



R-586 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAR 17, 2003 12 00 PM
Doc No(s) 2003-049501



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$1.00

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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

20p

Affects TMK: (2) 3-4-012:022

No. of pages: 20

LEASE

THIS INDENTURE OF LEASE made this _____ day of
JUN 19 2002, 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 LOKAHI PACIFIC, whose address is
1935 Main Street, Suite 204, Wailuku, Hawaii 96793, 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) 3-4-012:022, located at
Wailuku, Maui, Hawaii, and shown as Lot 2 on Exhibit "A" attached

RECEIVED AT EDB MEETING ON 2/28/19
from Committee Chair.

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 (30) YEARS, commencing on the date of execution of this Lease and continuing for a period of THIRTY (30) years unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor a rental of ONE DOLLAR NO/100 DOLLARS (\$1.00) per year.

RESERVING UNTO THE Lessor THE FOLLOWING:

1. Minerals and Waters.

A. All minerals as hereinafter defined, in, on or under the Premises and the right, on Lessor'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 Lessor'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 Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Prehistoric and Historic Remains. All prehistoric and historic remains found on the Premises.

3. 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.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Parking. Lessee shall be permitted to use up to ELEVEN (11) parking stalls at any time on that certain parcel identified as Tax Map Key No. (2) 3-4-012:022 located at Wailuku, Maui, Hawaii, and shown as Lot 1 on Exhibit "A" attached hereto and made a part hereof.

2. Taxes, Assessments, Etc. 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. Lessee shall pay when due all charges, duties and rates of every description, including electricity, 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. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon sex, sexual orientation, national origin, age, race, color, religion or disability.

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. 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. 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 and any improvements constructed thereon, now in force or which may hereinafter be in force.

8. Inspection of Premises. Lessee shall 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. Lessee shall 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.

Lessee shall not cause or allow encumbrance of a mortgage lien on the Premises without the prior written approval of the Lessor.

10. Use of Premises. Lessee shall use or allow the Premises hereby demised to be used solely to operate a small business incubator facility with an affordable housing component and certified kitchen. Other uses shall be subject to approval, in writing, by the Lessor.

11. Indemnity. The Lessor shall not be liable to the Lessee for any damage to the Lessee or Lessee's Property from any cause. The Lessee waives all claims against Lessor for damage to person or property arising for any reason.

Lessee will to the extent permitted by law, indemnify, defend and hold the Lessor 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. The Lessess's obligation under this Section shall survive and remain binding upon Lessee notwithstanding the expiration or termination of this Lease.

12. Costs of Litigation. In case the Lessor shall, without any fault on its 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; furthermore, the Lessee shall and will pay all costs and expenses which may be incurred by or

paid by the Lessor 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. 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 Lessor and Lessee 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. Upon execution of this Lease, 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. Such certificates shall name the County of Maui as an additional insured. 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. Lessee shall, 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 interest may appear, and shall be deposited with the Lessor 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 solely 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.

Upon execution of this Lease, 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 of any intention to cancel any such

policy or policies, prior to actual cancellation. Such insurance certificate shall name the County of Maui as an additional insured.

15. Lessor's Lien. 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 shall at its own expense from time to time and at all times during the term of this Lease 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. Capital Improvements. In accordance with §3.40.040, Maui County Code, Lessee shall expend the sum of TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) or more for capital improvements on the Premises or provide for any capital improvement on the Premises, the estimated cost of which is equal to or in excess of the sum of TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00). All capital improvements shall be completed in accordance with applicable federal, state, and county laws. Lessee shall provide Lessor with reasonable opportunity to review and

approve plans for all capital improvements. Lessee shall be solely responsible for the funding of its improvements, maintenance, and operation of the Premises.

18. Maui Redevelopment Agency. Any improvements constructed, placed, maintained and installed on the Premises and operation of the Premises shall be done in accordance with the Rules, Regulations, and Guidelines of the Maui Redevelopment Agency.

19. 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.

20. Condemnation. If at any time, during the term of this lease, the Premises or any portion of the Premises should be condemned, or required for public purposes by the State of Hawaii or the United States, this Lease shall terminate at the option of Lessor. 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. 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. Lessee hereby assigns to Lessor all compensation and/or claims for damages or for the Lessee's Leasehold interest for or on

account of such condemnation. 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. 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. 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 Lessor 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. 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 or any improvements thereon, as the same is being leased in "as is" condition.

28. Assignability, Etc. Lessee shall not transfer, assign, sublet or permit any other person or entity 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.

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

30. 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 Director Finance.

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.

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

32. 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.

33. 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.

34. Jurisdiction and Venue. This Lease shall be governed by the laws of the State of Hawaii. Any action or court proceeding which may arise from this Lease shall be heard in Circuit Court of the Second Circuit, State of Hawaii, County of Maui.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 17th day of June, 2002.

LESSOR:

COUNTY OF MAUI

By

JAMES H. APANA, JR.
Its Mayor

By

WESLEY P. LO
Its Director of Finance

LESSEE:

LOKAHI PACIFIC

Jo-Ann T. Ridao
(Signature)

Jo-Ann T. Ridao

(Print Name)

Managing Director

(Title)

APPROVAL RECOMMENDED:

Rosalyn Baker
ROSALYN BAKER
Economic Development
Coordinator

APPROVED AS TO FORM
AND LEGALITY:

TRACI FUJITA VILLAROSA
Traci Fujita Villarosa
County of Maui

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

On this JUN 19 2002 day of JUN 19 2002, 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.

Linda K. Tamashiro
Notary Public, State of Hawaii
LINDA K. TAMASHIRO
Print Name
My commission expires: 10/19/2002

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STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

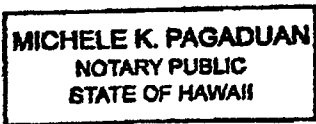
On this 21st day of June, 2002, before me personally appeared WESLEY P. LO, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal 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.

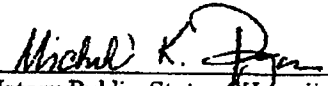
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

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

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 30th day of May, 2002, before me personally appeared JO-ANN T. RIDAO, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.





Notary Public, State of Hawaii
Michele K. Pagaduan
My commission expires: 04/14/06

RECORDER'S MEMO

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