

COUNCIL OF THE COUNTY OF MAUI

ECONOMIC DEVELOPMENT, ENERGY, AGRICULTURE, AND RECREATION COMMITTEE

March 11, 2014

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Economic Development, Energy, Agriculture, and Recreation Committee, having met on February 18, 2014, makes reference to County Communication 14-8, from the Director of Parks and Recreation, transmitting a proposed resolution, entitled "AUTHORIZING ACCEPTANCE OF A LEASE OF REAL PROPERTY FOR USE AS A PORTION OF THE KAUNAKAKAI LITTLE LEAGUE BALL FIELD, PURSUANT TO CHAPTER 3.56, MAUI COUNTY CODE".

The purpose of the proposed resolution is to authorize the acceptance of a lease to the County of Maui ("Lessee") from MSM Joint Venture, LLC ("Lessor"), of property situated at Kaunakakai, Molokai, Hawaii, for a 12,781-square-foot parcel identified as TMK: (2) 5-3-002:100, and a 331-square-foot portion of a parcel identified as TMK: (2) 5-3-002:093, for use as part of the Kaunakakai Little League Ball Field.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised proposed resolution, approved as to form and legality, incorporating nonsubstantive revisions.

Your Committee notes the lease, attached to the revised proposed resolution as Exhibit "A", states the subject property shall be exempt from real property taxes for the term of the lease. The term of the lease shall commence upon execution and shall expire upon termination by the Lessor or Lessee.

Your Committee further notes the property has been utilized as a recreation area for more than 24 years. Your Committee thanked the Lessor and the Department of Parks and Recreation for continuing to provide opportunities for the island of Molokai.

COUNCIL OF THE COUNTY OF MAUI

ECONOMIC DEVELOPMENT, ENERGY, AGRICULTURE, AND RECREATION COMMITTEE

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Committee
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Your Committee voted 4-0 to recommend adoption of the revised proposed resolution and filing of the communication. Committee Chair Guzman and members Baisa, Crivello and Victorino voted "aye". Committee Vice-Chair Carroll and members Cochran and White were excused.

Your Economic Development, Energy, Agriculture, and Recreation Committee RECOMMENDS the following:

1. That Resolution _____, as revised herein and attached hereto, entitled "AUTHORIZING ACCEPTANCE OF A LEASE OF REAL PROPERTY FOR USE AS A PORTION OF THE KAUNAKAKAI LITTLE LEAGUE BALL FIELD, PURSUANT TO CHAPTER 3.56, MAUI COUNTY CODE", be ADOPTED; and
2. That County Communication 14-8 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



DON S. GUZMAN, Chair

Resolution

No. _____

AUTHORIZING ACCEPTANCE OF A LEASE OF REAL PROPERTY
FOR USE AS A PORTION OF THE KAUNAKAKAI LITTLE LEAGUE
BALL FIELD, PURSUANT TO CHAPTER 3.56, MAUI COUNTY CODE

WHEREAS, MSM JOINT VENTURE, LLC, wishes to lease to the County of Maui, TMK: (2) 5-3-002:100, consisting of approximately 12,781 square feet, and a portion of TMK: (2) 5-3-002:093, consisting of approximately 331 square feet, for use as a portion of the Kaunakakai Little League Ball Field; and

WHEREAS, a copy of the proposed lease is attached hereto as Exhibit "A"; and

WHEREAS, the proposed lease rent is \$1.00 per year, which is below fair market value; and

WHEREAS, Chapter 3.56, Maui County Code, authorizes the Council to accept gifts and donations on behalf of the County; now, therefore,

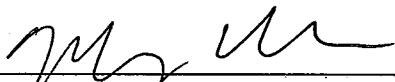
BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby expresses its appreciation and accepts the aforesaid Lease on behalf of the County of Maui; and

Resolution No. _____

2. That certified copies of this resolution be transmitted to the Mayor; the Director of Finance; the Department of Parks and Recreation; and the MSM Joint Venture, LLC.

APPROVED AS TO FORM
AND LEGALITY



JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui

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KAUNAKAKAI LITTLE LEAGUE BALL FIELD LEASE

THIS LEASE, made this _____ day of _____, 2013, by and between MSM JOINT VENTURE, LLC, a Hawaii limited liability company, whose mailing address is P.O. Box 558, Kaunakakai, Molokai, Hawaii 96748, the hereinafter referred to as "Lessor", and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter referred to as "Lessee", and hereinafter collectively referred to as the "Parties";

WHEREAS, the Lessor hopes and desires to lease to the County of Maui the parcel identified as TMK (2) 5-3-002:100 and a portion of TMK (2) 5-3-002:093, for use as a portion of Lessee's Kaunakakai Little League Ball Field; and

WHEREAS, Lessor and Lessee had entered into an unrecorded License Agreement dated July 5, 2006; and

WHEREAS, to facilitate the reimbursement of Real Property Tax paid by Lessor, said License Agreement was amended four (4) times, the first being on December 15, 2006, the second being on October 5, 2007, the third being on April 2, 2009, and the fourth being on September 28, 2010; and

WHEREAS, the Lessor hopes to enter into this Lease so that the Lessee may continue to use the Premises as a portion of the Kaunakakai Little League Ball Field; and

NOW, THEREFORE, Lessor, for and in consideration of Lessee's covenants and agreements set forth herein, does hereby agree to grant a lease to Lessee and Lessee hereby accepts said lease on the terms and conditions set forth below:

1. Premises: The Premises comprises TMK (2) 5-3-002:100, area approximately 12,781 square feet, and a portion of TMK (2) 5-3-002:093, area approximately 331 square feet, as shown on the map attached hereto and made a part hereof as Exhibit "T".

2. Term: The Lease shall commence upon execution and shall expire upon termination by Lessor or Lessee.

3. Rent: Lease rent shall be the nominal amount of ONE DOLLAR (\$1.00) per annum, the receipt of which is hereby acknowledged.

4. Real Property Tax: The Premises shall be exempt from Real Property Tax for the term of this Lease.

5. Insurance: Lessee is self-insured.

6. Indemnification: To the extent authorized by law, Lessee shall defend, hold harmless and indemnify Lessor, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all reasonable attorney's fees, and all claims, suits, and demands therefore, arising out or resulting from the negligent, reckless, intentional, or wrongful acts, errors, or omissions of Lessee or Lessee's employees, officers or agents under this Lease. Lessee shall pay for such loss, damage, cost, and expense to the extent that funds have been authorized and appropriated by the Council of the County of Maui, and the funds have been allocated by the executive budget process. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Lease.

7. Quiet Enjoyment: Lessee shall peaceably hold and enjoy the premises without interference or hindrance from any person claiming by or through Lessor for the Term of this Lease.

8. Assumption of Risk and Liability: Lessee, as a material part of the consideration to Lessor for this Lease, does hereby assume all risk of bodily injury, wrongful death and/or property damage, business interruption or economic loss occasioned by any accident, fire, or nuisance made or suffered on the Premises, and hereby waives any and all claims against the Lessor. All inventory, property, vehicles, approved improvements and equipment of Lessee shall be kept, placed or stored at the sole risk of Lessee, and Lessor shall not be responsible or liable for any damage thereto or loss or theft thereof, including subrogation claims by Lessee's insurance carriers.

9. "As Is" Condition: Lessor has not made and shall not make, any representation or warranty, implied or otherwise, with respect to the condition of the Premises, including but not limited to (a) any express or implied warranty of merchantability or fitness for any particular purpose or (b) any dangerous or defective conditions existing upon the premises, whether or not such conditions are known to Lessor or reasonably discoverable by Lessee. Lessee accepts the Premises in a completely "as is" condition, with full assumption of the risks, and consequences of such conditions.

10. Right to Terminate: Either of the Parties may terminate this Lease by giving the other party at least six (6) months prior written notice of such termination.

11. Compliance with Laws: Lessee shall comply with all federal, state, and county laws pertaining to the Premises and activities conducted on the Premises, now in force or which may hereinafter be in force.

12. Entire Agreement: This Lease and the attachments hereto contain the entire agreement of the parties with respect to said Lease, and supersede all negotiations, agreements, and understandings with respect thereto. This Lease may only be amended by a written document duly executed by the Parties.

MSM JOINT VENTURE, LLC:

David T. Mikami
Its Manager

COUNTY OF MAUI:

Alan M. Arakawa
Its Mayor

Danilo F. Aagsalog
Its Finance Director

Approval Recommended:

Glenn T. Correa, Director
Department of Parks and Recreation

Approved as to Form and Legality:

Jeffrey Ueoka
Deputy Corporation Counsel
County of Maui

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Kaunakakai Little League Field

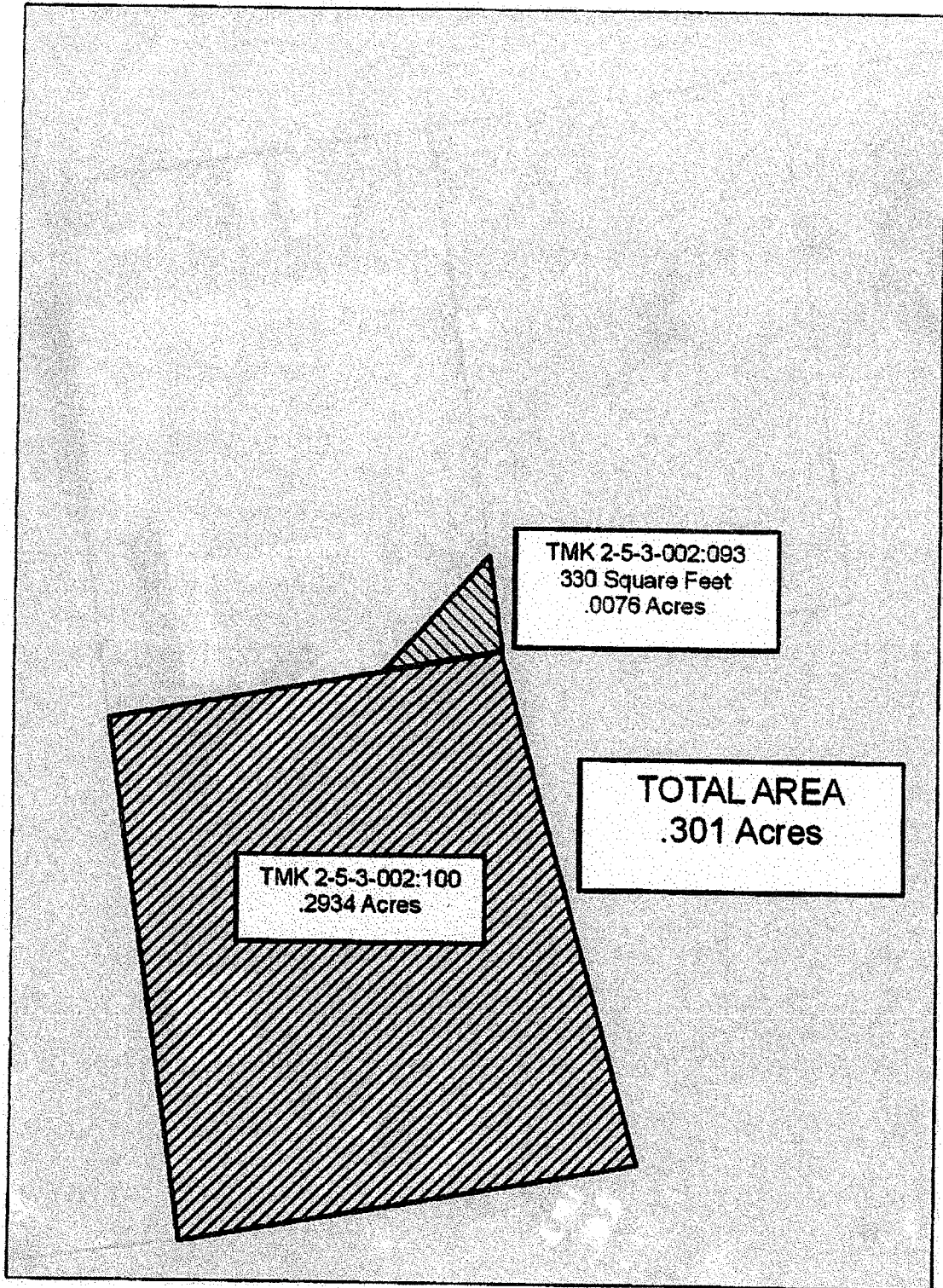


EXHIBIT " 1 "