, 2003

The Honorable Dain P. Kane
Chair and Members of the Council
Maui County Council
200. S. High Street
Wailuku, HI 96793

Re: Granting Friends of Moku'ula parking concession

Dear Council Chair Kane:

During the budget hearings of January 2001, it was made clear that the Friends of Moku'ula (FOM) was going to receive permission to operate a fee-for-parking concession at the parking lot leased to them in a lease and license dated January 2, 2002. In fact, the Council withdrew funding for FOM because Council perceived there would be sufficient funds generated from the parking concession. Apparently, the lease and license did not reflect the fact that the County would allow FOM the concession.

I am submitting a resolution that would allow an amendment be made to both the lease and license that would grant concession rights to FOM for the parking concession. In light of the fact that FOM was counting on these revenues since November 2002 and they have not received them, I am requesting that this resolution be heard by the full council at your next meeting.

Please advise me of the status of this request as soon as possible. Thanking you in advance for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan M. Arakawa".

Alan M. Arakawa
Mayor

Enclosures
CC: Corporation Counsel Moto

COUNTY COMMUNICATION NO. 03-99

Resolution

No. _____

AUTHORIZING AN AMENDMENT TO LEASE AND AN
AMENDMENT TO LICENSE FOR FRIENDS OF MOKU'ULA, INC.

WHEREAS, COUNTY OF MAUI and FRIENDS OF MOKU'ULA, INC. ("FOM") entered into that certain License agreement affecting TMK (2) 4-6-007:por. 002 and 036, dated January 2, 2002, and that certain Lease agreement affecting TMK (2) 4-6-007:001, dated January 2, 2002, which agreements were approved by the Council of the County of Maui on December 1, 2000, by Resolutions Nos. 00-172 and 00-171, respectively; and

WHEREAS, in both agreements, under Section 10, Use of Premises, it stated "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."; and

WHEREAS, the County of Maui and FOM desire to amend the terms and conditions of the agreements, specifically with respect to the Use of Premises sections, to permit FOM to operate a parking concession on the leased and licensed premises, said amendment being proposed and recited in the documents entitled "First Amendment to License", and "First Amendment to Lease", copies of which being attached hereto as Exhibits "A" and "B", respectively; and

Resolution No. _____

WHEREAS, pursuant to Maui County Code Section 3.40.200, concession or concession spaces and/or real property to be leased, rented, or set aside without any charge or at a charge below fair market value shall be considered a grant of public property and shall be submitted to the Council as an application for grant award and considered by the Council pursuant to Chapter 3.36, Maui County Code; and

WHEREAS, pursuant to Maui County Code Section 3.36.090, the Council of the County of Maui may authorize the grant of concessions at less than fair market value by resolution; and

WHEREAS, the Council of the County of Maui desires to approve the grant of a parking concession to FOM, in accordance with the terms and conditions of the amendments to the License and Lease, as set forth in Exhibits "A" and "B", attached hereto; now, therefore,

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

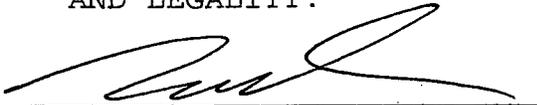
1. That FOM be granted the right to operate a parking concession on the licensed and leased Premises in accordance with the terms and conditions of the proposed "First Amendment to License", and "First Amendment to Lease", attached hereto as Exhibits "A" and "B", respectively; and

Resolution No. _____

2. That the Mayor and the Director of Finance or their authorized representatives are authorized to execute the proposed "First Amendment to License", and "First Amendment to Lease" documents; and

3. That certified copies of this Resolution be transmitted to the Mayor, the Director of Finance, the Director of Parks and Recreation, the Director of Housing and Human Concerns, and to the FOM.

APPROVED AS TO FORM
AND LEGALITY:



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

S:\ALL\ESK\RESO\Mokuulaam.wpd

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

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

"10. Use of Premises. That the 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, 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. 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.

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\Mokuulalicenseam.wpd

By _____
(Signature)

(Print Name Above)

Its _____
(Title)

By _____
(Signature)

(Print Name Above)

(Title)

STATE OF HAWAII)
): SS.
COUNTY OF MAUI)

On this _____ day of _____, 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

Print Name
My commission expires:_____

STATE OF HAWAII)
): SS.
COUNTY OF MAUI)

On this _____ day of _____, 200____, 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

Print Name
My commission expires:_____

STATE OF HAWAII)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(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: _____

STATE OF HAWAII)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(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: _____

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

EXHIBIT " 1 "

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

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

RESERVING UNTO THE STATE OF HAWAII THE FOLLOWING:

1. Minerals and Waters.

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

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

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

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

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

THE Licensee COVENANTS AND AGREES WITH THE Licensor AS FOLLOWS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LICENSEE:

FRIENDS OF MOKULULA, INC.

By [Signature]
(Signature)

CARY KUNITOMO
(Print Name)

Its PRESIDENT
(Title)

By [Signature]
(Signature)

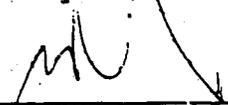
ANTHONY F. ARANA
(Print Name)

Its Executive Director
(Title)

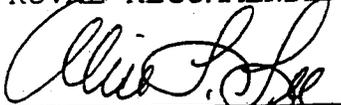
LICENSOR:

COUNTY OF MAUI

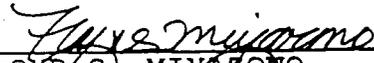
By 
JAMES H. APANA, JR.
Its Mayor

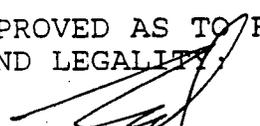
By 
WESLEY P. LO
Its Director of Finance

APPROVAL RECOMMENDED:

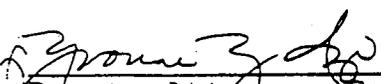

ALICE L. LEE
Director of Housing
and Human Concerns

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.

U.S.

Rocheline S. Badier
Notary Public, State of Hawaii
Print Name
My commissioner expires: _____
ROCHELINE S. BADIER, NOTARY PUBLIC
MY COMMISSION EXPIRES: 02/06/2004

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.

Rocheline S. Badier
Notary Public, State of Hawaii
Print Name
My commissioner expires: _____
ROCHELINE S. BADIER, NOTARY PUBLIC
MY COMMISSION EXPIRES: 02/06/2004

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, 2007, 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.

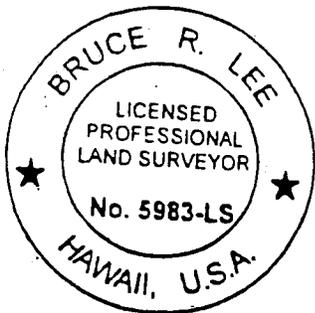
LS.

Marlene Lai
Notary Public, State of Hawaii
Marlene Lai
Print Name
My commission expires: January 10, 2003

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-frriendsof-lease

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 primarily to restore and preserve Moku'ula and the ponds of Mokuhinia. As an incidental use thereto, 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. 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.

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\Mokuulaleaseam.wpd

By _____
(Signature)

(Print Name Above)

Its _____
(Title)

By _____
(Signature)

(Print Name Above)

(Title)

STATE OF HAWAII)
 : SS.
COUNTY OF MAUI)

On this _____ day of _____, 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

Print Name
My commission expires:_____

STATE OF HAWAII)
 : SS.
COUNTY OF MAUI)

On this _____ day of _____, 200____, 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

Print Name
My commission expires:_____

STATE OF HAWAII)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(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: _____

STATE OF HAWAII)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(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: _____

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

EXHIBIT " 1 "

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

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

RESERVING UNTO THE STATE OF HAWAII THE FOLLOWING:

1. Minerals and Waters.

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

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

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

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

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

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS
FOLLOWS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

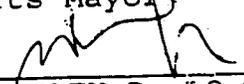
LESSOR:

COUNTY OF MAUI

By


JAMES H. APANA, JR.
Its Mayor

By


WESLEY P. LO
Its Director of Finance

LESSEE:

FRIENDS OF MOKU'ULA, INC.

By [Signature]
(Signature)

JERRY KAWITANI
(Print Name)

Its PRESIDENT
(Title)

APPROVAL RECOMMENDED:

[Signature]

ALICE L. LEE
Director of Housing
and Human Concerns

APPROVAL RECOMMENDED:

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

APPROVED AS TO FORM
AND LEGALITY:

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

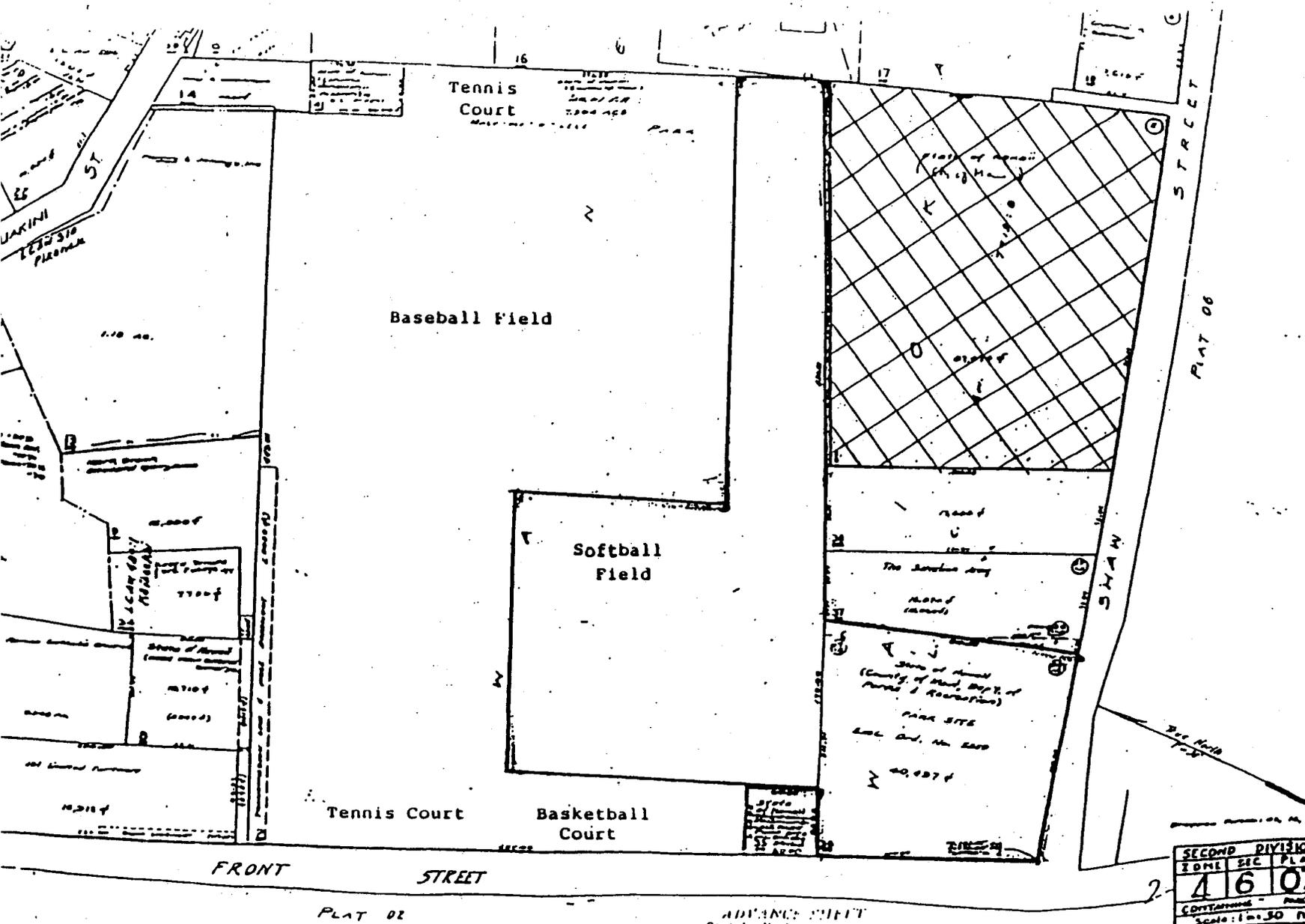
APPROVED BY THE BOARD OF LAND
AND NATURAL RESOURCES AT ITS
MEETING HELD ON AUGUST 10, 2001.

APPROVED AS TO FORM:

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

APPROVAL RECOMMENDED:

[Signature]
Chairperson
Department of Land and
Natural Resources



| SECOND DIVISION | |
|-----------------------|-----|
| EDME | SEC |
| 460 | |
| CITY OF PHOENIX | |
| Scale: 1 in. = 50 ft. | |

EXHIBIT "A"

STATE OF HAWAII)
)
) SS.
COUNTY OF MAUI)

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

Rocéphine G. Badua
Notary Public, State of Hawaii

U.S.

Print Name
My commissioner expires: _____
ROCEPHINE G. BADUA, NOTARY PUBLIC
MY COMMISSION EXPIRES 02/03/2004

STATE OF HAWAII)
)
) SS.
COUNTY OF MAUI)

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.

Rocéphine G. Badua
Notary Public, State of Hawaii

U.S.

Print Name
My commissioner expires: _____
ROCEPHINE G. BADUA, NOTARY PUBLIC
MY COMMISSION EXPIRES 02/03/2004

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 10, 2003

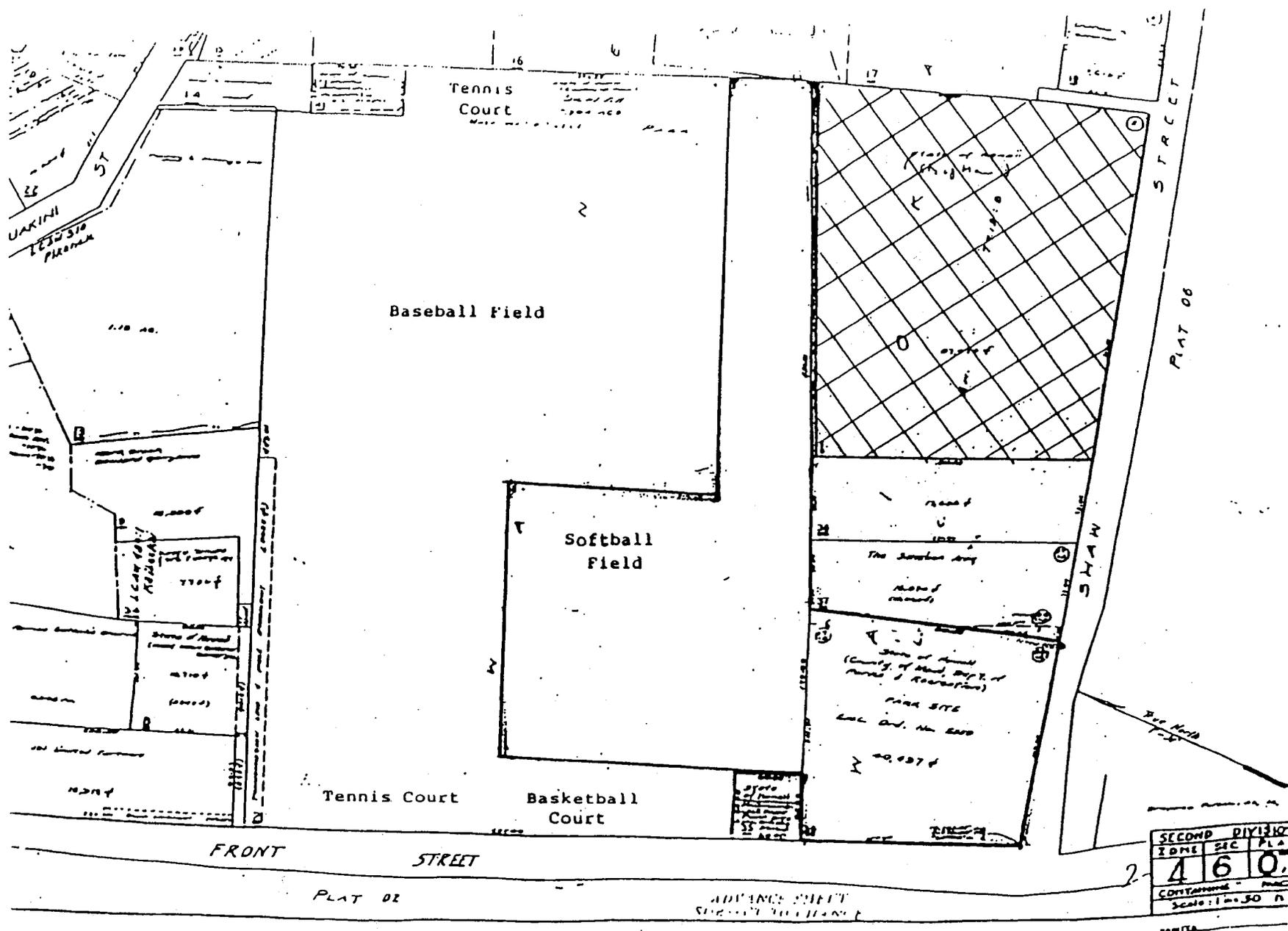


EXHIBIT "A"

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.

Rosephine G. Badua
Notary Public, State of Hawaii

Print Name
My commissioner expires: _____
ROSEPHINE G. BADUA, NOTARY PUBLIC
MY COMMISSION EXPIRES 12/31/04

STATE OF HAWAII)
COUNTY OF MAUI)

SS.

On this 19th day of December, 2001,
before me appeared Anthony & 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 12/31/04

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.

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

L.S.

April 22, 2003

MEMO TO: Council Chair Dain P. Kane
and Members of the Council

F R O M: Jo Anne Johnson, Chair
Parks and Agriculture Committee

SUBJECT: COUNTY COMMUNICATION NO. 03-99, RELATING TO
PROPOSED PARKING CONCESSION FOR FRIENDS OF
MOKU'ULA, INC.; COUNCIL MEETING OF APRIL 22,
2003

At the Council meeting of April 22, 2003, I intend to move to waive the requirement of committee referral and recommendation for the proposed resolution transmitted by County Communication No. 03-99 pursuant to Section 5(H) of the Rules of the Council. Approval of my motion by a two-thirds vote will enable the Council to consider a proposed resolution entitled "AUTHORIZING AN AMENDMENT TO LEASE AND AN AMENDMENT TO LICENSE FOR FRIENDS OF MOKU'ULA, INC.", submitted by the Mayor.

The purpose of the proposed resolution is to grant Friends of Moku'ula, Inc. a parking concession on leased County property in Lahaina pursuant to Chapter 3.36, Maui County Code.

The "First Amendment to License" and "First Amendment to Lease" amend the terms and conditions of the lease and license agreements dated January 2, 2002, specifically with respect to the Use of Premises sections, to permit the Friends of Moku'ula, Inc. to temporarily operate a parking concession on the leased and licensed premises located at TMK: 4-6-007: portion of 002 and 036. The net proceeds of the parking concession shall be used by the Friends of Moku'ula, Inc. for restoration and preservation purposes.

Research indicates that the Council and Administration have intended for Friends of Moku'ula, Inc. to be awarded the parking concession since at least 2001. Moreover, according to research, the parking concession has long been regarded as a revenue source for Friends of Moku'ula, Inc. Apparently, bureaucratic issues have delayed the formal approval of the parking concession thus far. May I suggest that the proposed resolution be adopted during this morning's Council meeting.

Therefore, I intend to make the following motions:

Memo To: Council Chair Dain P. Kane and Members of the Council
April 22, 2003
Page 2

First, I intend to move to waive the requirement of committee referral and recommendation for the proposed resolution transmitted by County Communication No. 03-99. The reason for this motion is to enable the Council to take immediate action to grant the Friends of Moku'ula, Inc. a parking concession on leased County property in Lahaina pursuant to Chapter 3.36, Maui County Code.

Second, I intend to move that the proposed resolution attached to County Communication No. 03-99, entitled "AUTHORIZING AN AMENDMENT TO LEASE", be amended to attach a new Exhibit "A1" (attached) as a substitute for the existing Exhibit "A". The proposed new Exhibit A1 would provide that the parking concession be subject to Council review every five years.

Third, I intend to move that the proposed resolution, as amended, be adopted.

Fourth, I intend to move that County Communication No. 03-99 be filed.

Thank you for your attention to this matter and for your consideration of the proposed motions. Should you have any questions, please contact me or Legislative Attorney David Rantz (ext. 7663).

pa:misc:wvr03-99a:dmr

Attachment

cc: Honorable Alan Arakawa, Mayor
County Clerk
Director of Council Services
Director of Parks and Recreation
Corporation Counsel

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 five (5) 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 every five (5) years 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.

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

By _____
(Signature)

(Print Name Above)

Its _____
(Title)

By _____
(Signature)

(Print Name Above)

(Title)

STATE OF HAWAII)
 : SS.
COUNTY OF MAUI)

On this _____ day of _____, 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

Print Name

My commission expires:

STATE OF HAWAII)
 : SS.
COUNTY OF MAUI)

On this _____ day of _____, 200____, 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

Print Name

My commission expires:

STATE OF HAWAII)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(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: _____

STATE OF HAWAII)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(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: _____

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 five (5) 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 every five (5) years 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)

(Print Name Above)
Its _____
(Title)

By _____
(Signature)

(Print Name Above)

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

(Title)

STATE OF HAWAII)
): SS.
COUNTY OF MAUI)

On this _____ day of _____, 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

Print Name
My commission expires: _____

STATE OF HAWAII)
): SS.
COUNTY OF MAUI)

On this _____ day of _____, 200____, 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

Print Name
My commission expires: _____

STATE OF HAWAII)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(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: _____

STATE OF HAWAII)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(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: _____

MINUTES

of the

COUNCIL OF THE COUNTY OF MAUI

APRIL 22, 2003

THE REGULAR MEETING OF THE COUNCIL OF THE COUNTY OF MAUI, STATE OF HAWAII, WAS HELD IN THE COUNCIL CHAMBERS, KALANA O MAUI BUILDING, WAILUKU, HAWAII, ON TUESDAY, APRIL 22, 2003, BEGINNING AT 9:06 A.M., WITH CHAIR DAIN P. KANE PRESIDING.

ROLL CALL

PRESENT: COUNCILMEMBERS G. RIKI HOKAMA, JO ANNE JOHNSON, DENNIS A. MATEO, MICHAEL J. MOLINA, WAYNE K. NISHIKI, JOSEPH PONTANILLA, CHARMAINE TAVARES, VICE-CHAIR ROBERT CARROLL, AND CHAIR DAIN P. KANE.

EXCUSED: NONE.

OPENING PRAYER

The opening prayer was offered by Councilmember Mateo, followed by the Pledge of Allegiance to the Flag.

CHAIR KANE: Thank you for those words, Member Mateo. Clerk, if we can proceed with the agenda, please.

COUNTY CLERK ROY T. HIRAGA: Yes, Mr. Chairman. We've received two requests from individuals who have signed up prior to the convening of the meeting that wish to testify at today's meeting. Shall we proceed?

CHAIR KANE: Yes, let's proceed with the testimony. And for those of you here in the audience as well as colleagues, at this time we ask that if you have a pager or a cell phone, if you can turn it either to the off or to the silent mode so that we can avoid

CHAIR KANE: Opposed?

NOES: NONE.

CHAIR KANE: Carried. Thank you, Member Mateo for that. Clerk.

COUNTY CLERK: For the record, that was RESOLUTION 03-53.

CHAIR KANE: Thank you.

NO. 03-98 - RIKI HOKAMA, COUNCIL MEMBER,
(dated April 2, 2003)

Transmitting a copy of a communication from Michael S. Kitagawa, Kitagawa's Towing, relating to impoundment of vehicles.

The County Clerk stated that the recommended action is that County Communication No. 03-98 be referred to the Committee of the Whole.

NO. 03-99 - ALAN M. ARAKAWA, MAYOR,
(dated April 15, 2003)

Transmitting a proposed resolution entitled "AUTHORIZING AN AMENDMENT TO LEASE AND AN AMENDMENT TO LICENSE FOR FRIENDS OF MOKU'ULA, INC."

The County Clerk stated that the recommended action is that County Communication No. 03-99 be referred to the Parks and Agriculture Committee.

(THE PROPOSED RESOLUTION WAS LATER ADOPTED AND NUMBERED RESOLUTION NO. 03-54 AND COUNTY COMMUNICATION NO. 03-99 WAS FILED. SEE PAGE NOS. 31 THROUGH 44 FOR DISCUSSION.)

NO. 03-100 - LYNN ARAKI-REGAN, ECONOMIC DEVELOPMENT COORDINATOR,
(dated April 10, 2003)

Transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 22.04, MAUI COUNTY CODE, PERTAINING TO KULA PARK."

The County Clerk stated that the recommended action is that County Communication No. 03-100 be referred to the Parks and Agriculture Committee.

RELATING TO COUNTY COMMUNICATION NO. 03-99

CHAIR KANE: Councilmember Johnson.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair.

MOVE TO WAIVE THE REQUIREMENT OF COMMITTEE REFERRAL AND RECOMMENDATION FOR PROPOSED RESOLUTION TRANSMITTED BY COUNTY COMMUNICATION NO. 03-99.

CHAIR KANE: Is there a second?

COUNCILMEMBER TAVARES:

SECOND.

CHAIR KANE: Thank you. It's been moved and seconded by Members Johnson and Tavares to waive the rules of referral to the Committee on County Communication 03-99. We are in discussion. Member Johnson.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair. The reason for the motion is to enable the Council to take immediate action to grant the Friends of Moku`ula a parking concession on leased County property in Lahaina pursuant to Chapter 3.36, Maui County Code.

CHAIR KANE: Thank you. Further discussion on the waiver. Hearing none, all in favor say "aye."

AYES: COUNCILMEMBERS HOKAMA, JOHNSON, MATEO, MOLINA, NISHIKI, PONTANILLA, TAVARES, VICE-CHAIR CARROLL, AND CHAIR KANE.

CHAIR KANE: Opposed?

NOES: NONE.

CHAIR KANE: Okay, it's unanimous. Thank you. Member Johnson, you are recognized.

COUNCILMEMBER JOHNSON:

YES, MY SECOND MOTION IS TO MOVE THAT THE PROPOSED RESOLUTION ATTACHED TO COUNTY COMMUNICATION NO. 03-99, ENTITLED AUTHORIZING AN AMENDMENT TO LEASE BE AMENDED TO ATTACH A NEW EXHIBIT A-1 AS A SUBSTITUTE FOR THE EXISTING EXHIBIT A.

COUNCILMEMBER TAVARES:

SECOND.

CHAIR KANE: It's been moved and seconded by Members Johnson and Tavares to adopt the resolution attached to County Communication 03-99, which is stated in your April 22, 2003 memorandum from Member Jo Anne Johnson, Chair of the Parks and Ag Committee to this body. Member Johnson, you have the floor.

COUNCILMEMBER JOHNSON: Yes, the proposed new Exhibit A-1 would provide that the parking concession be subject to Council review every five years and I think it would be helpful if Corporation Counsel could just reiterate or at least explain why we are making this amendment.

CHAIR KANE: Thank you. Corp. Counsel, are you prepared to respond this morning.

CORPORATION COUNSEL BRIAN MOTO: Good morning Mr. Chairman and Members.

CHAIR KANE: Good morning.

CORPORATION COUNSEL MOTO: Based upon the memorandum circulated by Councilmember Johnson, the proposed amendment and the revised exhibit referenced as Exhibit A-1 would amend the existing "First Amendment to Lease" with, between the County of Maui and the Friends of Moku`ula. As drafted, Exhibit A-1 would grant to, explicitly grant to licensee, the Friends of Moku`ula a parking concession on the premises. The proposed language would limit that to the first five years of the license term and it goes on to say that "Such incidental use" in other words use as a parking concession, "concession shall be reviewed and, in its discretion, approved by the Maui County Council by separate resolution every five years during the term of the License. If not approved by the Maui County Council, such incidental use" meaning the parking concession "shall not be permitted." Mr. Chairman, at this time I will also point out that to supplement and complete Councilmembers, Councilmember Johnson's memorandum and motion, there was circulated just a few minutes ago, an Exhibit B-1. Exhibit B-1 is a document entitled "First Amendment to Lease." As you note, Mr. Chairman, on the agenda today is a

resolution that would authorize the parking concession and it has attached to it two exhibits, Exhibit A and Exhibit B. Councilmember Johnson earlier circulated Exhibit A-1 which would substitute this new, revised version for the Exhibit A that was attached to the original transmission, transmittal. Exhibit B-1 will make the, the same or similar types of amendments that are proposed by Councilmember Johnson to the existing lease between the County of Maui and the Friends of Moku`ula because the entire property actually is covered by two separate agreements, a License and a Lease. And in order to, and because the Friends of Moku`ula, from what we understand, intend to at least temporarily, initially have a parking concession on the licensed portion and then at some point, which has yet to be determined, to then relocate the parking concession to the land that's on, covered by the lease.

CHAIR KANE: Okay, thank you. Member Johnson. Would you like to include the Exhibit B-1 in your--

COUNCILMEMBER JOHNSON:

YES, I WOULD LIKE TO AMEND MY MOTION, I WAS JUST GOING TO ASK THAT OF CORPORATION COUNSEL, SO MY ORIGINAL MOTION WOULD AMEND TO, ALSO INCLUDE EXHIBIT B-1.

COUNCILMEMBER TAVARES:

SECOND.

CHAIR KANE: Okay. We'll move to amend or instead, the Chair will recognize a friendly amendment to include the "First Amendment to Lease." Members are there any objections to just incorporating it into the full motion, as far as just including the lease portion. Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, since there is a formal motion on the floor, I would prefer a proper procedure regarding this legal document.

CHAIR KANE: Fine, okay. Let's move forward, then. It's been moved and seconded by Members Johnson and Tavares to amend the motion by including Exhibit B-1 to the main motion, so, as far as the amendment is concerned, we're just voting to include Exhibit B-1 to the, to the documents that have been given to us for review. Member Johnson, you have the floor.

COUNCILMEMBER JOHNSON: No, if there, I just wanted to note for the record that there are members and Akoni Akana has come to this meeting if there is anyone that would want to also hear from, his perspective what has transpired and why we're

asking, or he's asking. And Corporation Counsel is, you know, offering these, these amendments.

CHAIR KANE: Okay. Is there any discussion on the amendment, Members? Hearing none, all in favor say "aye."

AYES: COUNCILMEMBERS HOKAMA, JOHNSON, MATEO,
MOLINA, NISHIKI, PONTANILLA, TAVARES,
VICE-CHAIR CARROLL, AND CHAIR KANE.

CHAIR KANE: Opposed?

NOES: NONE.

CHAIR KANE: Okay, we're back to the main motion, and it's carried unanimously. We're back to the main motion, as amended, which would be to approve the resolution that has the Attachments A-1, which are revised, as well as Exhibit B-1, revised. And we're on that, as the main motion. Member Johnson.

COUNCILMEMBER JOHNSON: Yes, and the only thing that I would add is that upon passage of this,

MY MOTION WOULD ALSO INCLUDE THAT COUNTY
COMMUNICATION NO. 03-99 BE FILED.

CHAIR KANE: Okay, Members, any objections to having that included, or would you like to have it.

MEMBERS VOICED NO OBJECTION.

CHAIR KANE: Okay, thank you. No objections. Discussion. Member Hokama.

COUNCILMEMBER HOKAMA: Chairman, a question for Mr. Moto, please.

CHAIR KANE: Proceed.

COUNCILMEMBER HOKAMA: Under B-1, Mr. Moto. Section 10, Use of Premises, the language currently is that the Lessee shall use or allow the Premises. Is that the existing language, as I understand it in the already executed documents.

CORPORATION COUNSEL MOTO: Mr. Chairman. If I may have just a few seconds to--

CHAIR KANE: Yeah, Mr. Moto.

CORPORATION COUNSEL MOTO: Mr. Chairman, in response to Councilmember Hokama's question, yes the first sentence of that paragraph 10 is identical to the existing first sentence in the existing lease.

CHAIR KANE: Member Hokama.

COUNCILMEMBER HOKAMA: Thank you. Then can this body this morning, understand that that allows the Lessee the ability to sublease. Since it is the "shall use or allow", which I'm assuming then we, it is given the permission to sublease.

CORPORATION COUNSEL MOTO: I'm sorry, Mr. Chairman, if I may have just a few seconds to review the--

CHAIR KANE: No problem, take your time.

COUNCILMEMBER TAVARES: Mr. Chairman.

CORPORATION COUNSEL MOTO: Mister.

CHAIR KANE: Member Tavares.

COUNCILMEMBER TAVARES: Yes, maybe we could ask if all the questions maybe could be presented at this time, and then we could take a, a break and have Corp. Counsel look it over and then after we come back, then we'd have some answers.

CHAIR KANE: Well let's see if Mr. Moto can respond to that question. If there are any further questions, then we'll go ahead and recess prior to, to responding to further questions. But lets, lets finish up this question since its already been asked. Go ahead, Mr. Moto.

CORPORATION COUNSEL MOTO: Mr. Chairman. On response to the question regarding us subleasing of the property. There is a specific paragraph or section within the existing, in this case, since we're talking about the lease, I'll reference the lease. It, and I, a copy of which is in my binder, so I will assume that it's also in your binders as well. Its on page 15 of the Lease, in paragraph 29, entitled Assignability, Etc. And this section says "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."

CHAIR KANE: Member Hokama.

COUNCILMEMBER HOKAMA: Ah, thank you. I, I just wanted that on the record because when you, when I read, and if you just read this one section and not the total agreement, it says shall use or allow the premises to be used. Then one could make an inference that we are considering someone else that the lessee would allow to use the premises. My only other point, Mr. Chairman, is that while I agree with the, the intent of Miss Johnson and, and I believe this will be also be fulfilling what Council had always intended with the use of this property. I would say that from my point of view, that upon the adoption or execution of this revision, that after the first two years, Council be, Council shall review the concession as well as the revenues and expenditures and then after that point, we can consider an every five year renewal or, or reauthorization. I say that so that the Council may within a reasonable time, have a chance to understand how the revenues flow in and out of that lease and license and then we can make the appropriate adjustments because it was never intended to be more than what Council has already approved by the purchase of that property in the first place, and as presented by the former Director of Finance, in our understanding how we would finance the payment of the appropriation to purchase the said property.

CHAIR KANE: Mr. Hokama, would you like to state that in a form of a motion to amend?

COUNCILMEMBER HOKAMA: I, I, it was . . . to just throw it out to see if there was other Members that would think this was a reasonable request so that if so we'll move forward and if other Members think they can live with the five years and, and they're comfortable with it, then, obviously there's not support for me to move it forward, Chairman. So I, I throw it out because I think it's a reasonable consideration in my experience with commercial properties and administering programs such as these in my past that I think it is reasonable for this body to consider what I have just presented.

CHAIR KANE: Okay, thank you. Member Johnson.

COUNCILMEMBER JOHNSON: Yes, within the, the lease itself, an annual report is required. It says "The Lessee shall make annual reports to the Lessee on the forms specified by the Lessor." That is to be done annually but.

CHAIR KANE: Can you state the page, just for reference for the Members, since you're citing.

COUNCILMEMBER JOHNSON: That, that is on page 17 on line 32, and it's on Exhibit 1.

CHAIR KANE: Page 17, number 31, Member Johnson.

COUNCILMEMBER JOHNSON: It's 32.

CHAIR KANE: Thirty-two, now. Thank you.

COUNCILMEMBER JOHNSON: I know because we have two different leases. It's just stated in that manner. And the only other thing I would like to say Mr. Chair, is that from a business perspective, I believe that it will be incumbent upon the people who are going to be managing the parking concession to construct whatever they need to construct so there will be a, a little bit at least initially capital investment required to reconfigure the parking, striping, doing that. I don't know if the cost will be prohibited, or prohibitive, but I believe that in the first five years, it will give them the opportunity to at least see how the parking concession is going and also move forward with their plans. Unfortunately, because of some delays that were caused in the execution of this aspect of the original lease, revenues have been lost by the organization, which have placed it in a position of financial hardship at this point in time. And, there may be an overage of revenues that come to the organization that would perhaps be considered for use in other areas if we were looking at it in that respect. But I think that there may also be a shortfall and in that regard and no one knows which way the revenue source, revenue stream will go. So my concern would be that if there is a revenue loss at this point in time, giving the five year period would at least give Friends of Moku`ula enough time to have, perhaps over time to recover at least financially and move on with their project and perhaps accelerate that as an economic engine for the County and also as a historic site for people who are vacationing here and also as a historic site for those people who would be looking at as a cultural resource. So I just ask that it be left at five years respectfully.

CHAIR KANE: Thank you, Member Johnson. And Member Nishiki, before I recognize you, I'd, again I want to recognize as well, Member Tavares' request for a recess, which we normally take at around 10:30. We are in the middle of this so, I'm, I'm trying to give you folks as much flexibility to work this one out. Member Nishiki, I'll recognize you and then we're going to take a recess right after Mr. Nishiki, then we'll reconvene. Mr. Nishiki.

COUNCILMEMBER NISHIKI: I, we can, we can wait for the recess because my question is--

CHAIR KANE: Lengthy.

COUNCILMEMBER NISHIKI: --quite a bit, yeah.

CHAIR KANE: Okay, great. Why don't we go ahead and take a recess and we'll reconvene, Members, let's just call it 11:00. Okay. Recess, reconvene at 11:00.

(The meeting was recessed by the Chair at 10:46 a.m., and was reconvened at 11:02 a.m., with all Members present.)

CHAIR KANE: Okay, lets reconvene. This is the Council meeting for April 22, 2003. Councilmember Nishiki, you're recognized.

COUNCILMEMBER NISHIKI: Yeah, thank you. I know when we passed this resolution, it was based on the fact that Friends of Moku`ula would not be coming back to government asking us for more money. Can I ask if they intend to do and come back to us now that this lease will be initiated?

CHAIR KANE: Who do you want to ask, Mr. Nishiki.

COUNCILMEMBER NISHIKI: Friends of Moku`ula.

CHAIR KANE: So your request is to have them come forward.

COUNCILMEMBER NISHIKI: Please.

CHAIR KANE: Members are there any objections to requesting that a representative from Friends of Moku`ula come forward.

MEMBERS VOICED NO OBJECTION.

CHAIR KANE: Okay, thank you. Member Nishiki. And I believe we have Mr. Kunitomo. If you can, please sir, identify yourself for the record. And Mr. Nishiki.

MR. JERRY KUNITOMO: Good morning, my name is Jerry Kunitomo and I'm Acting President of Friends of Moku`ula.

CHAIR KANE: Mr. Nishiki.

COUNCILMEMBER NISHIKI: The, the question is, are you planning to come through asking from our grant or whatever, any money from Maui County to support your programs?

MR. KUNITOMO: I think the short answer to that question is no. But if I may, on the, at the time that we made that, you made that statement of us not coming back, the agreement was that we would use the parking lot to pay for operational funds, fund the organization and thereby its sustenance would prevent us from having to ask for, for more funds. So that's why at this point it's critical that we get the lot.

COUNCILMEMBER NISHIKI: The, the lot itself with the whatever you do to it, is it going to take away from any users of the basketball court, the tennis court, that normally park there. Or have you done any research to find out--

MR. KUNITOMO: We've done--

COUNCILMEMBER NISHIKI: --if there would be any impact to the community and if these users were using it. What, I don't know, I guess it's going to be your ballgame, your call now. You going to start charging 'um.

MR. KUNITOMO: Ah, the answer to the first question is yes we've done a lot of studies as far as park user-ship. That parking lot initially was established for softball/baseball use. Tennis and basketball was, was better served on the other side, there's another street there, I, I can't remember the name of it but, on that side there's a lot more parking stalls that they have been using. Actually a lot of the baseball used the mauka area, just below Waiola Church and the Hongwanji, there's a lot of parking there that is right behind the dugouts and right behind the batting cages. So most of the access was to the park, was based on whatever field they were using. Basketball and tennis would park by the tennis and basketball, and baseball would park by the baseball field. That being out, way out in like left field way for three, four hundred yards away, was mostly used by surfers using the beach, and which was not set aside for that. So we have contracted two different groups that have studied that and yes it is our intent to charge everyone that uses that lot.

COUNCILMEMBER NISHIKI: Right now being that I have not been there in a long time, is that lot being used and do you know who the primary users are.

MR. KUNITOMO: The primary users would be the patrons of 505.

COUNCILMEMBER NISHIKI: Commercial.

MR. KUNITOMO: Commercial. And those that have setup camp to use that beach area there for surf schools. In fact, I would say the first use would be those guys.

COUNCILMEMBER NISHIKI: Surf school, cars and their business interests, people wanting to learn to surf.

MR. KUNITOMO: Yeah.

COUNCILMEMBER NISHIKI: Okay. I'm done.

CHAIR KANE: Thank you. Since we have Mr. Kunitomo here, is, are there any questions for Mr. Kunitomo.

COUNCILMEMBER HOKAMA: Chairman.

CHAIR KANE: Member Hokama.

COUNCILMEMBER HOKAMA: Thank you. I believe, and, and thank you for that recess because I believe Mr. Kunitomo, along with Mr. Akana, we've had a chance to discuss my consideration for a two year proposal and allow it to come back before Council to be updated on its status. And I would ask maybe Mr. Kunitomo if he would share some comments because in no way is my consideration to hamper the efforts of Friends of Moku`ula. But just to have the Council do its responsibility in reviewing what is happening at that site as well as being given a update on the status of the progress of the Friends of Moku`ula and also their, their eventual need to move to the next phase at another location. And so maybe, if Mr. Kunitomo could refresh the Members, it will be helpful in us making a determination on this request, this morning.

CHAIR KANE: Thank you, Mr. Kunitomo.

MR. KUNITOMO: Thank you, Mr. Hokama. Okay, probably the, the most cumbersome part about it is that we have to work in phases. The manifestation of, of what once was there isn't real evident at this point and that's the challenge when you go through planning stages and, and so on and so forth. It's a little bit more clumsy. It's not really a restoration project because you can't see it. It's a restoration project and then something else because the, whatever you create has got to have a contemporary position. It's got to have a traditional, strong cultural traditional sense, but its got to be married to, to Lahaina or Front Street in the year, you know, 2100. So consequently, the challenge is to, to create that manifestation. And we have the people and we've had the communities support in order to do that. But it's been sort of one step at a time. For example, this parking lot we talking about reviewing, the status of the funding in two years and five years. The reality is the parking lot exists on top of the island as best we know it. So, this is an interim window, this is a, a temporary window of time where the organization sees an opportunity to create funding for itself because in three or five years, depending on how this process goes, we may be digging there because that is where most of the archaeological artifacts at this point, that have been verified, exists. So at which time, then during Phase 1, we create the new parking area, which allows us the opportunity to excavate in this time. But rather than let things get static as things go through, whether, whatever processes they are, utilize the parking lot to help the sustenance of the organization and we have other plans as far as indigenous plants and, and bringing in community programs to utilize the area within that window as well. I hope that answers your question.

COUNCILMEMBER HOKAMA: Since he and I chatted during recess, Chair, I mean, I understand what Mr. Kunitomo is saying so I will relinquish the floor and ask other Members if they would like to utilize this opportunity to have Mr. Kunitomo provide comment and information.

CHAIR KANE: Okay, thank you, any further questions for Mr. Kunitomo. Hearing none, thank you very much. We appreciate it. Members we have on the floor an amended resolution. Is there any further discussion on that amended resolution. Member Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you.

I WOULD MOVE TO AMEND THE MAIN MOTION AS AMENDED, UNDER SECTION 10 OF THE PROPOSAL, USE OF PREMISES. ON THE FOURTH SENTENCE "AS AN INCIDENTAL USE THERETO, AFTER TWO YEARS OF THE LEASE TERM, THE LESSEE SHALL RETURN TO COUNCIL FOR STATUS, REVIEW AND UPDATE." AND I THINK THAT'S GOOD ENOUGH BECAUSE AFTER THAT IT PROVIDES FOR LANGUAGE WHERE, FOR EVERY FIVE YEARS THEREAFTER. AND IT MAY NOT BE THE APPROPRIATE LANGUAGE, CHAIRMAN, BUT I BELIEVE THE, THE ATTORNEYS UNDERSTAND THE INTENT OF THE MOTION--

CHAIR KANE: Okay.

COUNCILMEMBER HOKAMA: --is to have two years and then a review, and then they can ask for a five year option of renewal.

COUNCILMEMBER NISHIKI:

SECOND FOR DISCUSSION.

CHAIR KANE: Okay. So for clarification, Member Hokama. Under Section 10, Use of Premises. You would like to delete and then insert, delete "five", the word five in parentheses five for the first, and instead insert "for the first two years of the lease term." And then after that, everything else would remain the same because then, after the every five years you would do a review. Is that?

COUNCILMEMBER HOKAMA: That, that's my intent, Mr. Chairman. And if Mr. Moto or our attorneys may provide something that would better be accurate in the intent of the motion and I would be very much open to supporting that revised version of how to accomplish this to allow Friends of Moku`ula to continue to move this project forward.

CHAIR KANE: Okay, thank you. The motion is to amend the language and taking out for the first five years and inserting the first two years. And that motion was made by Member Hokama, seconded by Member Nishiki. And we are in discussion. Member Hokama.

COUNCILMEMBER HOKAMA: Thank you, Chairman. I, I think, again it is helpful for the Council in our continued support for this project, as well as the organization, Friends of Moku`ula to have the ability to have a status after two years, whereby, if need be an adjustment can be made that would not, that could take away any impediments that may deter the progress of this project moving forward at an acceptable rate. And again, as Mr. Kunitomo has stated, you're working with an unknown, whereby until you move some soil and find out what's underneath the property, it is hard to determine the pace and, oh, I guess the total financial requirements that it will take to get this project completed. But it is something that Council's in the past have supported. We have supported large grants in the amount of \$500,000. While I, while I can appreciate Mr. Nishiki's comments of what, about whether or not they will return, this mechanism provides a funding source that hopefully will accomplish the requirements and not have them return for additional grant in aids. So I would appreciate the Members take this consideration before a final decision.

CHAIR KANE: Thank you. And just for clarification, that motion recognizes both the license and the lease.

COUNCILMEMBER HOKAMA: Thank you.

CHAIR KANE: As far as the amendment, so both documents. Mr. Moto, comments as to the language and I think you understand the intent of the motion.

CORPORATION COUNSEL MOTO: Yes, Mr. Chairman. Let me state I think we understand the intent of the motion made by Councilmember Hokama. Mr. Chairman, if I may have a, a point of clarification. As you know, Mr. Chairman, the, both the lease and the license are about year old now. They were, they are dated January 2002 and so in terms of clarification, when the maker of the motion says the first two years, the, that means that that, that date, that anniversary will come next year because the, the existing lease is already one year old. So does the maker of the motion mean two years from now, or two years from last year.

CHAIR KANE: Thank you. We'll have that clarified. Member Hokama.

COUNCILMEMBER HOKAMA: Chairman, I prefer to give the organization that full two years so it will be--

CHAIR KANE: Upon the adoption.

COUNCILMEMBER HOKAMA: --two years upon the adoption of this amendment, or three years from the date of the original execution.

CHAIR KANE: Okay.

COUNCILMEMBER HOKAMA: Whichever is the appropriate legal.

CORPORATION COUNSEL MOTO: Mr. Chairman. We can modify and draft the, the document in a manner consistent with the, the motion.

CHAIR KANE: Thank you. Any further discussion on the amendment? Member Johnson.

COUNCILMEMBER JOHNSON: I just wanted to reaffirm also that I did speak with Mr. Akana and it is agreeable to him to have it for this two year period from today's date.

CHAIR KANE: Thank you. Further discussion? Hearing none, members all in favor of the amendment say "aye."

AYES: COUNCILMEMBERS HOKAMA, JOHNSON, MATEO,
MOLINA, NISHIKI, PONTANILLA, TAVARES,
VICE-CHAIR CARROLL, AND CHAIR KANE.

CHAIR KANE: Opposed?

NOES: NONE.

CHAIR KANE: Carried. We're back to the main motion, as amended. Discussion. Hearing none, members all in favor of the motion as amended signify by saying "aye."

AYES: COUNCILMEMBERS HOKAMA, JOHNSON, MATEO,
MOLINA, NISHIKI, PONTANILLA, TAVARES,
VICE-CHAIR CARROLL, AND CHAIR KANE.

CHAIR KANE: Opposed?

NOES: NONE.

CHAIR KANE: Carried. And Member Johnson, I apologize, did we recognize the filing of that communication? And if not--

COUNCILMEMBER JOHNSON: Yes.

CHAIR KANE: --then we'll go ahead and move with that.

COUNCILMEMBER JOHNSON: We did recognize it.

CHAIR KANE: Okay. Okay, Members we've completed that process for that and congratulations for Moku`ula, Friends. Okay, let's move forward. Also Member Tavares.

RELATING TO COUNTY COMMUNICATION NO. 03-100

COUNCILMEMBER TAVARES: Yes, thank you, Mr. Chair. Just for clarification on County Communication 03-100. The bill for the ordinance amending Chapter 22.04, Maui County Code, pertaining to Kula Park, is, that is correct. The title of the Chapter 22 is called Agricultural Parks, so it is not to be confused with the Kula Recreational Park. This is about the Kula Ag Park. But, just in case people were going to get concerned that something was happening to the other park. Thank you.

CHAIR KANE: Thank you for that clarification. Member Molina.

RELATING TO COUNTY COMMUNICATION NO. 03-92

COUNCILMEMBER MOLINA: Mr. Chairman. Just to make some comments on County Communication 03-92. Earlier we had a testifier make comments regarding the concerns for sidewalks and curb ramps in the Makawao, Paia area, which I can appreciate--although my office has not received any calls from the community association regarding this matter--but we will look into that. And in the contract report, there is a contract for curb ramps at various locations, which I will look into. There may be a possibility of some curb ramps that will be put in those areas. And just for the public's information, in Makawao, there are two projects currently moving on which is the Makawao public restroom and police resource center and the improvements to the irrigation system at the Eddie Tam Complex. And in Paia, there are playground improvements, there is a contract for playground improvements at the Paia Community Center area. So, just to set the record straight and inform the people of those communities that there are other activities occurring in those towns. Thank you, Chairman.

CHAIR KANE: Thank you, Member Molina. Any further comments prior to the Chair's request for approval from the body. Hearing none, Members if there are no objections, County Communication 03-92, 03-96, 03-98, and 03-100, along with

Resolution

No. 03-54

AUTHORIZING AN AMENDMENT TO LEASE AND AN
AMENDMENT TO LICENSE FOR FRIENDS OF MOKU'ULA, INC.

WHEREAS, COUNTY OF MAUI and FRIENDS OF MOKU'ULA, INC. ("FOM") entered into that certain License agreement affecting TMK (2) 4-6-007:por. 002 and 036, dated January 2, 2002, and that certain Lease agreement affecting TMK (2) 4-6-007:001, dated January 2, 2002, which agreements were approved by the Council of the County of Maui on December 1, 2000, by Resolutions Nos. 00-172 and 00-171, respectively; and

WHEREAS, in both agreements, under Section 10, Use of Premises, it stated "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."; and

WHEREAS, the County of Maui and FOM desire to amend the terms and conditions of the agreements, specifically with respect to the Use of Premises sections, to permit FOM to operate a parking concession on the leased and licensed premises, said amendment being proposed and recited in the documents entitled "First Amendment to License", and "First Amendment to Lease", copies of which being attached hereto as Exhibits "A-1" and "B-1", respectively; and

Resolution No. 03-54

WHEREAS, pursuant to Maui County Code Section 3.40.200, concession or concession spaces and/or real property to be leased, rented, or set aside without any charge or at a charge below fair market value shall be considered a grant of public property and shall be submitted to the Council as an application for grant award and considered by the Council pursuant to Chapter 3.36, Maui County Code; and

WHEREAS, pursuant to Maui County Code Section 3.36.090, the Council of the County of Maui may authorize the grant of concessions at less than fair market value by resolution; and

WHEREAS, the Council of the County of Maui desires to approve the grant of a parking concession to FOM, in accordance with the terms and conditions of the amendments to the License and Lease, as set forth in Exhibits "A-1" and "B-1", attached hereto; now, therefore,

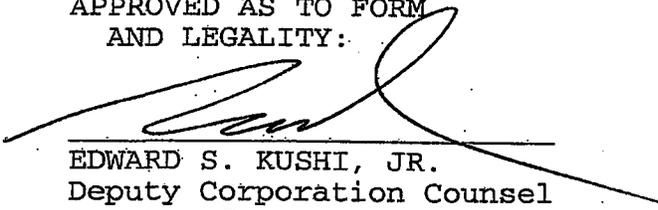
BE IT RESOLVED by the Council of the County of Maui:

1. That FOM be granted the right to operate a parking concession on the licensed and leased Premises in accordance with the terms and conditions of the proposed "First Amendment to License", and "First Amendment to Lease", attached hereto as Exhibits "A-1" and "B-1", respectively; and

2. That the Mayor and the Director of Finance or their authorized representatives are authorized to execute the proposed "First Amendment to License", and "First Amendment to Lease" documents; and

3. That certified copies of this Resolution be transmitted to the Mayor, the Director of Finance, the Director of Parks and Recreation, the Director of Housing and Human Concerns, and to the FOM.

APPROVED AS TO FORM
AND LEGALITY:



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

S:\ALL\ESK\RESO\Mokuulaam.wpd

LAND COURT SYSTEM

REGULAR SYSTEM

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

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

FIRST AMENDMENT TO LICENSE

THIS FIRST AMENDMENT TO LICENSE made this _____ day of _____, 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;

EXHIBIT "A-1"

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.

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

By _____
(Signature)

(Print Name Above)

Its _____
(Title)

By _____
(Signature)

(Print Name Above)

(Title)

STATE OF HAWAII)
): SS.
COUNTY OF MAUI)

On this _____ day of _____, 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

Print Name

My commission expires: _____

STATE OF HAWAII)
): SS.
COUNTY OF MAUI)

On this _____ day of _____, 200____, 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

Print Name

My commission expires: _____

STATE OF HAWAII)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(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: _____

STATE OF HAWAII)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(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: _____

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

EXHIBIT " 1 "

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

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

RESERVING UNTO THE STATE OF HAWAII THE FOLLOWING:

1. Minerals and Waters.

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

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

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

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

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

THE Licensee COVENANTS AND AGREES WITH THE Licensor AS FOLLOWS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

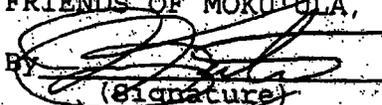
33. Paragraph Headings. The paragraph headings throughout this license are for the convenience of the Licensor and the Licensee and are not intended to construe the intent or meaning of any of the provisions thereof.

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

LICENSEE:

FRIENDS OF MOKULULA, INC.

By

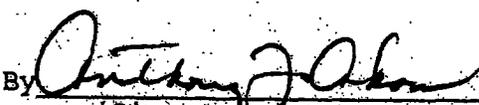

(Signature)

CARY KUNITOMO
(Print Name)

Its

RESIDENT
(Title)

By


(Signature)

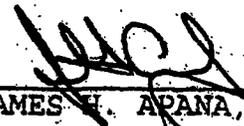
ANTHONY F. AKANA
(Print Name)

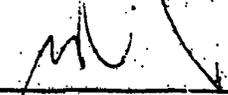
Its

Executive Director
(Title)

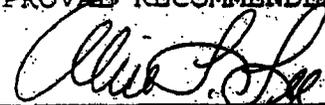
LICENSOR:

COUNTY OF MAUI

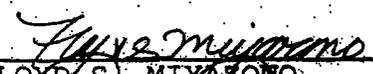
By 
JAMES H. APANA, JR.
Its Mayor

By 
WESLEY P. LO
Its Director of Finance

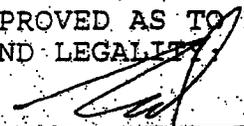
APPROVAL RECOMMENDED:


ALICE L. LEE
Director of Housing
and Human Concerns

APPROVAL RECOMMENDED:

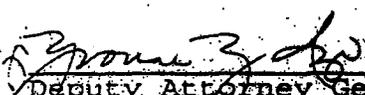

FLOYD S. MIYAZONO
Director of Parks
and Recreation

APPROVED AS TO FORM
AND LEGALITY:


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

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

APPROVED AS TO FORM:


Deputy Attorney General
Dated: 1/16/02

APPROVAL RECOMMENDED:


Chairperson
Department of Land and
Natural Resources

STATE OF HAWAII)
)
COUNTY OF MAUI)

SS.

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

Rochaine S. Baden
Notary Public, State of Hawaii

Print Name _____
My commissioner expires: _____
ROCHAINE S. BADEN, NOTARY PUBLIC
MY COMMISSION EXPIRES 02/01/2004

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.

Rochaine S. Baden
Notary Public, State of Hawaii

Print Name _____
My commissioner expires: _____
ROCHAINE S. BADEN, NOTARY PUBLIC
MY COMMISSION EXPIRES 02/01/2004

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, 2007, 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.

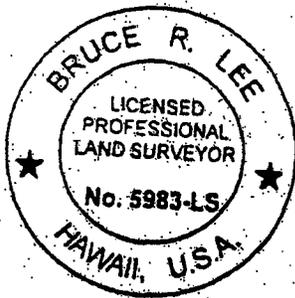
LS.

Marlene Lai
Notary Public, State of Hawaii
Marlene Lai
Print Name
My commission expires: January 10, 2007

- 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 _____, 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;

EXHIBIT "B-1"

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.

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

By _____
(Signature)

(Print Name Above)

Its _____
(Title)

By _____
(Signature)

(Print Name Above)

(Title)

STATE OF HAWAII)
 : SS.
COUNTY OF MAUI)

On this _____ day of _____, 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

Print Name
My commission expires: _____

STATE OF HAWAII)
 : SS.
COUNTY OF MAUI)

On this _____ day of _____, 200____, 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

Print Name
My commission expires: _____

STATE OF HAWAII)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(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: _____

STATE OF HAWAII)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(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: _____

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

EXHIBIT " 1 "

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

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

RESERVING UNTO THE STATE OF HAWAII THE FOLLOWING:

1. Minerals and Waters.

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

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

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

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

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

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

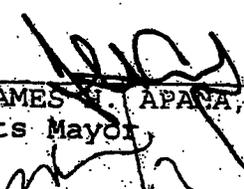
33. Gender. The use of any gender shall include all genders, and if there be more than one (1) lessee, then all words used in the singular shall extend to and include the plural.

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

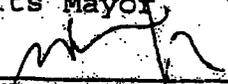
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 2nd day of January, 2002.

LESSOR:

COUNTY OF MAUI

By 

JAMES H. APANA, JR.
Its Mayor

By 

WESLEY P. LO
Its Director of Finance

LESSEE:

FRIENDS OF MOKU'ULA, INC.

By [Signature]
(Signature)

JERRY KUNITOMO
(Print Name)

Its PRESIDENT
(Title)

APPROVAL RECOMMENDED:

[Signature]

ALICE L. LEE
Director of Housing
and Human Concerns

APPROVAL RECOMMENDED:

[Signature]

FLOYD S. MIYAZONO
Director of Parks
and Recreation

APPROVED AS TO FORM
AND LEGALITY:

[Signature]

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

By [Signature]
(Signature)

Anthony J. Akana
(Print Name)

Its Executive Director

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

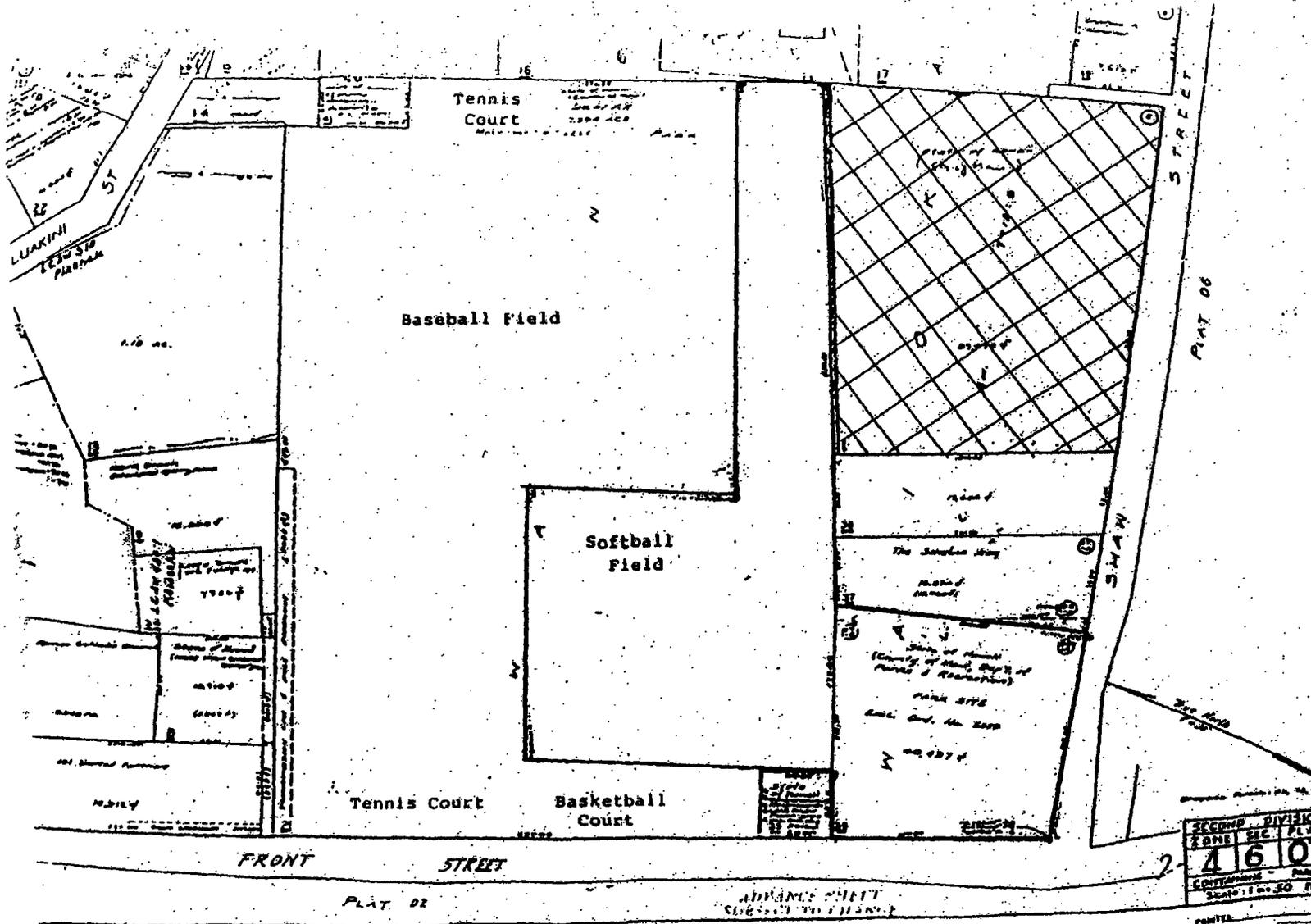


EXHIBIT "A"

SECOND DIVISION
 ENGINEER
 41610
 CONTRACTOR
 SCALE 1" = 20' H
 PUNTER

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

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.

Rosephine G. Badua
Notary Public, State of Hawaii

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

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.

Rosephine G. Badua
Notary Public, State of Hawaii

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

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 10, 2003

STATE OF HAWAII)

SS.

COUNTY OF MAUI)

On this 19th day of December, 2001, before me appeared Iuku Kuniyoshi 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. Ballou
Notary Public, State of Hawaii

Print Name
My commissioner expires: _____
ROSEPHINE G. BALLOU, NOTARY PUBLIC
MY COMMISSION EXPIRES: _____

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.

Rosephine G. Ballou
Notary Public, State of Hawaii

Print Name
My commissioner expires: _____
ROSEPHINE G. BALLOU, NOTARY PUBLIC
MY COMMISSION EXPIRES: _____

STATE OF HAWAII)
COUNTY OF MAUI)

SS.

On this 2nd day of January, 2002, before me personally appeared JAMES H. APANA, JR., to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 7-5.11 and Section 9-18 of the Charter of the County of Maui; and the said JAMES H. APANA, JR. acknowledged the said instrument to be the free act and deed of said County of Maui.

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

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

STATE OF HAWAII)
COUNTY OF MAUI)

SS.

On this 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

COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is **HEREBY CERTIFIED** that **RESOLUTION NO. 03-54** was adopted by the **Council of the County of Maui, State of Hawaii**, on the **22nd day of April, 2003**, by the following vote:

| MEMBERS | Dairi P. KANE Chair | Robert CARROLL Vice-Chair | G. Riki HOKAMA | Jo Anne JOHNSON | Dennis A. MATEO | Michael J. MOLINA | Wayne K. NISHIKI | Joseph PONTANILLA | Charmaine TAVARES |
|-----------|---------------------------|---------------------------------|-------------------|--------------------|--------------------|----------------------|---------------------|----------------------|----------------------|
| ROLL CALL | Aye | Aye | Aye | Aye | Aye | Aye | Aye | Aye | Aye |

Diana A. Kakamaku
DEPUTY COUNTY CLERK