

September 25,2021

Senators and house members

My name is Brendan Balthazar I live on Maui and own Diamond B Ranch which I started in 1968. 99% of my ranch is on lease land. I not only have to pay a lease but must do what ever possible to care for the property like it is my own, so it can be some what profitable. I find that is is more of a love for the lifestyle of raising animals then money. I retired from the fire department after almost 37 years. This and a few rentals funds my passion for ranching.

At the start of every lease I have, the property is very bad shape. I don't do anything half way . I am proud to show any one any of my properties and all the improvements I made. I have cleared brush, and a lot of invasive trees and plants , brought in lime to improve the ph, planted grass and spread fertilizer. Most didn't have any fencing nor a water system. I have made catchments , dug a well, put in pipes and tanks to store over 150,000 gallons of water on each property. We spend more money in herbicide, and labor to keep back all the invasive every year then we pay for the lease.

I would like to tell you a little about one particular lease. It is up in Kula on Maui TMK223 005 002 consisting of 3410 acres ,known as the Vontempsky ranch. It was in ranching for over 100 years and still is. About 17 years ago Charlie Ota who some of you know had the lease and was sick. He asked me to buy him out and assume the lease. A lease was then made with the owner John Pridjian . We started out with a 10 year lease. After a few years he came to visit the property and was really pleased with all the work and money I had invested. I was going to apply for a cross fence project with NRCS and they required a 10 year lease I asked if he would extend my lease for 2 more years, and he said why not 5. A few years ago he and his wife who was from Japan split ,and in the settlement he gave her the property. I met her and her daughter on the property and showed them around. I had some improvements that I had put on hold when I found out she had the property. She told me to go right ahead because she was not selling it and leaving it for her kids. She was also very happy how the place looked. After that assurance, I then built a new set of corals all out of pipe and metal rails, brought in electricity, made a gravel road to the corals, put in a \$20,000 squeeze chute, certified scales ,and made a roof over half of the pens and working area. Put in a new \$10,000 water pump and built a room to house it, added more pipeline , tanks, and troughs to the upper area to access more grazing area. The investment was over 250,000. Not quite 2 months after we got finished I got a call from her Realtor Roy Sakamoto informing me that he wanted to bring some potential buyers up to see the property. That was how I found out that it was for sale. However I knew in my lease John had put in that at the end of the lease I could ask for a 10 year extension. Not long after I found out that the state had bought it . I was told not to worry because I had a 10 year lease and it would take awhile before forestry would have the funds and be ready to do anything. Two months after the state acquired the property officially they sent me a certified letter giving me a year notice which they say was required in my lease that they would be taking 2100 acres next year. I had forgotten about that notice until I got the letter. John put that in when I first got the lease because he said he had plans to develop the 40 acres below the old coral and that was it ,he was not going to do anything with the rest of the property and I would be there until I died. He is still alive and I can have him attest to this. He also told me at one of his visits ,because of all the work I was doing on his property he was going to give me a few acres when he made the subdivision. This gave me a lot more incentive to work harder and take care of the place.

I know this was kind of long but I wanted all of you to know the background of that now state property. Now I want to plead with all of you to help me keep at least some of the property. Act 90 which is already in our Hawaii statues ,states clearly that DLNR will turn over all agg lands to the DOA. My understanding is that it is a law. So what gives DLNR the right to choose , and hold on to agg lands that

they are already bound by law to turn over. If any of us in the state violated a law that you guys passed we would be held accountable, fined or jailed. Even the Honolulu police chief was not above the law. What makes Chair Case and DLNR special? Who is the person or agency that should be enforcing this law? Do they also work for DLNR?

I was told by DLNR and so was the committee, that this property should not even be discussed with act 90 because it was bought with certain terms. So outside money controls what happens with our state lands no matter if it is good for the land or people? I also heard that there was some recent outside money offered DLNR to expedite the taking of this land and planting of trees. This is a clear violation. Maybe if there was someone with a lot of money to put in their department not to plant trees would that change the terms? Again I say this land is owned by the state not DLNR. You folks in public office are the representatives of the state, and entrusted by the public to make the best decisions for the people. People like me. Our governor stated that he wanted to double food production by 2025. He also signed a bill requiring our schools to purchase at least 30% of the produce locally. If land that is in active agg like this parcel has been for over 100 years it should be under DOA. It should not matter if Kamahamaha gave the land to the state 100 years ago, if the state purchased it 20 years ago or a year ago. It belongs to the state and it is in active agg. It doesn't belong to Chair Case nor her department.

DLNR stated that they produce food by allowing hunting. There are 10 times more game on my ranch that is managed, than in the whole Kula forest. The grass is in the ranch, game needs food and there is very little under the trees. Just another one of their stories. Truth is the plan on paper is to fence off the whole 2100 acres. Allow public hunting for 3 to 4 months to avoid controversy, then close it off go in with the helicopters and shoot everything that is left. This was disclosed to me by DLNR. If this is a story made up by me ask them for their plans for that area. They have been telling the public that they plan to make hiking trails, camping areas, opening it up for hunting, what will there be to hunt when everything is fenced off and exterminated? Just smoke.

I ask all of you for your understanding, consideration of the positions I am in, and to please please help keep at least part of this land in agg. Just for a moment in your minds, try to walk in my shoes and go through what I did to end up where I am. I am not asking for the whole 3410 acres. I am ok with the state taking 2000 acres at the top of the property where it boundaries the Kula forest and can be put in forestry. The bottom part boundary all borders private property. We don't have a forestry industry but we do have agg. Loosing this part of my ranch will mean loosing almost half of my herd of cattle, and all of the 300 sheep, and their income. If I don't do a good job taking care of the land and the grass, I don't get paid, and my employees and their families depend on me. Forestry and DLNR all get paid every week no matter what kind of job they do and how they take care of the land. I depend on this land for my livelihood. Their pay check is not tied in to their performance or how they manage the land. Example of this is the estimated 4 million they lost in rental income through poor management. Did that effect the chair's or any of her staff's pay check? If it was money any of you lost would you still keep that person or persons working for you? Ah but the state does. And now DLNR wants all of the senators and representatives like you to believe they can manage agg land as well as DOA can.

I alone can't fight the tyrants in DLNR. As senator Inouye asked DLNR at the first meeting, why don't they plant trees in all of the millions of acres they have under conservation it is already fenced and free of undulant s? She didn't get an answer. Maybe some of you can.

These are a few facts. DLNR controls millions of acres which is under conservation and forestry. The amount of land under their control does not match their budget. They don't have the money nor the resources to manage what they have, so why take on more? At the second meeting David Smith a

forester for DLNR took offense with my statement. He claims that the Kula forest is one of their best kept. Well I can only imagine what the others look like. This is not a he said she said. The proof is on the ground. Any one of you can come and see for yourself, I would be more than happy to take you to the ranch and their pristine forest. I had the pleasure of taking Kyle Yamashita and Gil Agaran and the current DLNR board member Pua Canto. I agree, the camping area, where the redwoods are has some kept trails that are maintained and there is little or no trees above the tree line, which makes that area open and accessible. But everything below is thick with invasive s. So thick you can't walk 20' off the road. Waddle trees, black berry, raspberry, fire weed, banana poka to name a few. I worked there when I was a kid for the forestry and where they were roads there is none or they have turned into trails. There are some other properties in the same Kula area which are several hundred acres that are solid waddle trees and invasive s, under the management of forestry. Again you don't have to take my word you can come and see for your self.

DLNR has tried to justify planting all the land with trees because they sequester carbon. Well many studies have concluded that grass lands sequester as much or more carbon as forest. One of these studies was done by UH. If there is a fire, like their was a few years ago, and burned a lot of acres in the Kula forest, all the carbon sequestering is gone for 15 to 20 years until the trees grow back. If grass burns the roots are still there and the grass comes up at the first rain. Just another fact the water the helicopters were using to stop the fire came from my 45,000 gallon water tanks up that mountain. As I stated earlier I worked for the fire department and was on duty when that fire broke. There is no ponds or water available up that mountain. So until the fire department can mobilize a portable tank and fill it with the tankers I had the only water available. Once we set up they had to fly from the fire at the top 10 to 12 miles down to the road to get water instead of a mile across to my tanks. Its ranchers who help forestry not the other way around.

Another excuse given, is the forest helps our water shed. Fact, the pine trees up in that area are one of the most thirsty trees. An important fact, large pine tree will absorb a lot of water from the ground. As a result, the grass or plants beneath it might not get enough water. There are several reasons for which it is so hard to grow grass under a pine tree. Usually, the soil beneath a pine tree is usually very acidic. Also, sunlight cannot reach the grass as the pine tree will block it. So under those trees there is just dirt which causes erosion during heavy rains. This area is very steep not flat where water can sit and be absorbed. Very little water will be drifting down to replenish our water table. Grass in the ranch can only absorb so much which is very little compare to a tree, the rest goes into the ground to our aquifer.

I found this interesting information below, to back up my statements and it addresses all trees not only pine. If DLNR tries to say there's not many pine trees in the Kula forest. I offer another fact: in 1966 and 1967 my summer job was working for the forestry, for 3 months. There were 40 boys divided in 4 crews. For a month straight each year 2 crews, we were given a shovel and a bag with 100 pine tree seedlings, every day, for us to plant 20 paces apart I was part of that crew. I probably planted more trees than David Smith or Suzann Case did in their lifetime. We also planted Eucalyptus trees on a lot of state land going to Hana during my 3 month summer job.

INFORMATION NOTE Water Use by Trees FCIN065 BY TOM NISBET OF FOREST RESEARCH

INTRODUCTION The amount of water used by trees has been the subject of worldwide research spanning the past 100 years (Boschand Hewlett, 1982; McCulloch and Robinson, 1993). This work has been driven by the needs of water resource managers and planners to understand how forests affect water supplies, as well as by related concerns over downstream flooding and erosion control. Studies in the UK began in the 1960s and initially focused on the impact of conifer afforestation in the

uplands. In the 1980s and 1990s interest widened to include the effects of broadleaved woodland and short rotation coppice's on groundwater resources in the lowlands. Today, the need to know how forests and land-use in general affect run-offs even greater as water companies strive to deal with the dual threat of rising water demand and the possibility of reduced supplies due to climate change. The introduction of the European Water Framework Directive in 2000 presents another important challenge, as Member States are required to achieve good surface water and groundwater status by 2015. The purpose of this Information Note is to review our understanding of water use by trees in the light of findings from recent studies.

SUMMARY Trees and forests can use more water than shorter types of vegetation. This is mainly due to the interception of rainwater by their aerodynamically rougher canopies. The resulting impact on water supplies is becoming an increasingly important issue for water resource managers and planners as demands for water continue to rise. Climate change predictions of warmer, drier summers will put further pressure on supplies. This Information Note assesses the factors that influence the water use of trees and considers how conifers and broadleaved are likely to affect water resources in different parts of the UK.

Again I am asking all of you to put part of this land under DOA. It will still be owned by the state and can in the future be used by the state for something that may be more important than agg. But if it stays under DLNR it will be lost for ever. No one will want to spend the money to clear out all the trees be it invasive or planted. Like it happened on the big island with all the plantation land that was taken out of agg and planted with eucalyptus trees. The cost to put what was beautiful open land back into agg is too costly. Don't let this happen here.

Another thing discussed was giving DLNR more powers to manage agg land. That is so wrong. We have an agg department who understands agg and by law should be the ones managing it. DLNR was just on the hot seat for mismanaging the leases they control and the state estimating losses of over 4 million. This was not agg land. So with this pressure they will continue to increase the cost of leasing agg land to the point that no one can afford the lease. They have terms on agg leases that are a hindrance to an agg operation, why, because they don't understand agg. None of them in that department come from an agg background. This discussion to extend their powers is completely absurd and detrimental to all agg leases. We have an agg department and you in our legislature or those before you had the common sense to passed a law putting all active agg lands under DOA. I heard that DOA is reluctant to take all this land because they don't have the money and staffing. Well it is you folks job to give them the funding needed to implement the law that you passed. If DLNR's work load is lessened by so much land that will be transferred, take the appropriate amount of money from their budget and put it in the DOA. Funny how simple and common sense it sounds. Maybe to us but not DLNR. When DLNR is trying to ask for more power to manage DOA land, they are saying they also want to be DOA. My grandpa always told us fart with your own ass, DLNR wants to use everyone's else's but their own.

I am a catholic and try to go to mass every morning. I am 71 years old and in a fight for my livelihood. I invested a lot of money in that property in the last few years and now there may be a strong possibility of not recovering it. After retiring from the fire department I work on the ranch every day 7 days a week. Sometimes fixing pipes at 10 at night right along my workers. Which they will not have a job if I loose this land. As you can see it is my life and my passion but, I realize I can't go up against DLNR alone and need to reach out to all of you. Even if your don't farm or ranch you have a

conscience and know the difference between right and wrong . And hopefully can see the wrong that is being done by DLNR. They control millions of acres and still want my little piece. I would like to see the next generation of ranchers be able to farm that land that I put so much into.

I pray for all of you especially during this trying times. I even pray for chair Case that she will see what she is doing and that greed is not a good thing, she needs to walk in my shoes. Everyone needs to remember, it is nice to be important ,but more important to be nice.

Got bless

Brendan Balthazar

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Act 90 Working Group Hearing
October 14, 2021
10:00 am by Video Conference

Members of the Committee, thank you for the opportunity to submit comment on the subject of Act 90 Session Laws 2003.

It is evident in the last 18 years since the passage of Act 90 that emotions and elections have rendered no change in the status quo of how the State's lands are managed. Internationally, though, many organizations have found the usefulness of Decision Making Models. Models that start with a Quality of Life and Landscape Goal.

I am submitting the attached Holistic Resource Management Decision Model as an example and would like to explain the model to the Act 90 Working group given the opportunity within the hearing. Otherwise, I can be reached by phone or email to discuss the Model and how it has been used to improve the quality of life and landscapes with achievable outcomes.

I will be on the zoom hearing to answer any questions.

Thank you,

Lani C. Petrie

GOAL

QUALITY OF LIFE
PRODUCTION AND LANDSCAPE DESCRIPTION

ECOSYSTEM FOUNDATION BLOCKS

Succession

Water Cycle

Mineral Cycle

Energy Flow

TOOLS

Human
Creativity

(Rest Fire Grazing Animal
Impact Living
Organisms Technology)

Money
&
Labor

GUIDELINES

Whole Eco-System Weak Link Cause & Effect Marginal Reaction Energy/Wealth Source & Use Society & Culture Time Stock Density Herd Effect Population Management Burning Flexibility -Strategic -Tactical -Operational Biological Plan Monitor Control Replan Organization/Personal Growth \$ Plan Monitor Control Replan

TESTING

MANAGEMENT

Holistic resource management model.

KAPĀPALA RANCH

Act 90 Working Group Meeting September 9, 2021 From A Tenant's Perspective

Lease Rent

Deputy Masuda pointed out that the Kapāpala annual lease rent is \$44,000. Further commenting, "that's only \$2.00 per acre". GL 5374 is roughly 22,000 acres hence Masuda's calculation.

In actuality, \$44,000 is the net rent paid to the DLNR after the bird hunting credit of 20%, or \$11,000. Thus the fixed rent is \$55,000.

In the last rent reopenener the appraiser reconciled that 7,000 acres of kipukas had adequate soil to be productive grazing area whereas 14,000 acres were lava flows. Thus \$55,000 divided by 7,000 acres is \$7.86 per acre per year and a more accurate calculation of the grazing rent generated from these lands.

Another factor to consider is the land maintenance cost. Our annual budget for invasive weed control on GL 5374 is three times that of the lease rent or \$17.14 per acre per year. \$25 per acre per year (\$7.86 + \$17.14) more clearly depicts the tangible return on public trust lands.

The intangible returns of grazing and weed control are increased habitat for the endemic and threatened Nēnē. Groups of sometimes as many as 20 birds are seen congregating and grazing in open fields around the ranch. We also see a larger percentage of unbanded birds than we witnessed 20 years ago.

Also an intangible is the recreational component to the bird hunters with enhanced areas for sport hunting. More often today we find hunters in areas that we intensively manage brush. The ability to walk freely in short grass and easily work a bird dog make for desirable hunting conditions.

Water System

Chair Case questioned what authority Kapāpala Ranch had to build the new water system in a pristine Koa forest within GL 5374.

Our decision to upgrade the water resource was due to the fact that the Ranch's primary water source of Makakupu Tunnel was badly degrading. Built in 1925 its age as well as location made it questionable to the degree of repair the Ranch should make especially considering it's 30 day revocable permit status.

The water system, Kaniwai, would be built in conjunction with USDA's Natural Resource Conservation Service's (NRCS) Environmental Quality Incentive Program (EQIP). The application required a Landowner's Consent which was signed by DLNR Administrator Russell Tsuji in 2005. With the passage of Act 90 only two years prior, we were highly motivated to build a water resource with capabilities that would service the land for generations.

The reservoir and catchment sites were carefully chosen for two major reasons. First, the elevation at 4,850' was 1,100' higher than the current Makakupu system thus eliminating expensive pumping. Secondly, the site was a sparsely vegetated pahoehoe flat. Satellite imagery prior to 2008 reveals the natural vegetation prior to construction. There were scrub ohi'a and less than a dozen small koa trees that were cleared from the site. Deputy Masuda and Michael Constantinides of DOFAW observed them on an inspection in 2008. There was some discussion of selling the stumpage but the Land Division opted away from a potentially controversial issue for such a small number of board feet of koa.

Headquarters

Chair Case cited the commercial building and residential component of the Kapāpala Ranch Headquarters which benefits the ranch operation without generating revenue to the State.

The Ranch Headquarters was built and has been maintained by the lessee since the 1860's. In our 44 year tenure this historic site has been destroyed more than several times from floodwaters and once from a massive earthquake. We have never received any financial assistance nor rent credit from the State for the losses suffered to the buildings, roads, and bridges at Headquarters. Also a naturally occurring devastation is the acid fallout from the Volcano which wreaks havoc on the roofs covering approximately 10,000 square feet of buildings. The Ranch continually bears the costs at Headquarters of replacing roofs, upgrading electrical wiring, termite tenting, painting, and landscaping in an effort to preserve the functionality as well as the historic and cultural significance in an ambiance which is Kapāpala Ranch past and present.

Respectfully submitted,

Lani C. Petrie
Kapāpala Ranch

Act 90 Working Group Hearing
Oct.14, 2021

Aloha Senator Inouye and Representative Tarnas, and members of the Working Group,

I would like to offer my experience as a rancher who has had a DLNR lease transferred from the DLNR to HDOA. Along with family, I own and operate Kuahiwi Ranch. We have been in business since 1993 and having been providing locally grown beef to our community since 2007.

The first thing I would like to say about this is that although the process took many years to complete, my experience of working with the DLNR and HDOA staff members was one of collaboration and helpfulness. Our civil servants must thread a complex web of stakeholder interests and often antiquated regulations in service of the public good and the highest and best use of the our natural resources.

I should add that what constitutes highest and best use has changed considerably in my lifetime from a strictly economic calculation of what use will bring the highest return to the state to a more holistic standard that takes into consideration environmental and social impacts. This standard will continue to change as we attempt to mitigate and adapt to increasingly extreme weather and a long-term drying trend for our islands.

All of this being said the food produced by agriculture is second only to having a stable natural environment in our hierarchy of needs. My ranch has benefitted greatly from the transfer of a key lease from the DLNR, where it was under a short-term revocable permit to a long-term lease under HDOA. Although we pay slightly more for the lease, we are able to make long term investments in water and fencing infrastructure with peace of mind. We also can make long term plans for local beef production, and thus contribute to the sustainability of Hawai'i's food system.

Both HDOA and DLNR have long-term lease options however HDOA's lease application process is less onerous for those who qualify as bona-fide farmers and ranchers. Therefore for those lands whose highest and best use is for agriculture, whether farming or ranching, the public good is served by transferring these lands to be leased by HDOA to bona-fide farmers for agricultural production.

However I am aware that some public lands currently under the DLNR and leased for pasture include native forests or other natural resources which are of broad public interest and for which the highest and best use may not be ranching. It is important that these natural resources be protected. Whether this is best done under DLNR or HDOA is probably a question that must be taken up case by case, and lease by lease. Possibly writing provisions into the lease to incentivize ranchers to protect native forest is a possible solution whose time has come.

Thank you for the opportunity to testify and for your service in considering this complex issue.

Sincerely,

Michelle Galimba , VP

October 10, 2021

Testimony
Act 90: Working Group

Re: Agricultural Leases on State Lands

Aloha Chair Inouye, Vice-Chair Tarnas and Members of the Working Committee,

The Thompson Ranch on Maui has been raising cattle for many generations, and understands the importance of raising food for our community. We ask that you please consider the transfer of all Agricultural State Land Leases from DLNR to HDOA. We support lands in active cattle production.

Our state cannot afford to cutback on food production. Our Governor has asked for us to increase food production by 30% by 2030. We can help reach this goal if you support ranching on State Lands by approving the transfer of all Agricultural State Land Leases from DLNR to HDOA.

We are good stewards of the land. We can work together.

Thank you for your kind attention in this matter.

Mahalo,

Theresa Thompson
Thompson Ranch
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COMMITTEE ON WATER AND LAND
Senator Lorraine R. Inouye, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

COMMITTEE ON AGRICULTURE AND ENVIRONMENT
Senator Mike Gabbard, Chair
Senator Clarence K. Nishihara, Vice Chair

HB469 HD1

RELATING TO THE TRANSFER OF NON-AGRICULTURAL PARK LANDS.

DATE: Thursday, Oct. 14, 2021
TIME: 10:00 AM
PLACE: VIA VIDEOCONFERENCE

Aloha Chairs Inouye and Gabbard, Vice Chairs Keith-Agaran and Nishihara, and Members of the Committees,

My Name is Peter Simmons. I previously testified on this matter and I'm in favor of passing pastoral leases from our State's DLNR to our State's DOA.

The professionals at DLNR and DOFAW (based on the people I've known over the past 43 years) are really good at what they do. They have high ideals, work hard and are intelligent, knowledgeable and capable. They have written great plans, consolidated conservation minded land interests to focus more efficiently on common conservation issues. And over the decades they have been able to augment their budgets, sometimes as if by magic with government and private funds.

Given all that; how is it that good, smart people are headed and have been headed, not in the wrong direction but not in enough directions for decades. Unfortunately their responsibilities all need tending and that means funding appropriate to the needs of all our forests needs and not only the lucky ones with grants. In the late 1970s DLNR-DOFAW began their quest for Hawaii's share of Federal conservation funding and drifted from the States previous forestry plans. It was great timing as Senators Inouye and Akaka ascended in Washington and so did Hawaii's conservation funding.

The issue is mission creep. When the mission is getting the grants then land asset management follows the money. Over time (decades) we've become trapped in a cycle of State underfunding and federal well intentioned, needed and in many cases successfully grants. Which are not sufficient to malama all of our State's Forests. As an unintended consequence of the lack of funding and mostly funding projects with matching funds, some of forest lands and their resources are dying from neglect.

DLNR-DOFAW should be recognized for how much good their strategy has brought to some of Hawaii's forests. And when coupled with aligning landowner conservation interests with the public's watershed interests in watershed alliances it adds even more value to their budget strategy. And DLNR-DOFAW brought federal agencies together to share information and funding strategies. All of this should be recognized as true accomplishments that have benefited Hawaii. DOFAW-DLNR has performed magic in multiplying and stretching its budgets.

The critical issue is we lack funds to manage our forests as they should be managed. As David Smith writes in DOFAW's Forest Action Plan, "We hope this information will be used to influence our communities, our state and national governments, and other leaders to invest in Hawai'i's forests for the future," (my emphasis). He's asking for help. Unfortunately we haven't funded DLNR-DOFAW adequately to manage all its land responsibilities for decades and decades and it shows. Incrementally, by underfunding DLNR we've forced them to be grant experts with little discretionary funding and no funding for our more degraded forests.

There are 780,000 acres that DOFAW is directly responsible for and the \$/acre allocated to DLNR is significantly less than other states which also have fewer intractable problems. For example, Oregon Division of Forestry, with close to the same acres to manage as DLNR-DOFAW has about twice the management budget.

DOFAW's success of uniting conservation interests in the Conservation Alliance has enlarge the lands that need management to 1.6 million acres with the unintended consequence of further lowering the \$/acre budgets.

We have stunning forest degradation issues such as:

- 1.1 million acres spreading strawberry guava according to USFS, DOFAW and DOA that is two land areas the size of Oahu and about ½ of the low elevation, ohia, ohia-koa forests belong to the State;
- ROD is present on all islands, 175,000 acres on Hawaii Island;
- Small mammalian predators killing our birds and changing native ecosystems;
- 50,000 acres of Albezia;
- Sheep in the mamane on Mauna Kea;
- We have not removed a single plant or animal from the endangered species list;
- We don't have proper introduction of alien pests;
- We're not managing our most critical watersheds and according to DOFAW only be able to manage 30% of them by 2030;
- According to recent reports in Civil Beat we lack the necessary funding to prevent and mitigate wild fires which released tremendous volume of CO2 into the atmosphere and which have been a primary cause of native ecosystem losses; and

- We don't have the funds to inventory our timber assets, much less manage or use them.

How does it make sense that DLNR-DOFAW weighted down with the above and more responsibilities with meager budget wants to take on more land responsibilities, develop a new project of planting trees to transition from managed pasture lands to conservation ohia-koa forest? In the light of the above lands and resources in dire straits we need to ask is this the right time for a new albeit noble goal? We're losing our existing forests and their resources and DLNR-DOFAW wants to plant new ones. It just doesn't make sense. It's not good for Hawaii's existing forests or our land.

DLNR-DOFAW landscape level plans of sequestering carbon to help global climate change has difficulties in that while it is true planting trees sequesters carbon and, so do well managed pastures. And if DLNR-DOFAW replaces well managed pasture with a planted forest there is very little carbon or watershed gain except by fog drip and at the same time DLNR-DOFAW allows forests to die and decay which emit methane and more carbon di-oxide than the newly planted trees could sequester. The carbon balance is not working and overall without caring for the lower elevation forests the DLNR-DOFAW carbon banking accounting is a bust. Take care of the Carbon bank opportunities of all our forests before taking on more.

It's a great idea to plant trees and more can and should be done even on ranch land; it's a bad idea to add pasture management to DLNR-DOFAWs responsibilities especially when there is so much to be done to manage our demised forests; DLNR-DOFAW should focus on the forests we have.

It is ironic that DLNR-DOFAW is fighting so hard to add responsibilities (without adequate long-term funding for management) to their portfolio instead of giving the responsibility to their Sister organization, our DOA. And in this context it's doubly ironic to consider giving Hawaiian land and forests to the USFS as seems to be DLNR-DOFAW's desire.

What's best for land is that it is managed for the long term. While DLNR has enjoyed its position as landlord holding short-term agreements the lands and the lands' stewards have suffered. Denying long term leases (a real estate interest) to ranchers puts the State's lessee ranchers at an economic disadvantage when they want to finance capital improvements or fund their operation. Short term pasture agreements add unnecessary business risk. Bottom line: there is less money for keeping up with maintenance let alone improving the land.

The DLNR had decades to come to long-term arrangements for the State's pasture leases. Their lack of progress shows a lack of understanding or empathy that their action has had on both the land steward and the land. A well written long term lease complete with conservation requirements and withdrawals agreements is within the scope of both DLNR and DOA especially if they work together with the lessee. It should be what agreed to in the lease that matters not in who's portfolio it resides.

For all of the above reasons please move the remainder of pastoral leases from the DLNR to DOA.

I sincerely thank you for allowing me this opportunity to help.

Peter D. Simmons

We are SC Ranch Co which has been in business for over 45 years. We have owned SC Ranch Co since 2011 and in those ten years we have taken the original vision and grown it to a first-class cattle operation. We raise Hawaii beef and 85% of our cattle remain in Hawaii's local consumer market. We strive to be 100% local, but current instability requires that we diversify with a portion of our business as cow/calf. We are Hawaii agriculture and we should be represented under the Department of Agriculture.

If our lease continues to stay under DLNR we continue to live with the risk that and our investments to the land, to Hawaii Agriculture, and our livelihood will be taken away.

We work hand-in-hand with the NRCS (Natural Resource Conservation Services) to continually invest in making our ranch more and more sustainable, preserve our natural watershed and native resources, and grow Hawaiian agriculture.

Here are just some of the improvements we have invested in:

1. Replaced 80% of boundary fencing with hog wire which allows us to be more efficient in our grass management. We now have longer rotations which allows for longer rest periods and improve re-growth of native grasses and trees.
2. Fenced our gulches aka natural watershed in order to assist in preserving the native plants; fern, Ohia, and Koa to name a few.
3. Installed two thirty-two-thousand- gallon water holding tanks to allow us to be more water sustainable.
4. We are in the planning process of building a 1-million-gallon reservoir for water sustainability.

Since our lease is under the Department of Land and Natural Resources, we live with the threat of possibly losing our lease or having to buy it back plus improvements at the end of our lease. We make these improvements because it is the right thing to do and we are confident that our lease should **stay agriculture and be under the DOA.**

Thank you for your time,

Charles & Vanessa Stevens

SC Ranch Co.



Email: communications@ulupono.com

ACT 90 WORKING GROUP
Thursday, October 14, 2021 — 10:00 a.m.

Dear Chair Inouye, Chair Tarnas, and Members of the Working Group:

My name is Micah Munekata, and I am the Director of Government Affairs at Ulupono Initiative. We are a Hawai'i-focused impact investment firm that strives to improve the quality of life throughout the islands by helping our communities become more resilient and self-sufficient through locally produced food; renewable energy and clean transportation; and better management of freshwater and waste.

Ulupono Initiative supports the local livestock industry and its efforts to provide fresh, healthy products for Hawai'i's consumers. With the DOA's affordable, long-term lease structure in place, local ranchers will be able to make the necessary investments into their respective operations, improving economic viability and increasing local food production for the State.

We appreciate this working group's efforts during the last several months to find solutions to Act 90's implementation. Ulupono still believes however that all active agricultural pasture leases should be transferred to the DOA per the intent of Act 90, SLH 2003 as DOA's mission and expertise to manage agricultural activities and related natural resources, including pastureland production, through a favorable lease structure promotes local food production and directly supports State sustainability goals.

Thank you for this opportunity to provide comments.

Respectfully,

Micah Munekata
Director of Government Affairs

Investing in a Sustainable Hawai'i

AMENDED AND RESTATED GRAZING LEASE AND HUNTING LICENSE

AGREEMENT

This Grazing Lease Lease ("Lease") is made effective as of January 1, 2006, and is by and between KJZ LLC, a Hawaii limited liability company, hereinafter called "Lessor", and Brendan Balthazar, hereinafter called "Lessee".

Whereas, Lessor is the owner of certain land located on the island of Maui, state of Hawaii;

Whereas, Lessee is desirous of utilizing Lessor's property for grazing livestock and the operation of a ranch; and

Whereas, Lessor and Lessee, entered into that Grazing Lease and Hunting License Agreement, effective **January 1, 2006**, with a term expiring on December 31, 2015, and the parties desire to amend and restate such agreement and extend its term by five years by entering into this Lease, which expires as set forth below on **December 31, 2020**;

Now, therefore, in consideration of the rent hereinafter set forth and of the covenants and conditions herein contained and on the part of the Lessee to be kept, observed and performed, the parties hereto agree as follows:

1. Lease of Premises. Subject to the terms and conditions contained in this Lease, Lessor does hereby demise and lease to the Lessee the lands located in the District of Kula, island and county of Maui, state of Hawaii, and designated as Maui tax key nos. 2-3-005-002-0000 (area approximately 3,335 acres (hereinafter referred to as the "Premises"), to have and to hold the Premises unto the Lessee, together with the water system, pipes, tanks, troughs, and other similar equipment or improvements on the Premises, for grazing and cattle ranch purposes only.

Reserving, however, unto the Lessor, the following:

(i) All prehistoric and historic remains found in, on or under the Premises.

(ii) The ownership of improvements of whatever kind or nature, including but not limited to fences and stock water systems located on the Premises prior to or on the commencement date of this Lease, excluding those improvements constructed during the term of the Lease unless otherwise provided herein.

(iii) The right or privilege of withdrawing from the operation and effect of this Lease, at any time or times during the Term, all or any portion of the Premises of the Lessor's own selection for any purposes, Lessor, in its sole and absolute discretion may deem appropriate; provided, however, the exercise of such right or privilege of withdrawal shall be conditioned upon (1) a reduction in the rent herein reserved for the remainder of the then rental period in the proportion that the value of the land withdrawn shall bear to the value of the entire land under this Lease prior to such withdrawal, such values to be based on the livestock "carrying capacities" of such land, as determined by the parties by mutual agreement, or, failing agreement, by appraisers or arbitrators as hereinafter provided, (2) construction and maintenance by the Lessor of any fencing required by reason of the exercise of this withdrawal privilege, (3) payment to Lessee of the Lessee's reasonable documented undepreciated material and labor costs for any improvements built on the withdrawn land either during the first two years of the initial lease term or thereafter, provided that documentation of such costs are provided to Lessor within twelve (12) months of such costs being incurred (depreciated proportionately over the initial lease term for costs incurred during the Term or, as the case may be, over the extended lease term for costs incurred during the extended lease term) and (4) Lessor giving Lessee twelve (12) months prior notice of such withdrawal. Where the portion so withdrawn renders the remainder unsuitable for the use or uses for which the Premises 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 a reasonable time period.

(iv) The right, at any time, with reasonable notice and without compensation, to take possession of any part of the Premises which may be required for laying out and constructing new roads or improving or changing the line and grade of old roads, and taking such soil, rock or gravel as may be necessary for the construction or improvement of any road; provided, however, that Lessee shall not be required to erect and maintain fences along newly constructed roads; but if the Lessee shall deem such fencing desirable and the Lessor or other tenants fail or refuse to erect and/or maintain such fences within a reasonable time following the request to do so by the Lessee, the Lessee may perform such work and deduct the costs thereof from the rental payment or payments next thereafter due to the Lessor; and provided, further, that where the amount of land so taken for roads exceeds two acres in area, there shall be a reduction in the rent herein reserved for the remainder of the then rental period in the proportion that the value of the land withdrawn shall bear to the value of the entire land under this Lease prior to such withdrawal, such values to be based on the livestock "carrying capacities" of such land, as determined by the parties by mutual agreement, or, failing agreement, by appraisers or arbitrators as hereinafter provided.

(v) The right and privilege to issue written permits to individuals to hunt, subject to the rules and regulations issued by the Hawaii State Department of Agriculture; provided, however, that the parties hereto acknowledge that Lessee is obtaining hunting license rights as provided for in more detail in the last paragraph of the Lease, which the parties agree and acknowledge do not represent an interest in real property.

2. Term. This Lease shall continue for a term ("Term) of ten (10) years commencing on January 1, 2006, and expiring on December 31, 2020.

3. Rent. Rent payable by Lessee to Lessor for the Term shall be One Thousand Two Hundred Dollars (\$1,200) per month, representing a total rental amount due every six months of \$7,200. Lessee shall pay to Lessor, in arrears, the rent for successive six-month periods of the Term, with the first payment being due on or before July 1, 2006

4. Fencing. Lessee will, wholly at Lessee's own cost and expense, keep and maintain in good order and in a stock-proof condition throughout the period of this Lease the fences constructed by Lessee and those now existing on the Premises. Lessee will maintain and, if necessary, construct, at its own cost and expense, such fences as may be required for Lessee's use of the Premises by any law, rule, regulations or ordinance now in force or that may hereafter be enacted.

5. Taxes, Assessments, Etc. for Lessee's Operations. The Lessee shall pay or cause to be paid, when due, all taxes, rates, assessments and other outgoings of every description with respect to Lessee's use and operation of the Premises, during the term of this Lease.

6. Repair and Maintenance. Lessee will, at Lessee's own expense, at all times during the said term, maintain well and substantially repair, maintain, amend, and keep the Premises and improvements thereon covered by this Lease in good order, condition and repair, reasonable wear and tear excepted, and in a strictly clean and sanitary condition. It is agreed and understood that Lessee shall not dispose of rubbish or any waste materials anywhere on the Premises. Lessee will allow the Lessor or its agents free access to the Premises at all reasonable times for the purpose of examining the same and determining whether the covenants herein are being fully observed and performed, and will make good at Lessee's own cost and expense all repairs and amendments reasonably necessary of which notice shall be given within thirty (30) days after the giving of such notice; or if such repairs cannot be reasonably completed within said thirty (30) days, Lessee shall proceed diligently to complete such repairs as soon as reasonably possible thereafter; and shall

protect and hold harmless the Lessor and the Premises from any and all liens of any kind or character which may be levied for labor performed in connection with the maintenance of the Premises, and will indemnify the Lessor against all actions, suits, damages, and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of all laws, ordinances, rules and regulations, or of this covenant.

7. Compliance with Laws. 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 Premises, now in force or which may hereinafter be in force.

8. Utility Services. 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 the Lessee's use of the Premises relates or causes, regardless of whether such amounts are assessed to or initially payable by the Lessor or Lessee. The parties hereby expressly agree and acknowledge that the Lessee is not expected to separately contract for or use these services and that this provision is intended to only apply if the Lessee separately contracts for these services or otherwise uses them.

9. Inspection of Premises. In addition to any express and specific rights provided for herein, 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.

10. Liens and Recording of Lease. The Lessee will not commit or suffer any act or neglect whereby the Premises or any improvement thereon shall become subject to any attachment, lien, charge or encumbrance whatsoever, and shall indemnify and hold harmless the Lessor from and against all such attachments, liens, charges and encumbrances and all expenses resulting therefrom. Neither this Lease nor a memorandum thereof shall be recorded against the property.

11. Character of Use. The Lessee shall use or allow the Premises hereby demised to be used solely for grazing cattle and other livestock ranch purposes. The Premises shall not be used for purposes not specifically authorized in writing by the Lessor, which authorization may be withheld by Lessor in its sole and absolute discretion. The parties acknowledge that the Lessee is receiving certain hunting license rights in the last paragraph of the Lease, and that such rights do not comprise an interest in real property.

12. Assignments, Etc. The Lessee shall not transfer, assign or permit any other person to occupy or use the Premises or any portion thereof,

or transfer or assign this Lease or any interest therein, either voluntarily or by operation of law, and any such occupancy, use, transfer or assignment so made shall be null and void and shall entitle Lessor, immediately and without notice, to terminate this Lease and be restored to the sole, exclusive possession of the Premises.

13. Mortgage. The Lessee will not mortgage, hypothecate or pledge the Premises or any portion thereof or any interest therein without the prior written approval of the Lessor, which approval may be withheld in the sole discretion of Lessor, and any such mortgage, hypothecation or pledge without such approval shall be null and void.

14. Indemnity. The Lessee will 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 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, including aerial drift or the use of chemicals, pesticides, herbicides, fungicides, mematicides and plant growth regulations (hormones), and from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

15. 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 including reasonable attorney's fees; furthermore, the Lessee shall and will pay all costs and expenses including reasonable attorney's fees that 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 rent, taxes and any and all other charges.

16. Liability, Property Damage and Insurance. The Lessee will indemnify and hold the Lessor harmless from claims or demands by third persons and from any losses or damages, including without limitation reasonable attorney's fees, for property damages or personal injury or death arising out of any accident or happening on or from the Premises, including nonexclusive access rights-of way, and will at its own expense, carry and keep in force during the term of the Lease, or any extension, a policy or policies of landlord's, owner's, and tenant's liability insurance or the equivalent with minimum limits of not less than Three Million Dollars (\$3,000,000.00) each

occurrence for bodily injury, not less than One Million Dollars (\$3,000,000) per occurrence for property damage and not less than Three Million Dollars (\$3,000,000) general aggregate combined single limit for bodily injury and property damage liability, said policy or policies to name the Lessor as additional insured and require thirty (30) days notice to the Lessor of any intent on the part of the insurer to cancel said policy or policies. The Lessee shall furnish the Lessor with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, 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 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 adequacy of the coverage afforded by the liability insurance shall be subject to review by the Lessor from time to time, and if it appears in such a review that a prudent businessman in Hawaii operating a business similar to that operated by the Lessee on the Premises would increase the limits of his liability insurance, the Lessee shall forthwith increase such limits to that extent.

17. Fire Insurance. The Lessee will insure and keep insured against loss or damage by fire at its own expense with extended coverage and in a sum as near as may be practicable to the value thereof all buildings placed upon the Premises with an established insurance company or companies satisfactory to the Lessor, the loss, if any, to be payable to the Lessor; and in case the said buildings or any part thereof shall at any time during the said term be destroyed or damaged by fire, then and as often as the same shall happen all monies received in respect of such insurance shall with all convenient speed be laid out in rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner, according to the plans of the buildings so destroyed or damaged by fire or according to such other plan or in such other manner as shall be previously approved by the Lessor in writing. Lessee will at all times furnish the Lessor with satisfactory evidence that such policy or policies is in full force and effect. Such policy or policies shall require thirty (30) days written notice to the Lessor of the insurer's intent to cancel.

18. Water System. The Lessee will operate the demised water system in an efficient manner, and will make such repairs thereto at its own expense as may become necessary to maintain the said system, and that at the expiration of the term of this Lease it will return to the Lessor the said water system substantially as it now is, natural wear and deterioration excepted, and that it will pay all water charges as metered against the said system. Any improvements in the water system that the Lessor makes and pays for

consistent with the provisions of Section 1(iii)(3) shall remain the property of the Lessee to the extent such improvements have not been fully depreciated. As provided for in more detail in Section 24, it is the intent of the parties that, to the extent this lease terminates for any reason when the Lessee has any ownership interests in such improvements, the Lessor shall have the option of either purchasing such improvements for the undepreciated cost of them or providing the Lessee the right to remove such improvements.

19. Breach. Time is of the essence of this agreement and if the Lessee shall fail to yield to pay any rent or any part thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be attached or otherwise be taken by operation of law, or if any assignment 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 thirty (30) 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, 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 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.

20. Construction Bond. Lessee will, before undertaking any "Lienable Construction" (as defined below) on the Premises, notify Lessor of the fact that such Lienable Construction is to be undertaken. Lessor may, at such time, require Lessee to display the ability to pay for any such Lienable Construction, which determination of ability to pay shall be made by Lessor in its reasonable judgment. If, in Lessor's reasonable judgment, Lessee does not have the ability to pay for the Lienable Construction in question, Lessee shall deposit with Lessor a bond or certificate in form and amount with surety reasonably satisfactory to Lessor, guarantying the completion of the applicable Lienable Construction, free and clear of all mechanics' and materialmen's liens. For purposes hereof, the term "Lienable Construction" shall mean the construction of any alteration, addition or improvement on the Premises (i) which costs in excess of Twenty Thousand Dollars (\$20,000) (or, when aggregated with all other alterations, additions or improvements to be constructed at any one time, aggregate in excess of Twenty Thousand Dollars (\$20,000)) and (ii) with respect to which a statutory mechanics' or materialmen's lien may be asserted.

21. 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, any county or any governmental authority, the rent 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 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 Premises occupied by the Lessee. Where the portion so taken renders the remainder unsuitable for the use or uses for which the Premises 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.

22. Improvements. The Lessee shall not at any time during said term construct, place, maintain and install on the Premises any building, structure or improvement of any kind and description whatsoever except with the prior written approval of the Lessor and upon such reasonable conditions as the Lessor may impose in its sole discretion.

23. Quiet Enjoyment. The Lessor hereby covenants and agrees with the Lessee that upon payment of 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 the use of the Premises for the term hereof, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through or under it.

24. Expiration of Term of this Lease. On the expiration of the term of this Lease or sooner termination as herein provided, or upon termination for whatsoever cause, Lessee will peaceably and quietly leave and surrender and deliver up to the Lessor possession of the Premises, together with all improvements thereon, in good repair, order and condition, reasonable wear and tear and damage by acts of God excepted. Lessee shall, however, remove all improvements at its cost if Lessor requires Lessee to do so; provided further on the expiration on the term hereunder the ownership of all water system improvements and all fences and roadway improvements, at Lessor's option, shall revert to Lessor and shall be the property of the Lessor. If and to the extent there is any such reversion to the Lessor, to the extent there is a reversion of undepreciated costs, consistent with the provisions of Section 1(iii)(3), Lessor shall pay for the undepreciated costs.

25. Condition of Premises.

(a) Lessee acknowledges that it is familiar with the Premises and has made such independent investigations and reviewed such documents as it deems necessary or appropriate concerning the use of the Premises for grazing and ranching purposes, including, but not limited to, any desired investigations or analysis of the economic value of the Premises or the feasibility of utilizing the Premises for the purposes intended by Lessee and permitted by Lessor; the size, dimensions, location or topography of the Premises; any surface, soil, subsoil or other physical conditions of or affecting the Premises; all present or future governmental laws, statutes, rules, regulations, ordinances, limitations, restrictions or requirements concerning the use, density, location or suitability of the Premises (collectively "Regulations"), including, but not limited to, zoning, subdivision, land use, environmental, ecological, building code, or other such Regulations; the necessity or availability of any general or special plan amendments, rezoning, zone variances, conditional use permits, building permits, environmental impact reports, parcel or subdivision maps or any other governmental permits, approvals or acts (collectively the "Permits"); the necessity or existence of any dedications, fees, charges, costs or assessments that may be imposed in connection with any Regulations or the obtaining of any required Permits; all other matters concerning the conditions and use of the Premises.

(b) Lessee is relying solely upon its own inspection, investigation and analysis of the foregoing matters in executing this Lease and is not relying in any way upon any representations, statements, agreements, warranties, studies, reports, descriptions, guidelines or other information or material furnished by Lessor or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding any of the foregoing matters.

(c) Lessee will be using the Premises "as is", in its present state and condition, without representation by Lessor or its representatives as to any matter, whether or not expressly mentioned above. No patent or latent condition affecting the Premises in any way, such as, but not limited to, the matters listed in subparagraph (a) of this paragraph 25, whether or not known or discoverable or hereafter discovered, shall affect Lessee's rights or obligations as set forth in this Lease, nor shall give rise to any right of damages or otherwise against Lessor.

26. Good Husbandry, Conservation Program and Hazardous Materials.

(a) The Lessee shall at all times practice good husbandry with regard to the use of the Premises for the use herein permitted and shall carry out a program of conservation developed by the Lessee. Good husbandry and conservation includes taking reasonable steps to ensure that clear pasture

areas do not become overtaken by large trees or other growths, but does not include reclaiming portions of pasture that have already been overtaken by large trees, eucalyptus, pine and wattle.

(b) The Lessee will not commit or suffer any strip or "waste" or any unlawful, improper or offensive use of the Premises or any part thereof. The term "waste" shall be deemed to include, but shall not be considered restricted to (1) overgrazing to the detriment of the whole or any portion of the Premises; (2) suffering the Premises or any portion thereof to become unduly eroded without reasonable efforts being taken to correct the same; (3) the severance of any trees whose diameter exceeds 10 inches now or hereafter growing on the Premises, except by written permission of the Lessor; and (4) suffering any noxious weed, shrub or tree coverage to remain or become established on lands which are economically feasible for grazing use; the term "noxious weeds, shrub or tree" shall be deemed to include, but shall not be considered restricted to such pests as fire bush, Gorse, Black Wattle, Eucalyptus, Guava and Spiny Amaranth, Broom Sedge grass, and cane grass; provided, however, the Lessee shall not be considered to have committed waste for suffering the growth on said land, or any portion thereof, of any plant, shrub, or tree of a noxious character which is not referenced herein or which has not been designated noxious by the State Department of Agriculture, or its successor or which has not been designated noxious by Lessor and notice in writing of such designation being given the Lessee by the Lessor; provided further, the Lessee will practice accepted principles of good husbandry, pest control and good pasture management.

(c) Lessee covenants that (i) the Premises shall be kept free of Hazardous Materials and (ii) neither Lessee nor any occupant of the Premises shall use, transport, store, dispose of or in any manner deal with Hazardous Materials on the Premises. "Hazardous Material" as used herein shall mean any hazardous or toxic substance or material that is or becomes regulated by any local, state or federal authority.

27. Force Majeure. If and to the extent that the Premises are affected by earthquake, fire, flood, volcanic eruption, civil disturbance, war, or act of God, which renders the Premises unusable for Lessee's purpose (grazing and ranching operations), then upon thirty (30) days prior written notice to the Lessor, Lessee may suspend or terminate its obligations under this Lease.

28. Arbitration. If at any time during the term of this Lease or after termination thereof, any dispute, difference or question shall arise between the parties hereto with respect to the rental amount, land value, or the provisions, construction, meaning or effect of this Lease or anything herein contained or the rights or limitations of the parties under this Lease, every such dispute, difference or question shall, at the desire of any party, be submitted to

and be determined by a single arbitrator, if the parties so mutually agree, or in the absence of such agreement by a board of three impartial arbitrators. Either the single arbitrator or the two arbitrators appointed by the parties as hereinafter provided in case a single arbitrator cannot be agreed upon shall be persons experienced and knowledgeable, in the case of disputes involving rental or land value, in the appraisal of real property, or in all other disputes, in agricultural land management matters. In case a single arbitrator cannot be agreed upon, the impanelment of a board of three arbitrators shall be as follows: The party desiring to have the matter in dispute submitted to arbitration shall give the other party written notice of such desire and shall name one arbitrator in such notice. Within twenty (20) days after the receipt of such notice, the other party shall name a second arbitrator, and in case of failure to do so the party who first named an arbitrator may have the second arbitrator selected or appointed by a judge of the Circuit Court of the Second Circuit, State of Hawaii, and the two arbitrators so appointed in either manner shall select and appoint a third arbitrator, and if the two arbitrators so appointed shall fail to appoint the third arbitrator within twenty (20) days after the naming of the second arbitrator, either party may have the third arbitrator selected or appointed by one of said judges, and the three arbitrators so appointed shall thereupon proceed to determine the matter in question, disagreement or difference, and the decision of any two of them shall be final, conclusive and binding upon the parties, all as provided in Chapter 658, Hawaii Revised Statutes, as the same may be amended, and judgment may be entered upon any such decision by the Circuit Court as provided in said statute. In all cases of arbitration, each of the parties hereto shall pay the expense of its own attorneys and witnesses, and all other expenses of such arbitration shall be divided equally between the parties. If the issue or dispute submitted to arbitration involves the payment of money, the amount in dispute shall be deposited by the party to be charged with payment into an interest-bearing account, with an institution acceptable to both parties, pending the completion of the arbitration and interest accrued shall be paid with payment of the principal after the award.

29. Notices. Any notice to be given to or served upon any of the parties hereto shall be deemed to have been sufficiently given or served for all purposes when actually delivered by messenger or by certified mail, return receipt requested, delivered as follows (supplementary copies may be deemed delivered if sent by fax or email, and expressly recognized by the party receiving the correspondence):

In the case of Lessor:
KJZ LLC
c/o West Maui Financial Services
5095 Napilihau Street, Suite 202
Lahaina, Hawaii 96761

Tel.: (808) 667-1000
Fax: (808) 667-1002
Email: John.Zwaanstra@wmflc.com

In the case of Lessee:
Brendan Balthazar
103 Maha Road
Makawao, Hawaii 96768
Tel.: (808) 281-1723 Fax: (808) 572-2820
Email: DiamondBRanchHI@aol.com

30. No Party Deemed Drafter. The parties agree that no party shall be deemed to be the drafter of this Lease and further that in the event that this Lease is ever construed by an arbitrator(s) or a court of law, such arbitrator(s) or such court shall not construe this Lease or any provision of this Lease against any party as the drafter of the Lease.

31. Amendments. This Lease shall not be modified except by an instrument in writing signed by all of the parties.

32. Governing Law. This Lease shall be governed and construed in accordance with the laws of the State of Hawaii.

33. Late Charge. Any amount owing by Lessee to Lessor under the term of this Lease shall be subject to interest from the date of the same originally becomes due until paid at the rate of the lesser of one percent (1%) per month or the highest rate allowable under applicable law, whether or not Lessor has demanded same, for suit of collection thereof, granting any extension(s) for payment thereof, or exercise or fail to exercise any other right or remedy in respect thereto, and said interest shall be considered as a part of the rental payable herein.

34. Nonwaiver. The acceptance of the rent by Lessor shall not be deemed to be a waiver by Lessor of any breach of continuing breach by Lessee of any covenant herein contained, nor of Lessor's right to terminate this Lease for breach of continuing breach of covenant.

35. Lessor's Mortgage. Lessee agrees that upon the request of Lessor it will subordinate this Lease and the lien hereof to the lien of any present or future mortgage or mortgages upon the Premises or any property of which the Premises are a part, irrespective of the time of execution or time of recording of any such mortgage or mortgages. Lessee agrees that it will upon the request of Lessor execute, acknowledge and deliver any and all instruments deemed by Lessor necessary or desirable to give effect to or notice of such subordination, provided only that said mortgagee enters into an agreement with

Lessee which provides that said mortgagee will not disturb the possession and other rights of Lessee so long as Lessee performs its obligations hereunder and that said mortgagee will accept Lessee as Lessee of the Premises under the terms and conditions of this Lease in the event of acquisition of title by said mortgagee through foreclosure proceedings or otherwise, and which further provides that Lessee will agree to recognize the holder of such mortgage as the Lessor in such event, said agreement to be expressly binding upon the successors and assigns of Lessee and of the mortgagee and upon anyone purchasing the Premises at any foreclosure sale. Lessee and Lessor agree to execute and deliver any appropriate instruments necessary to carry out the agreements in this section contained. Any such mortgage to which this Lease shall be subordinated may contain such other terms, provisions and conditions as the mortgagee deems usual or customary. Lessee also agrees that if it fails at any time to execute, acknowledge or deliver any such instrument requested by Lessor, then Lessor may, in addition to any other remedies available to them, execute, acknowledge and deliver such instrument as the attorney-in-fact of Lessee and in Lessee's name; and Lessee hereby makes, constitutes and irrevocably appoints Lessor as its attorney-in-fact for that purpose. The word "mortgage" as used herein includes mortgages, deeds of trust or other similar instruments and modifications, consolidations, extensions, renewals, replacements and substitutes thereof.

36. Time Of Essence. Time is of the essence of each provision of this Lease.

37. Section Headings. Section headings of this Lease are for convenience only and if there be any conflict, the text shall control.

38. Entire Lease. The parties agree that their entire contract has been stated herein and that this instrument and all of the terms and conditions herein contained, supersede any prior, oral, or written agreements or representations made by or between the parties in respect of any matter relating hereto, all of which have been merged herein.

39. Option to Extend Term. The Lessee shall have the option to extend the term of this Lease for one (1) additional ten (10) year period upon the condition that there is no default in performance or observance of any covenant or condition of this Lease of which a notice of default has been given to the Lessee at the expiration of the initial term described in paragraph 2; provided, however, that in case of any such default which cannot with due diligence be cured prior to the expiration of the initial term, if the Lessee shall have proceeded promptly after the service of notice of default with due diligence to cure such default, the Lessee may, nevertheless, be entitled to such extended term. Except with respect to the amount of the rent payable during the one (1) additional ten (10) year period and except that there shall be no privilege to

extend this Lease for any further periods, the said one (1) additional ten (10) year period shall be upon the same conditions as provided in this Lease. The Lessee shall exercise the option by giving the Lessor written notice at least ninety (90) days prior to the expiration of the initial term. An effective exercise shall be deemed to extend this Lease without the execution of any further lease or instrument.

During the one (1) additional ten (10) year period the rent payable by Lessee to Lessor shall be as mutually agreed upon by the Lessor and Lessee; provided, however, in the event the Lessor and Lessee shall fail to agree in writing to such rent at least sixty (60) days before the commencement date of the one (1) additional ten (10) year period, the rent shall be determined by the arbitration procedure set forth in paragraph 28, with the fair market value of the rent being determined by the arbitrators, given the specific facts unique to the Lease. The rent for the one (1) additional ten (10) year period, whether determined by mutual agreement or by arbitration, shall be not less than the rent for the initial ten (10) year period. If the rent has not been determined by the commencement of the one (1) additional ten (10) year period, the Lessee shall pay on account of rent to the Lessor in the same amount and in the same manner as the initial ten (10) year period. Within thirty (30) days after the rent has been determined, the Lessee shall pay the Lessor all additional amounts due by reason of such determination together with interest accrued thereon at 10% per annum from the date such additional rental would have been payable under the Lease had it been determined prior to the commencement of the extension period.

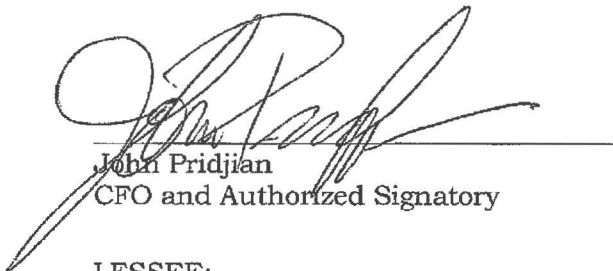
40. Hunting License. For no additional consideration, the Lessor hereby grants the Lessee the right and privilege to hunt for recreational non-business purposes, and to extend the same such right to (i) a limited number of individual employees or independent contractors who currently work with or for the Lessee in connection with utilizing the Premises for grazing livestock or the operation of a ranch and (ii) two members of the Lessee's family, provided such individuals exercise these rights only while being accompanied by Lessee. A list of the names of each such individual employee or independent contractor granted this right by Lessee will be provided to Lessor in writing in advance of any such use along with an appropriate photocopy of any such individual's Hawaii driver's license or comparable photographic identification. This list may be revised by time to time by Lessee in a similar writing delivered to the Lessor. If any individual, other than the Lessee and an individual set forth on the list of permitted individuals, is found exercising hunting rights on the Premises with the Lessee's permission, written or otherwise, or to have done so in the past during the Term or extension lease term, all hunting rights for the balance of the Term or extension lease term will be terminated and forfeited by Lessee.

It is the intention and understanding of the Lessor and Lessee that all hunting rights and any hunting activities conducted on the Premises will be conducted consistent with and subject to the rules and regulations issued by the Hawaii State Department of Agriculture, any applicable federal or local laws, and to further reasonable rules and regulations of Lessee. It is also the intention of the parties that while the license rights granted hereunder do not represent rights or interests in real property, all of the other provisions of this Lease concerning liability and indemnification shall apply. Without limiting the preceding sentence, for example, the provisions of paragraphs 14 and 15 (concerning the Lessee's obligation to indemnify the Lessor against claims and costs, including litigation costs, with respect to Lessee's use of the Premises) and paragraph 16 (concerning the obligation to obtain the appropriate amount of insurance and make Lessor as an additional insured) apply to the hunting rights provided in this paragraph. The insurance obtained pursuant to paragraph 16 shall include coverage for liability for hunting activities conducted directly or indirectly by Lessee.

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Lease effective as of the 1st day of January 2006.

LESSOR:

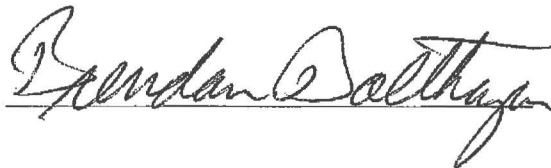
KJZ LLC, a Hawaii limited liability company



John Pridjian
CFO and Authorized Signatory

LESSEE:

BRENDAN BALTHAZAR





STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
685 HALEAKALA HIGHWAY
KAHULUI, HAWAII 96732

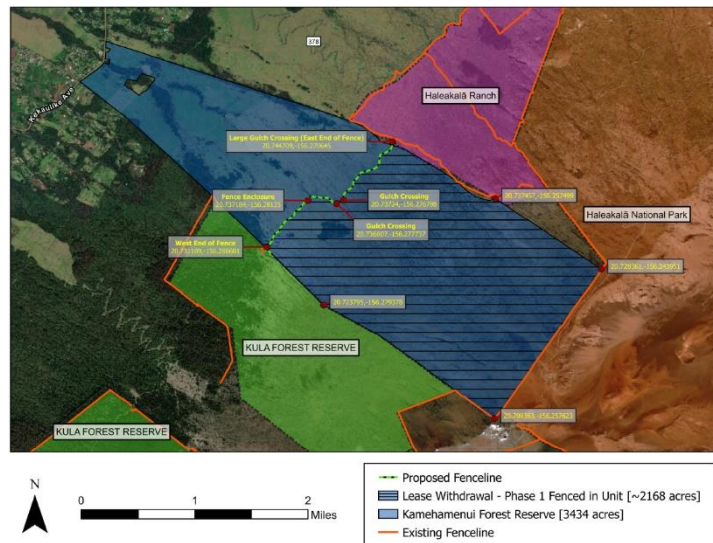
September 8, 2021

Subject: Kamehamenui (TMK 2-3-005:002; 3,434 acres) purchase and management

In partnership with the Trust for Public Lands, the department closed on the purchase in August 2020 and we are proceeding with planning and management for forest and watershed restoration, endangered species protection, and development of trails and recreational opportunities. Purchase of those lands, which were offered on the open market, was made possible with the strong support of community and agency partners, funding from the state legislature, and grants from the US Forest Service and US Fish and Wildlife Service.

Grazing lease

Conveyed to the state with the purchase was an existing 10-year lease of the lands to a private individual for livestock grazing purposes. The terms of the lease allow for the withdrawal of all or portions of the parcel from the lease with one year notice. Withdrawal of the lands from the grazing lease is necessary for the successful completion of management objectives for reforestation and watershed protection, grant compliance, and to provide for public access and use of the lands and natural resources. We are in communication with the lessee to establish a phased withdrawal of portions, consistent with management readiness. In May 2021, the department notified the lessee of our intent to withdraw lands mauka of approximately 6000' elevation. We expect that withdrawal of lower portions will proceed in the 3-5 year time frame.



Planning

We are preparing to issue a solicitation for services to qualified planning consultants for the preparation of a community-based management plan for the 3,434-acre Kamehamenui lands. The plan will be developed through broad consultation with community members and constituents and will include master planning for forest and watershed restoration, endangered

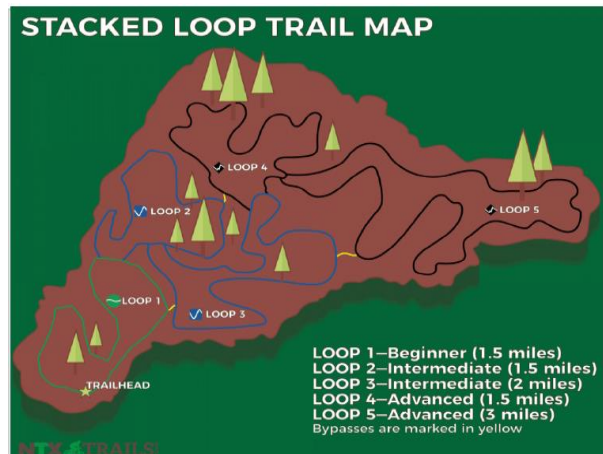
species protection, and development of trails and access. We expect to scope development of a network of trails for hiking that will include both short loop trails and remote upcountry trails for expert hikers. The community-based planning approach will enable us to seek public input on additional recreational opportunities that may be compatible with the community's vision, such as camping, backpacking, mountain bikes, archery, and bird hunting. We expect to begin the planning in late 2021.

Habitat management and surveys

We recently completed biological surveys of the upper portions of the parcel, and further surveys for endangered species are in progress, including installing acoustic monitoring stations to track long term population trends for the endangered Hawaiian Hoary Bat. The subalpine lands above 6000' elevation were selected for the first management phase because they support areas of more intact native habitats and several endangered species and will respond quickly to management efforts. Initial management actions for that unit will include fencing and removal of feral ungulates and reforestation. Upper portions are expected to rebound quickly, supported by the natural seedbank, and will not require extensive tree planting. A mesic zone from 6000-6500' elevation is expected to require active tree planting for restoration. At this time, we have secured the funds needed to complete the fence, we have scouted and marked the fence line, and are in the process of completing environmental compliance requirements for that fenced unit. We expect to begin fence construction and restoration of the upper unit in January 2022.

Trails and access

We were awarded a generous donation of \$1M from an anonymous donor who is an avid hiker and is interested in supporting development of new back country hiking opportunities. We plan to build initial trails in the upper management unit, which can be accessed from the Kula Forest Reserve. As lower lands are withdrawn from grazing, we will implement plans for reforestation and trails and access in those areas. Demand for hiking and outdoor recreation on Maui is greater than ever, with many trails and parking areas at or over capacity. Our goal is to create new hiking opportunities throughout Maui Nui. The full network of hiking trails at Kamehamenui will extend from the highway at approximately 3500' elevation to the summit at 9000', providing miles of new remote hiking trails to meet the very high demand for outdoor recreation on Maui. The above map shows a conceptual example of a stacked-loop type network of trails.



Please do not hesitate to us if you would like additional information.

Brendan Balthazar
103 Maha Road
Makawao, HI 96768

June 29, 2020

Via email: ytraeh@gmail.com

Via certified U.S. mail, return receipt requested:

Shizuka Asakawa, as Trustee
Of the Shizuka Asaka Revocable Trust
Agreement, dated April 16, 2016
730 Battery Place
Alexandria, VA 22314

Re: ESTOPPEL CERTIFICATE/EXERCISE OF OPTION

Dear Ms. Asakawa:

I am the lessee under that certain unrecorded Amended and Restated Grazing Lease and Hunting License Agreement ("Lease"), effective January 1, 2006. You are the Lessor under the Lease, as the successor of the original Lessor, KJZ LLC. I am writing to you to provide notice I hereby do exercise my option to extend the Lease for one (1) additional ten (10) year period pursuant to Paragraph 39 of the Lease.

You have recently requested that I execute an Estoppel Certificate. I would be willing to do so, and would just ask that it first be revised to reflect my exercise of the option, as stated herein.

Thank you for your attention in this matter.

Sincerely,


Brendan Balthazar

cc: Via Email: John.Zwaanstra@wmfllc.com, roy@sakamotoproperties.com
Via certified U.S. mail, return receipt requested:

KJZ LLC
c/o West Maui Financial Services
5095 Napilihau Street, Suite 202
Lahaina, Hawaii 96761

October 14, 2021

TO: Act 90 Working Group
FR: David G. Smith, Forestry and Wildlife Administrator
SU: Kamehamenui Acquisition and Lease Withdrawal

Mr. Balthazar stated in testimony to the Act 90 Working Group that the state is withdrawing 60% of a parcel of land from a grazing lease he holds with the state. He subsequently complained about the state's action in a *Star-Advertiser* article, and is quoted as saying "*What good is the lease? The lease wasn't as good as the paper it was written on*". Mr. Balthazar's statements are misleading and not relevant to the Act 90 discussion.

Mr. Balthazar is referring to a lease that he held with a private landowner for grazing on lands that are locally known as the former Von Tempsky property in the ahupuaa of Kamehamenui in Kula. Prior to purchase by the state in 2020, the Kamehamenui lands were for sale on the open market and threatened with development and loss of open space. With their sweeping vistas and unparalleled beauty, the lands were prime for development of country estates. The lease Mr. Balthazar is referring to is the one he signed with the private landowner while the land was on the market for sale. He was aware of the pending sale and the terms, which enable the landowner to cancel all or any portion of the lease land with one year notice. The lease enabled sale of the property without a long-term encumbrance.

With the Kamehamenui land for sale and under threat of development, the state took action and turned a potential loss of natural resources and open space into an opportunity for sustainable management of public trust resources.

With DLNR as the lead, a coalition of partners presented a proposal that enabled the Kamehamenui lands to be purchased and added to the state forest reserve system. Working with the Trust for Public Lands, that proposal generated support from the U.S. Forest Service, U.S. Fish and Wildlife Service, Maui County, state legislators, and private individuals and organizations. Together the partners generated more than \$12M to purchase and begin restoration and management of those lands for their wide-reaching public benefits, including watershed protection, biodiversity, endangered species protection, climate change mitigation, and significant opportunities for forest and outdoor recreation.

The land purchase had broad support from numerous stakeholders. That support included grants with certain terms and obligations. Among those are a \$4M grant from the U.S. Forest Service that requires reforestation of 75% of the lands within the first 10 years of purchase, and a \$2M U.S. Fish and Wildlife Service grant for the protection and management of endangered species habitat. That is an ambitious commitment given the threats that native ecosystems face, and we need to begin that work immediately.

Recognizing the vision of the conservation partners and the public benefits to be achieved, the Board of Land and Natural Resources approved a set aside of the lands to the state forest reserve system to

become a part of the adjacent Kula Forest Reserve, one of Maui's most popular hiking and recreation areas.

The inclusion of the Kamehamenui lands, and the lease held by Brendan Balthazar, are not relevant to the Act 90 working group discussions, as the land was recently purchased with funds requiring specific outcomes, and are not eligible for transfer to the Department of Agriculture.

Background regarding the lease withdrawal:

Prior to the purchase, we were aware that a 10-year lease to Mr. Balthazar would likely be conveyed with the parcel. We reached out to Mr. Balthazar early in the scoping period and were transparent with him about our management objectives and commitments, and clear that grazing of livestock is not compatible with reforestation, and that we would need to withdraw the lands from the lease. We understand and respect Mr. Balthazar's desire to continue grazing on the parcel, and it is through that understanding that we initiated a phased approach in which withdrawal is done on pace with management readiness. We currently have funds for fencing, ungulate removal, and planting for the first phase of the project. We selected the best unit size, location, and configuration to accomplish that first phase, consistent with the funds and management capacity available. DLNR is currently moving forward with funding and plans to fence, reforest, and build a network of trails for public access on all the Kamehamenui lands, and will soon launch a planning effort for the development of a community-based master plan consistent with the funding used to purchase the lands.

We reached out to Mr. Balthazar again before proceeding with the first phase of withdrawal, showing him our proposed fence line. At that time, he expressed no objections since most of the lands to be withdrawn in the first phase were not used by him for grazing (they are mostly high elevation subalpine shrublands). We issued the notice of withdrawal in May of 2021. Mr. Balthazar's recent proposal, suggesting we move our Phase 1 fence line up above the pine trees would have a significant impact on our objectives and deliverables. The location of the fence line as we scouted it was deliberately placed to ensure that we included approximately 100 acres of the mesic ecological zone where koa, ohia, and iliahi planting will be initiated. The subalpine zone above the pine trees is a very different ecological zone that does not involve extensive forest planting. The mesic ecological zone however, will be a major challenge, requiring that we build a work force of community and staff partners that will plant more than 500,000 trees over the next nine years. It is critical that we begin the development of that program now. The placement of the Phase 1 fence across that zone below the pine trees is the minimum area we will need to do that. Failing to include that zone now to start up the reforestation program would create costly and unnecessary delays as we enter into the second phase of mesic reforestation where we will need to cover huge areas with thousands of trees.

Based on our readiness and commitments to federal grants, we cannot justify delays to what will already be a very challenging initiative.

ESTOPPEL CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That, as of this 1 day of AUGUST, 2020, Diamond B Ranch, LLC, whose address is 103 Maha Road, Makawao, Hawaii 96768, hereinafter referred to as the "Lessee," certifies to the State of Hawai'i, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, that:

1. Brendan Balthazar is the lessee under that certain unrecorded Amended and Restated Grazing Lease and Hunting License Agreement ("Lease"), effective January 1, 2006, as amended by First Amendment to Amended and Restated Grazing Lease and Hunting License ("Amended Lease") (collectively, the "Lease"), effective as of August __, 2020; and
2. Brendan Balthazar assigned the Lease to Diamond B Ranch LLC pursuant to the Amended Lease; and
3. A true and correct copy of the Lease is attached hereto as Exhibit 1; and
4. The Trust for Public Land, a California nonprofit public benefit corporation, is the current Lessor under the Lease; and
5. The Lessee is not in default in any respect as of this date, nor has any event occurred which with the passage of time or the giving of notice would constitute a default; and
6. The Lessee is not aware of the Lessor being in default in any respect as of this date, nor has any event occurred which with the passage of time or the giving of notice would constitute a default; and
7. There are no claims for damages, rents due, or other liability which the Lessee is aware of against the Lessor arising out of Lease or performance of the terms, covenants or conditions of the Lease; and
8. The Lessee has not undertaken or initiated the undertaking of any "Lienable Construction," as that term is defined in Paragraph 20 of the Lease; and
9. The Lessee has never transferred, mortgaged, or assigned the Lease, or any rights thereunder, to any party; and
10. The Lease is in full force and effect; and
11. No other agreement exists between the Lessee and the Lessor relating to Tax Map Key Nos. (2) 2-3-005:002 or (2) 2- 3-005:014.

IN WITNESS WHEREOF, the Lessee has caused these presents to be executed the day, month and year first above written.


BRENDAN BALTHAZAR

LESSEE

EXHIBIT 1

AMENDED AND RESTATED GRAZING LEASE AND HUNTING LICENSE

AGREEMENT

This Grazing Lease Lease ("Lease") is made effective as of January 1, 2006, and is by and between KJZ LLC, a Hawaii limited liability company, hereinafter called "Lessor", and Brendan Balthazar, hereinafter called "Lessee".

Whereas, Lessor is the owner of certain land located on the island of Maui, state of Hawaii;

Whereas, Lessee is desirous of utilizing Lessor's property for grazing livestock and the operation of a ranch; and

Whereas, Lessor and Lessee, entered into that Grazing Lease and Hunting License Agreement, effective January 1, 2006, with a term expiring on December 31, 2015, and the parties desire to amend and restate such agreement and extend its term by five years by entering into this Lease, which expires as set forth below on December 31, 2020;

Now, therefore, in consideration of the rent hereinafter set forth and of the covenants and conditions herein contained and on the part of the Lessee to be kept, observed and performed, the parties hereto agree as follows:

1. Lease of Premises. Subject to the terms and conditions contained in this Lease, Lessor does hereby demise and lease to the Lessee the lands located in the District of Kula, island and county of Maui, state of Hawaii, and designated as Maui tax key nos. 2-3-005-002-0000 (area approximately 3,335 acres (hereinafter referred to as the "Premises"), to have and to hold the Premises unto the Lessee, together with the water system, pipes, tanks, troughs, and other similar equipment or improvements on the Premises, for grazing and cattle ranch purposes only.

Reserving, however, unto the Lessor, the following:

(i) All prehistoric and historic remains found in, on or under the Premises.

(ii) The ownership of improvements of whatever kind or nature, including but not limited to fences and stock water systems located on the Premises prior to or on the commencement date of this Lease, excluding those improvements constructed during the term of the Lease unless otherwise provided herein.

(iii) The right or privilege of withdrawing from the operation and effect of this Lease, at any time or times during the Term, all or any portion of the Premises of the Lessor's own selection for any purposes, Lessor, in its sole and absolute discretion may deem appropriate; provided, however, the exercise of such right or privilege of withdrawal shall be conditioned upon (1) a reduction in the rent herein reserved for the remainder of the then rental period in the proportion that the value of the land withdrawn shall bear to the value of the entire land under this Lease prior to such withdrawal, such values to be based on the livestock "carrying capacities" of such land, as determined by the parties by mutual agreement, or, failing agreement, by appraisers or arbitrators as hereinafter provided, (2) construction and maintenance by the Lessor of any fencing required by reason of the exercise of this withdrawal privilege, (3) payment to Lessee of the Lessee's reasonable documented undepreciated material and labor costs for any improvements built on the withdrawn land either during the first two years of the initial lease term or thereafter, provided that documentation of such costs are provided to Lessor within twelve (12) months of such costs being incurred (depreciated proportionately over the initial lease term for costs incurred during the Term or, as the case may be, over the extended lease term for costs incurred during the extended lease term) and (4) Lessor giving Lessee twelve (12) months prior notice of such withdrawal. Where the portion so withdrawn renders the remainder unsuitable for the use or uses for which the Premises 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 a reasonable time period.

(iv) The right, at any time, with reasonable notice and without compensation, to take possession of any part of the Premises which may be required for laying out and constructing new roads or improving or changing the line and grade of old roads, and taking such soil, rock or gravel as may be necessary for the construction or improvement of any road; provided, however, that Lessee shall not be required to erect and maintain fences along newly constructed roads; but if the Lessee shall deem such fencing desirable and the Lessor or other tenants fail or refuse to erect and/or maintain such fences within a reasonable time following the request to do so by the Lessee, the Lessee may perform such work and deduct the costs thereof from the rental payment or payments next thereafter due to the Lessor; and provided, further, that where the amount of land so taken for roads exceeds two acres in area, there shall be a reduction in the rent herein reserved for the remainder of the then rental period in the proportion that the value of the land withdrawn shall bear to the value of the entire land under this Lease prior to such withdrawal, such values to be based on the livestock "carrying capacities" of such land, as determined by the parties by mutual agreement, or, failing agreement, by appraisers or arbitrators as hereinafter provided.

(v) The right and privilege to issue written permits to individuals to hunt, subject to the rules and regulations issued by the Hawaii State Department of Agriculture; provided, however, that the parties hereto acknowledge that Lessee is obtaining hunting license rights as provided for in more detail in the last paragraph of the Lease, which the parties agree and acknowledge do not represent an interest in real property.

2. Term. This Lease shall continue for a term ("Term") of ten (10) years commencing on January 1, 2006, and expiring on December 31, 2020.

3. Rent. Rent payable by Lessee to Lessor for the Term shall be One Thousand Two Hundred Dollars (\$1,200) per month, representing a total rental amount due every six months of \$7,200. Lessee shall pay to Lessor, in arrears, the rent for successive six-month periods of the Term, with the first payment being due on or before July 1, 2006

4. Fencing. Lessee will, wholly at Lessee's own cost and expense, keep and maintain in good order and in a stock-proof condition throughout the period of this Lease the fences constructed by Lessee and those now existing on the Premises. Lessee will maintain and, if necessary, construct, at its own cost and expense, such fences as may be required for Lessee's use of the Premises by any law, rule, regulations or ordinance now in force or that may hereafter be enacted.

5. Taxes, Assessments, Etc. for Lessee's Operations. The Lessee shall pay or cause to be paid, when due, all taxes, rates, assessments and other outgoings of every description with respect to Lessee's use and operation of the Premises, during the term of this Lease.

6. Repair and Maintenance. Lessee will, at Lessee's own expense, at all times during the said term, maintain well and substantially repair, maintain, amend, and keep the Premises and improvements thereon covered by this Lease in good order, condition and repair, reasonable wear and tear excepted, and in a strictly clean and sanitary condition. It is agreed and understood that Lessee shall not dispose of rubbish or any waste materials anywhere on the Premises. Lessee will allow the Lessor or its agents free access to the Premises at all reasonable times for the purpose of examining the same and determining whether the covenants herein are being fully observed and performed, and will make good at Lessee's own cost and expense all repairs and amendments reasonably necessary of which notice shall be given within thirty (30) days after the giving of such notice; or if such repairs cannot be reasonably completed within said thirty (30) days, Lessee shall proceed diligently to complete such repairs as soon as reasonably possible thereafter; and shall

protect and hold harmless the Lessor and the Premises from any and all liens of any kind or character which may be levied for labor performed in connection with the maintenance of the Premises, and will indemnify the Lessor against all actions, suits, damages, and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of all laws, ordinances, rules and regulations, or of this covenant.

7. Compliance with Laws. 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 Premises, now in force or which may hereinafter be in force.

8. Utility Services. 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 the Lessee's use of the Premises relates or causes, regardless of whether such amounts are assessed to or initially payable by the Lessor or Lessee. The parties hereby expressly agree and acknowledge that the Lessee is not expected to separately contract for or use these services and that this provision is intended to only apply if the Lessee separately contracts for these services or otherwise uses them.

9. Inspection of Premises. In addition to any express and specific rights provided for herein, 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.

10. Liens and Recording of Lease. The Lessee will not commit or suffer any act or neglect whereby the Premises or any improvement thereon shall become subject to any attachment, lien, charge or encumbrance whatsoever, and shall indemnify and hold harmless the Lessor from and against all such attachments, liens, charges and encumbrances and all expenses resulting therefrom. Neither this Lease nor a memorandum thereof shall be recorded against the property.

11. Character of Use. The Lessee shall use or allow the Premises hereby demised to be used solely for grazing cattle and other livestock ranch purposes. The Premises shall not be used for purposes not specifically authorized in writing by the Lessor, which authorization may be withheld by Lessor in its sole and absolute discretion. The parties acknowledge that the Lessee is receiving certain hunting license rights in the last paragraph of the Lease, and that such rights do not comprise an interest in real property.

12. Assignments, Etc. The Lessee shall not transfer, assign or permit any other person to occupy or use the Premises or any portion thereof,

or transfer or assign this Lease or any interest therein, either voluntarily or by operation of law, and any such occupancy, use, transfer or assignment so made shall be null and void and shall entitle Lessor, immediately and without notice, to terminate this Lease and be restored to the sole, exclusive possession of the Premises.

13. Mortgage. The Lessee will not mortgage, hypothecate or pledge the Premises or any portion thereof or any interest therein without the prior written approval of the Lessor, which approval may be withheld in the sole discretion of Lessor, and any such mortgage, hypothecation or pledge without such approval shall be null and void.

14. Indemnity. The Lessee will 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 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, including aerial drift or the use of chemicals, pesticides, herbicides, fungicides, mematicides and plant growth regulations (hormones), and from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

15. 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 including reasonable attorney's fees; furthermore, the Lessee shall and will pay all costs and expenses including reasonable attorney's fees that 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 rent, taxes and any and all other charges.

16. Liability, Property Damage and Insurance. The Lessee will indemnify and hold the Lessor harmless from claims or demands by third persons and from any losses or damages, including without limitation reasonable attorney's fees, for property damages or personal injury or death arising out of any accident or happening on or from the Premises, including nonexclusive access rights-of way, and will at its own expense, carry and keep in force during the term of the Lease, or any extension, a policy or policies of landlord's, owner's, and tenant's liability insurance or the equivalent with minimum limits of not less than Three Million Dollars (\$3,000,000.00) each

occurrence for bodily injury, not less than One Million Dollars (\$3,000,000) per occurrence for property damage and not less than Three Million Dollars (\$3,000,000) general aggregate combined single limit for bodily injury and property damage liability, said policy or policies to name the Lessor as additional insured and require thirty (30) days notice to the Lessor of any intent on the part of the insurer to cancel said policy or policies. The Lessee shall furnish the Lessor with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, 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 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 adequacy of the coverage afforded by the liability insurance shall be subject to review by the Lessor from time to time, and if it appears in such a review that a prudent businessman in Hawaii operating a business similar to that operated by the Lessee on the Premises would increase the limits of his liability insurance, the Lessee shall forthwith increase such limits to that extent.

17. Fire Insurance. The Lessee will insure and keep insured against loss or damage by fire at its own expense with extended coverage and in a sum as near as may be practicable to the value thereof all buildings placed upon the Premises with an established insurance company or companies satisfactory to the Lessor, the loss, if any, to be payable to the Lessor; and in case the said buildings or any part thereof shall at any time during the said term be destroyed or damaged by fire, then and as often as the same shall happen all monies received in respect of such insurance shall with all convenient speed be laid out in rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner, according to the plans of the buildings so destroyed or damaged by fire or according to such other plan or in such other manner as shall be previously approved by the Lessor in writing. Lessee will at all times furnish the Lessor with satisfactory evidence that such policy or policies is in full force and effect. Such policy or policies shall require thirty (30) days written notice to the Lessor of the insurer's intent to cancel.

18. Water System. The Lessee will operate the demised water system in an efficient manner, and will make such repairs thereto at its own expense as may become necessary to maintain the said system, and that at the expiration of the term of this Lease it will return to the Lessor the said water system substantially as it now is, natural wear and deterioration excepted, and that it will pay all water charges as metered against the said system. Any improvements in the water system that the Lessor makes and pays for

consistent with the provisions of Section 1(iii)(3) shall remain the property of the Lessee to the extent such improvements have not been fully depreciated. As provided for in more detail in Section 24, it is the intent of the parties that, to the extent this lease terminates for any reason when the Lessee has any ownership interests in such improvements, the Lessor shall have the option of either purchasing such improvements for the undepreciated cost of them or providing the Lessee the right to remove such improvements.

19. Breach. Time is of the essence of this agreement and if the Lessee shall fail to yield to pay any rent or any part thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the Premises; or if this Lease and the Premises shall be attached or otherwise be taken by operation of law, or if any assignment 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 thirty (30) 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, 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 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.

20. Construction Bond. Lessee will, before undertaking any "Lienable Construction" (as defined below) on the Premises, notify Lessor of the fact that such Lienable Construction is to be undertaken. Lessor may, at such time, require Lessee to display the ability to pay for any such Lienable Construction, which determination of ability to pay shall be made by Lessor in its reasonable judgment. If, in Lessor's reasonable judgment, Lessee does not have the ability to pay for the Lienable Construction in question, Lessee shall deposit with Lessor a bond or certificate in form and amount with surety reasonably satisfactory to Lessor, guarantying the completion of the applicable Lienable Construction, free and clear of all mechanics' and materialmen's liens. For purposes hereof, the term "Lienable Construction" shall mean the construction of any alteration, addition or improvement on the Premises (i) which costs in excess of Twenty Thousand Dollars (\$20,000) (or, when aggregated with all other alterations, additions or improvements to be constructed at any one time, aggregate in excess of Twenty Thousand Dollars (\$20,000)) and (ii) with respect to which a statutory mechanics' or materialmen's lien may be asserted.

21. 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, any county or any governmental authority, the rent 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 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 Premises occupied by the Lessee. Where the portion so taken renders the remainder unsuitable for the use or uses for which the Premises 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.

22. Improvements. The Lessee shall not at any time during said term construct, place, maintain and install on the Premises any building, structure or improvement of any kind and description whatsoever except with the prior written approval of the Lessor and upon such reasonable conditions as the Lessor may impose in its sole discretion.

23. Quiet Enjoyment. The Lessor hereby covenants and agrees with the Lessee that upon payment of 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 the use of the Premises for the term hereof, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through or under it.

24. Expiration of Term of this Lease. On the expiration of the term of this Lease or sooner termination as herein provided, or upon termination for whatsoever cause, Lessee will peaceably and quietly leave and surrender and deliver up to the Lessor possession of the Premises, together with all improvements thereon, in good repair, order and condition, reasonable wear and tear and damage by acts of God excepted. Lessee shall, however, remove all improvements at its cost if Lessor requires Lessee to do so; provided further on the expiration on the term hereunder the ownership of all water system improvements and all fences and roadway improvements, at Lessor's option, shall revert to Lessor and shall be the property of the Lessor. If and to the extent there is any such reversion to the Lessor, to the extent there is a reversion of undepreciated costs, consistent with the provisions of Section 1(iii)(3), Lessor shall pay for the undepreciated costs.

25. Condition of Premises.

(a) Lessee acknowledges that it is familiar with the Premises and has made such independent investigations and reviewed such documents as it deems necessary or appropriate concerning the use of the Premises for grazing and ranching purposes, including, but not limited to, any desired investigations or analysis of the economic value of the Premises or the feasibility of utilizing the Premises for the purposes intended by Lessee and permitted by Lessor; the size, dimensions, location or topography of the Premises; any surface, soil, subsoil or other physical conditions of or affecting the Premises; all present or future governmental laws, statutes, rules, regulations, ordinances, limitations, restrictions or requirements concerning the use, density, location or suitability of the Premises (collectively "Regulations"), including, but not limited to, zoning, subdivision, land use, environmental, ecological, building code, or other such Regulations; the necessity or availability of any general or special plan amendments, rezoning, zone variances, conditional use permits, building permits, environmental impact reports, parcel or subdivision maps or any other governmental permits, approvals or acts (collectively the "Permits"); the necessity or existence of any dedications, fees, charges, costs or assessments that may be imposed in connection with any Regulations or the obtaining of any required Permits; all other matters concerning the conditions and use of the Premises.

(b) Lessee is relying solely upon its own inspection, investigation and analysis of the foregoing matters in executing this Lease and is not relying in any way upon any representations, statements, agreements, warranties, studies, reports, descriptions, guidelines or other information or material furnished by Lessor or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding any of the foregoing matters.

(c) Lessee will be using the Premises "as is", in its present state and condition, without representation by Lessor or its representatives as to any matter, whether or not expressly mentioned above. No patent or latent condition affecting the Premises in any way, such as, but not limited to, the matters listed in subparagraph (a) of this paragraph 25, whether or not known or discoverable or hereafter discovered, shall affect Lessee's rights or obligations as set forth in this Lease, nor shall give rise to any right of damages or otherwise against Lessor.

26. Good Husbandry, Conservation Program and Hazardous Materials.

(a) The Lessee shall at all times practice good husbandry with regard to the use of the Premises for the use herein permitted and shall carry out a program of conservation developed by the Lessee. Good husbandry and conservation includes taking reasonable steps to ensure that clear pasture

areas do not become overtaken by large trees or other growths, but does not include reclaiming portions of pasture that have already been overtaken by large trees, eucalyptus, pine and wattle.

(b) The Lessee will not commit or suffer any strip or "waste" or any unlawful, improper or offensive use of the Premises or any part thereof. The term "waste" shall be deemed to include, but shall not be considered restricted to (1) overgrazing to the detriment of the whole or any portion of the Premises; (2) suffering the Premises or any portion thereof to become unduly eroded without reasonable efforts being taken to correct the same; (3) the severance of any trees whose diameter exceeds 10 inches now or hereafter growing on the Premises, except by written permission of the Lessor; and (4) suffering any noxious weed, shrub or tree coverage to remain or become established on lands which are economically feasible for grazing use; the term "noxious weeds, shrub or tree" shall be deemed to include, but shall not be considered restricted to such pests as fire bush, Gorse, Black Wattle, Eucalyptus, Guava and Spiny Amaranth, Broom Sedge grass, and cane grass; provided, however, the Lessee shall not be considered to have committed waste for suffering the growth on said land, or any portion thereof, of any plant, shrub, or tree of a noxious character which is not referenced herein or which has not been designated noxious by the State Department of Agriculture, or its successor or which has not been designated noxious by Lessor and notice in writing of such designation being given the Lessee by the Lessor; provided further, the Lessee will practice accepted principles of good husbandry, pest control and good pasture management.

(c) Lessee covenants that (i) the Premises shall be kept free of Hazardous Materials and (ii) neither Lessee nor any occupant of the Premises shall use, transport, store, dispose of or in any manner deal with Hazardous Materials on the Premises. "Hazardous Material" as used herein shall mean any hazardous or toxic substance or material that is or becomes regulated by any local, state or federal authority.

27. Force Majeure. If and to the extent that the Premises are affected by earthquake, fire, flood, volcanic eruption, civil disturbance, war, or act of God, which renders the Premises unusable for Lessee's purpose (grazing and ranching operations), then upon thirty (30) days prior written notice to the Lessor, Lessee may suspend or terminate its obligations under this Lease.

28. Arbitration. If at any time during the term of this Lease or after termination thereof, any dispute, difference or question shall arise between the parties hereto with respect to the rental amount, land value, or the provisions, construction, meaning or effect of this Lease or anything herein contained or the rights or limitations of the parties under this Lease, every such dispute, difference or question shall, at the desire of any party, be submitted to

and be determined by a single arbitrator, if the parties so mutually agree, or in the absence of such agreement by a board of three impartial arbitrators. Either the single arbitrator or the two arbitrators appointed by the parties as hereinafter provided in case a single arbitrator cannot be agreed upon shall be persons experienced and knowledgeable, in the case of disputes involving rental or land value, in the appraisal of real property, or in all other disputes, in agricultural land management matters. In case a single arbitrator cannot be agreed upon, the impanelment of a board of three arbitrators shall be as follows: The party desiring to have the matter in dispute submitted to arbitration shall give the other party written notice of such desire and shall name one arbitrator in such notice. Within twenty (20) days after the receipt of such notice, the other party shall name a second arbitrator, and in case of failure to do so the party who first named an arbitrator may have the second arbitrator selected or appointed by a judge of the Circuit Court of the Second Circuit, State of Hawaii, and the two arbitrators so appointed in either manner shall select and appoint a third arbitrator, and if the two arbitrators so appointed shall fail to appoint the third arbitrator within twenty (20) days after the naming of the second arbitrator, either party may have the third arbitrator selected or appointed by one of said judges, and the three arbitrators so appointed shall thereupon proceed to determine the matter in question, disagreement or difference, and the decision of any two of them shall be final, conclusive and binding upon the parties, all as provided in Chapter 658, Hawaii Revised Statutes, as the same may be amended, and judgment may be entered upon any such decision by the Circuit Court as provided in said statute. In all cases of arbitration, each of the parties hereto shall pay the expense of its own attorneys and witnesses, and all other expenses of such arbitration shall be divided equally between the parties. If the issue or dispute submitted to arbitration involves the payment of money, the amount in dispute shall be deposited by the party to be charged with payment into an interest-bearing account, with an institution acceptable to both parties, pending the completion of the arbitration and interest accrued shall be paid with payment of the principal after the award.

29. Notices. Any notice to be given to or served upon any of the parties hereto shall be deemed to have been sufficiently given or served for all purposes when actually delivered by messenger or by certified mail, return receipt requested, delivered as follows (supplementary copies may be deemed delivered if sent by fax or email, and expressly recognized by the party receiving the correspondence):

In the case of Lessor:
KJZ LLC
c/o West Maui Financial Services
5095 Napilihau Street, Suite 202
Lahaina, Hawaii 96761

Tel.: (808) 667-1000
Fax: (808) 667-1002
Email: John.Zwaanstra@wmflc.com

In the case of Lessee:
Brendan Balthazar
103 Maha Road
Makawao, Hawaii 96768
Tel.: (808) 281-1723 Fax: (808) 572-2820
Email: DiamondBRanchHI@aol.com

30. No Party Deemed Drafter. The parties agree that no party shall be deemed to be the drafter of this Lease and further that in the event that this Lease is ever construed by an arbitrator(s) or a court of law, such arbitrator(s) or such court shall not construe this Lease or any provision of this Lease against any party as the drafter of the Lease.

31. Amendments. This Lease shall not be modified except by an instrument in writing signed by all of the parties.

32. Governing Law. This Lease shall be governed and construed in accordance with the laws of the State of Hawaii.

33. Late Charge. Any amount owing by Lessee to Lessor under the term of this Lease shall be subject to interest from the date of the same originally becomes due until paid at the rate of the lesser of one percent (1%) per month or the highest rate allowable under applicable law, whether or not Lessor has demanded same, for suit of collection thereof, granting any extension(s) for payment thereof, or exercise or fail to exercise any other right or remedy in respect thereto, and said interest shall be considered as a part of the rental payable herein.

34. Nonwaiver. The acceptance of the rent by Lessor shall not be deemed to be a waiver by Lessor of any breach of continuing breach by Lessee of any covenant herein contained, nor of Lessor's right to terminate this Lease for breach of continuing breach of covenant.

35. Lessor's Mortgage. Lessee agrees that upon the request of Lessor it will subordinate this Lease and the lien hereof to the lien of any present or future mortgage or mortgages upon the Premises or any property of which the Premises are a part, irrespective of the time of execution or time of recording of any such mortgage or mortgages. Lessee agrees that it will upon the request of Lessor execute, acknowledge and deliver any and all instruments deemed by Lessor necessary or desirable to give effect to or notice of such subordination, provided only that said mortgagee enters into an agreement with

Lessee which provides that said mortgagee will not disturb the possession and other rights of Lessee so long as Lessee performs its obligations hereunder and that said mortgagee will accept Lessee as Lessee of the Premises under the terms and conditions of this Lease in the event of acquisition of title by said mortgagee through foreclosure proceedings or otherwise, and which further provides that Lessee will agree to recognize the holder of such mortgage as the Lessor in such event, said agreement to be expressly binding upon the successors and assigns of Lessee and of the mortgagee and upon anyone purchasing the Premises at any foreclosure sale. Lessee and Lessor agree to execute and deliver any appropriate instruments necessary to carry out the agreements in this section contained. Any such mortgage to which this Lease shall be subordinated may contain such other terms, provisions and conditions as the mortgagee deems usual or customary. Lessee also agrees that if it fails at any time to execute, acknowledge or deliver any such instrument requested by Lessor, then Lessor may, in addition to any other remedies available to them, execute, acknowledge and deliver such instrument as the attorney-in-fact of Lessee and in Lessee's name; and Lessee hereby makes, constitutes and irrevocably appoints Lessor as its attorney-in-fact for that purpose. The word "mortgage" as used herein includes mortgages, deeds of trust or other similar instruments and modifications, consolidations, extensions, renewals, replacements and substitutes thereof.

36. Time Of Essence. Time is of the essence of each provision of this Lease.

37. Section Headings. Section headings of this Lease are for convenience only and if there be any conflict, the text shall control.

38. Entire Lease. The parties agree that their entire contract has been stated herein and that this instrument and all of the terms and conditions herein contained, supersede any prior, oral, or written agreements or representations made by or between the parties in respect of any matter relating hereto, all of which have been merged herein.

39. Option to Extend Term. The Lessee shall have the option to extend the term of this Lease for one (1) additional ten (10) year period upon the condition that there is no default in performance or observance of any covenant or condition of this Lease of which a notice of default has been given to the Lessee at the expiration of the initial term described in paragraph 2; provided, however, that in case of any such default which cannot with due diligence be cured prior to the expiration of the initial term, if the Lessee shall have proceeded promptly after the service of notice of default with due diligence to cure such default, the Lessee may, nevertheless, be entitled to such extended term. Except with respect to the amount of the rent payable during the one (1) additional ten (10) year period and except that there shall be no privilege to

extend this Lease for any further periods, the said one (1) additional ten (10) year period shall be upon the same conditions as provided in this Lease. The Lessee shall exercise the option by giving the Lessor written notice at least ninety (90) days prior to the expiration of the initial term. An effective exercise shall be deemed to extend this Lease without the execution of any further lease or instrument.

During the one (1) additional ten (10) year period the rent payable by Lessee to Lessor shall be as mutually agreed upon by the Lessor and Lessee; provided, however, in the event the Lessor and Lessee shall fail to agree in writing to such rent at least sixty (60) days before the commencement date of the one (1) additional ten (10) year period, the rent shall be determined by the arbitration procedure set forth in paragraph 28, with the fair market value of the rent being determined by the arbitrators, given the specific facts unique to the Lease. The rent for the one (1) additional ten (10) year period, whether determined by mutual agreement or by arbitration, shall be not less than the rent for the initial ten (10) year period. If the rent has not been determined by the commencement of the one (1) additional ten (10) year period, the Lessee shall pay on account of rent to the Lessor in the same amount and in the same manner as the initial ten (10) year period. Within thirty (30) days after the rent has been determined, the Lessee shall pay the Lessor all additional amounts due by reason of such determination together with interest accrued thereon at 10% per annum from the date such additional rental would have been payable under the Lease had it been determined prior to the commencement of the extension period.

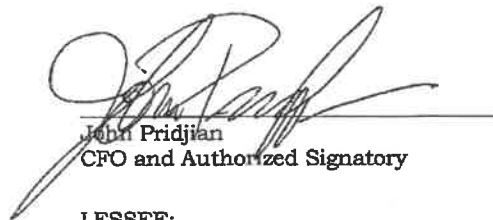
40. Hunting License. For no additional consideration, the Lessor hereby grants the Lessee the right and privilege to hunt for recreational non-business purposes, and to extend the same such right to (i) a limited number of individual employees or independent contractors who currently work with or for the Lessee in connection with utilizing the Premises for grazing livestock or the operation of a ranch and (ii) two members of the Lessee's family, provided such individuals exercise these rights only while being accompanied by Lessee. A list of the names of each such individual employee or independent contractor granted this right by Lessee will be provided to Lessor in writing in advance of any such use along with an appropriate photocopy of any such individual's Hawaii driver's license or comparable photographic identification. This list may be revised by time to time by Lessee in a similar writing delivered to the Lessor. If any individual, other than the Lessee and an individual set forth on the list of permitted individuals, is found exercising hunting rights on the Premises with the Lessee's permission, written or otherwise, or to have done so in the past during the Term or extension lease term, all hunting rights for the balance of the Term or extension lease term will be terminated and forfeited by Lessee.

It is the intention and understanding of the Lessor and Lessee that all hunting rights and any hunting activities conducted on the Premises will be conducted consistent with and subject to the rules and regulations issued by the Hawaii State Department of Agriculture, any applicable federal or local laws, and to further reasonable rules and regulations of Lessee. It is also the intention of the parties that while the license rights granted hereunder do not represent rights or interests in real property, all of the other provisions of this Lease concerning liability and indemnification shall apply. Without limiting the preceding sentence, for example, the provisions of paragraphs 14 and 15 (concerning the Lessee's obligation to indemnify the Lessor against claims and costs, including litigation costs, with respect to Lessee's use of the Premises) and paragraph 16 (concerning the obligation to obtain the appropriate amount of insurance and make Lessor as an additional insured) apply to the hunting rights provided in this paragraph. The insurance obtained pursuant to paragraph 16 shall include coverage for liability for hunting activities conducted directly or indirectly by Lessee.

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Lease effective as of the 1st day of January 2006.

LESSOR:

KJZ LLC, a Hawaii limited liability company


John Pridjian
CFO and Authorized Signatory

LESSEE:

BRENDAN BALTHAZAR



To: State Pasture Land Working Group
From: Neil J. Kaho'okele Hannahs, Founder & CEO Ho'okele Strategies LLC
Date: October 14, 2021

I. Open

- a. Mahalo for the opportunity to join this discussion concerning State agricultural lands and encumbrances held by DLNR.
- b. I don't possess a working knowledge of these assets & agreements, but did come to know lands like these & felt the pressures of the competing demands for them during my tenure as Director of the Land Division of Kamehameha Schools (KS) where I had kuleana for 358,000 acres of land in roughly equal portions of AG & CON designation.
- c. What I learned from that experience is that **these lands have multiple values and require integrated management strategies that can foster gains across the value spectrum, rather than maximize a single dimension of return at the expense of all others.**
- d. It is my understanding that your management team in DLNR shares this perspective and is endeavoring to strategically deploy these lands to contribute to the achievement of State goals for:
 - i. Increasing local food production
 - ii. Strengthening biosecurity
 - iii. Increasing watershed protection
 - iv. Enhancing marine resources
 - v. Increasing generation of renewable energy
- e. **Therefore, I support leaving these assets in DLNR.**

II. Case Study

- a. I do not speak for KS, but I do feel at liberty to share some insights into our management approach as an analog that might catalyze ideas for your situation.
- b. Like you, we had to adapt our management strategies as circumstances changed over time, values evolved & different outcomes were expected.
- c. Highlights of Power Point
 - i. KS adopted a strategic goal to generate an optimal balance of cultural, economic, educational, environmental and community returns (aka 5 values) from all of our lands, regardless of land use designation.
 - ii. The Land Assets Division was formed and given responsibility for the Agriculture and Conservation land portfolio comprising ~358,000 acres that were equally divided between AG and CON.
 - iii. We evaluated the entire portfolio from the standpoint of our 5 values and developed the following plans that set forth values, outcomes, measures of success, financial projections, priorities and action plans for:
 - 1. Culture Resources
 - 2. Natural Resources
 - 3. Water Resources

- 4. Educational Engagement
- 5. Agriculture & Renewable Energy
 - a. Including a Pasture Plan that identified total acres under agreement, usable acres, high quality acres.
 - b. Metrics
 - i. Increase in local food production (market share of locally grown food)
 - ii. Food security:
 - 1. how many people in HI fed
 - 2. Number of jobs created
 - iii. MW of energy generated
 - iv. Homes powered
 - v. Forest acres planted / replanted
 - vi. Acres of certified organic farms
 - vii. Acres of traditional crops
 - viii. Acres of newly irrigated fields.

- iv. We managed our assets and leases in accordance with these plans; focused on outcomes and impacts, rather than activity; & produced unprecedented returns.
- v. We tried to perform as a cohesive unit by creating ownership of all the goals by all of the team. We had our moments of total alignment, but there were also inevitable tensions and conflicts. That is to be expected and is in some ways a healthy sign of the kind of diverse, competent and passionate team you need to take on an assignment that requires holistic strategies.

III. Closing

- a. Credit for the shift of KS' land management strategies should go to stakeholders across the State who demanded the adoption of a balanced scorecard of impacts and returns.
- b. If anything, the concerns that were expressed to us more than two decades ago have only grown more fervent in this era of heightened awareness of the implications of climate crisis, food security, watershed protection, cultural renaissance, biodiversity and regenerative economy.
- c. The assets that are the focus of your study can play a powerful role in addressing these concerns and I believe that the staff of DLNR are so committed and are doing the best they can with their limited resources to deliver these outcomes.
- d. Mahalo for considering my views.

FINAL BUYER SETTLEMENT STATEMENT

State of Hawaii

File Number: 21019124905
Escrow Officer: Jeremy Trueblood
Buyer: State of Hawaii
Seller: The Trust for Public Land
Tax Map: 2230050020000
Property Location: 2176 Kekaulike Ave
 KULA, HI 96790-8923
Settlement Date: 08/31/2020
Lender:
Loan No:

	Buyer	
	Debit	Credit
Financial Consideration		
Sale Price of Property	9,830,000.00	
Deposit		8,850,000.00
Deposit		1,000,000.00
Seller Credit for Pro-rata share of rent		1,200.00
Title Charges		
Re-Insurance 50% Credit to TITLE GUARANTY OF HAWAII LLC		4,935.00
Settlement Agent Fee to TITLE GUARANTY ESCROW SERVICES, INC.	7,853.40	
Title - Owner's Title Insurance to TITLE GUARANTY OF HAWAII LLC	9,870.00	
Policies issued:		
Owners Policy		
Coverage: 9,830,000.00	9,870.00	
Subtotals	9,847,723.40	9,856,135.00
Balance Due TO Buyer	8,411.60	
TOTALS	9,856,135.00	9,856,135.00

ADDENDUM TO FINAL BUYER SETTLEMENT STATEMENT

File Number: 21019124905

Property Location: 2176 Kekaulike Ave
KULA, HI 96790-8923

Tax Map: 2230050020000

Additional Properties: Kekaulike Ave
HI

Additional Tax Map: 2230050140000

Buyer: State of Hawaii

Seller: The Trust for Public Land

Please Review the Following Statement Notes:

RETAIN THIS STATEMENT for possible income tax purposes.

HOME EXEMPTIONS ONLY - If you intend to reside on the property you have just purchased, you are allowed a Homeowners Exemption against your Real Property Taxes. Application should be made to the City and County Director of Finance in the respective counties. Contact the applicable County tax office for their application deadlines.

TAX NOTE - The County Tax Office may not send you a tax bill in time for the next payment. Payment dates are: first installment, Aug 20; 2nd installment, Feb 20. Be sure to contact the tax office if you do not receive a billing 30 days prior, and obtain the amount due.

Buyer/Borrower: If you have purchased title insurance in this transaction, you may be eligible for a title insurance premium credit if you close a future transaction involving this property with Title Guaranty within the next eight years.

BUYER: PROPERTY EXPENSES such as Real Property Taxes, Maintenance Fees, Association Dues, Lease Rent, Sewer Fees, etc. (if applicable) are your responsibility after closing and must be paid by you direct to the agency that collects it.

ESCROW INSTRUCTIONS and GENERAL PROVISIONS

The Escrow Instructions and General Provisions (the "Escrow Instructions") under which this escrow will be processed are printed below. Please read them carefully. If you have any questions, please contact your escrow officer. Any requested changes to these Escrow Instructions must be in writing, received and accepted by Escrow and all other parties to this escrow within ten days of the date of Escrow's opening letter. Otherwise, all of the Escrow Instructions on these pages will govern this transaction.

ESCROW INSTRUCTIONS

To: **Title Guaranty Escrow Services, Inc.** ("Escrow")

The Parties agree to the sale and purchase, refinance, or exchange, of the referenced property.

Escrow will collect and hold all documents and funds delivered to Escrow pursuant to the Contract, Lender's Instructions, if applicable, and these Escrow Instructions. If the Parties have not delivered to Escrow all appropriate and necessary documents, Escrow is authorized to have them prepared for execution. When Escrow has obtained said documents and funds and when required conditions to the closing of the escrow transaction have been satisfied, Escrow is authorized to deliver or record, or both, said documents and to apply and disburse the funds delivered to Escrow pursuant to the Contract, Lender's Instructions, if applicable, these Escrow Instructions and the closing statement.

TENTATIVE CLOSING STATEMENTS ONLY

The tentative closing statement is based upon a pro-ration of charges as of a specified date and the understanding that all necessary payments will be current to that date by the Parties. If the pro-ration date changes or the necessary payments have not been kept current, Escrow is authorized to close this transaction and to make all necessary payments and adjust all pro-rations to the date of closing, unless another date has been agreed upon by the Parties.

GENERAL PROVISIONS

1. DEFINITIONS

"Contract" means the agreement (including amendments, if any) received by Escrow pertaining to this transaction. "Lender's Instructions" means instructions received by Escrow from a Lender pertaining to this transaction. "Escrow" means Title Guaranty Escrow Services, Inc., a Hawaii corporation. "Party" means each Buyer and Seller as identified in the Contract; Borrower; Lender; and, in any exchange transaction, each Principal. Unless otherwise agreed to in writing by the relevant parties, all notices and communications must be in writing and may be delivered by: U.S. Mail, courier service, hand-delivery, facsimile or other electronic transmission.

2. TIME IS OF THE ESSENCE

Time is of the essence in this transaction. Any Party, not being in default, shall have all legal remedies against any other Party for such other Party's default. If this transaction is not in a condition to close as provided in the Contract, or at the time of any extensions made pursuant to the Contract, any Party may, in writing, demand the delivery of any money, property or documents deposited with Escrow by that Party. Escrow shall deliver a copy of such demand to the other Party. Unless the other Party objects to the demand in writing within fifteen (15) days of the date of mailing of Escrow's notice of such demand, Escrow shall have the right to either comply with the demand or proceed under the Disputes paragraph. If the agreed upon closing date has passed, and Escrow has not received a written demand, Escrow may continue to process this transaction and close. However, at Escrow's sole discretion, if there is no action taken on this escrow within six (6) months after the contracted 'closing' date or written extension thereof, Escrow can elect to resign from this transaction as described in the Right of Resignation paragraph.

3. DEPOSITS & INSURANCE

To avoid delays, not less than 48 hours prior to a scheduled disbursement, deposits need to be made by wire transfer or cashier's check drawn on a Hawaii financial institution. Escrow shall verify that all deposits have been cleared by the financial institution to which they are submitted before funds can be disbursed. Funds received in this escrow may be deposited with other escrow funds in any Federally-insured Hawaii financial institution. The Parties acknowledge that Federal law and regulations limit the amount of insurance on insured deposit accounts per depositor. For insurance coverage, see www.fdic.gov. Escrow may have other deposit accounts in the financial institution in which the funds for this escrow are deposited. The cumulative effect of other accounts of Escrow may limit the amount of insurance available for the funds deposited in this escrow. The Parties agree that Escrow has no liability in the event of failure, insolvency or inability of a financial institution to pay any funds so deposited, including earnings thereon. The sole responsibility of Escrow is to make the deposit.

4. INTEREST ON DEPOSITS

Hawaii law provides that when Escrow holds funds in escrow, any earnings on those funds shall accrue to the credit of the Buyer in the transaction unless written instructions to the contrary are given to Escrow by the Parties. To defray the costs of special handling and accounting for such earnings, an administrative fee of Fifty Dollars (\$50.00) will be added to the normal escrow fees, to be paid by the Party to whom the earnings are paid. Because in many instances the administrative charge will exceed any accrued earnings, unless the Parties otherwise instruct Escrow in writing, the Parties will be deemed to have waived the right to receive such earnings and these Escrow Instructions constitute written instructions to Escrow not to open and hold the funds in an earnings accrual account, in which case the \$50.00 charge will not be applicable, and the funds may be placed in deposits in financial institutions, as permitted by Hawaii law. All earnings on the deposits will accrue and be payable to Escrow. If the Parties instruct Escrow to open an earnings accrual account, the \$50.00 charge will be applicable and the Party to whom the earnings accrue must supply the applicable Social Security Number or other Tax Identification number. A minimum of two (2) business days will be required prior to closing to withdraw and disburse invested funds. Further, in such event, the Party entitled to the earnings and not Escrow will be responsible for any early withdrawal penalty.

5. FEES & CHARGES

The Parties agree to pay all charges, including the fees of Escrow, incurred in connection with this transaction, even if the transaction does not close. The Parties further agree that all consent fees and other fees required to be paid in advance in order to process this transaction may be paid by Escrow prior to closing from funds held in escrow. In the event of cancellation, Escrow is not responsible for payment of third party service vendors.

6. POST-CLOSING WITHHOLDING

The withholding of funds after closing are subject to additional escrow service charges. These fees will be deducted from the funds held.

7. WRITTEN INSTRUCTIONS TO ESCROW

Escrow's sole responsibility shall be to comply with the written instructions given to Escrow by the Parties and accepted by Escrow. Any amendment to these Escrow Instructions must be in writing and accepted by Escrow. If there is any conflict between the Contract or Lender's Instructions and these Escrow Instructions, these Escrow Instructions will control.

8. DISCLOSURE REQUIREMENT

Escrow is neither responsible for, nor assumes any liability for the obligation of any Party to comply with disclosure requirements under Federal and Hawaii law, including without limitation, Haw. Rev. Stat. 508-D, 514A-61, 514B, Part V, 516-71, and 516D-11.

9. TENTATIVE & FINAL CLOSING STATEMENTS

In most instances, each Party's tentative closing statement and final closing statement will differ. Copies of such statements will be furnished to the Party named therein and such Party's real estate agent. Escrow shall send the applicable closing statements to the appropriate lending institutions in compliance with governmental guidelines.

10. PRO-RATIONS

Unless otherwise agreed upon, all pro-rations and adjustments shall be made as of the date upon which the appropriate documents are recorded. All adjustments and pro-rations shall be made on the basis of a 30-day month.

11. CONDITION OF TITLE

The Parties acknowledge that Escrow is not a title abstractor or title insurer. It is the duty of the Parties to determine the condition of title and all physical attributes of the property, including without limitation, any facts which a correct survey, archaeological report or inspection of the property would disclose. Without limiting the generality of the foregoing, it is the Parties' responsibility to review and understand the contents of any deed, mortgage, and other transaction documents. Escrow does not render legal or financial advice as to the sufficiency or legal effect of such instruments.

12. DISPUTES

If any dispute arises with respect to this transaction, or any demand is received by Escrow and Escrow is uncertain as to its duties hereunder, Escrow may at its sole election and without any liability: (1) await, without taking any action, the determination of such dispute by the Parties; or (2) file a suit in interpleader or institute other action in any court of competent jurisdiction for the purpose of having the respective rights and duties of Escrow and the Parties adjudicated. The Parties shall be liable to Escrow for all costs and expenses, including reasonable attorney's fees, incurred by Escrow in connection with any dispute or legal action. The Parties agree that such fees and expenses can be deducted from the funds held in Escrow. The Parties agree to indemnify and hold Escrow harmless against liabilities, damages and costs incurred by Escrow, including reasonable attorney's fees and costs, except to the extent that such liabilities, damages and costs were caused by the gross negligence or willful misconduct of Escrow.

13. WITHHOLDING REQUIREMENTS

To comply with certain Federal and State withholding requirements, Seller shall provide to Escrow a Non-Foreign affidavit or other exemption form pursuant to the IRS Code (FIRPTA) and a Non-Resident affidavit or other exemption form pursuant to Hawaii law (HARPTA), if applicable. If FIRPTA/HARPTA payments are to be made by Escrow to the IRS and/or State of Hawaii Department of Taxation, Escrow may prepare the FIRPTA/HARPTA forms to attach to the payments and charge Seller \$50.00 for the FIRPTA forms and \$50.00 for the HARPTA forms. The Parties understand both State of Hawaii forms and Federal forms require Federal Identification Numbers from the Buyer and Seller, and in some situations, these forms are circulated to each Party for compliance purposes. If the transaction involves payment to a non-resident alien, Escrow may also be required to withhold up to thirty percent (30%) of such payment under Federal law. Escrow does not provide tax advice and recommends that any Party affected by these withholdings consult with a tax consultant.

14. ESCHEAT

Escrow reserves the right to give notice to an appropriate Party if funds are subject to escheat under Hawaii law, and to escheat such funds in accordance with Chapter 523A, Hawaii Revised Statutes.

15. RELEASE OF MORTGAGES

If on the date of recordation, Escrow does not hold a release of mortgage, Escrow will charge a Release Processing Fee of \$55.00. This fee will cover the follow-up and processing of any such release. The fee will be charged to the Seller.

16. DOCUMENT PREPARATION

Real estate documents required for this transaction may be prepared by an attorney designated by a Party. If the Party does not designate the attorney to prepare the documents, Escrow is authorized to select the attorney to prepare the documents. The attorney is not the agent of Escrow. Escrow recommends that the Parties consult and obtain legal advice for this transaction.

17. SIGNATORY OF DOCUMENTS

These Escrow Instructions and other instructions, agreements, approvals or notices regarding this transaction may be signed in counterparts, and unless otherwise required in writing by a Party or by Escrow, a facsimile or electronically-transmitted signature or communication as permitted by the Uniform Electronic Transactions Act, shall be as binding and effective for all purposes as the original. Escrow shall have no duty to inquire into or have responsibility for the form, content, due execution, genuineness, validity, sufficiency or enforceability of any agreement, documents, certification, or other papers received by Escrow. The Parties acknowledge that Escrow will assume that all papers received by it have been signed by the proper person, that each such person had capacity and authority to so sign, and that such papers have been signed by the persons whose signatures purport to appear thereon.

18. ELECTRONIC DELIVERY

Escrow reserves the right to electronically deliver (e-record) original documents for recording in accordance with the Bureau of Conveyances, Title 13 Chapter 16 Hawaii Admin Rules, as revised. Paper originals of recorded documents will be destroyed after recordation.

19. NO DUTY TO INFORM

Escrow shall have no duty to inform any Party regarding any facts which Escrow may have acquired outside this transaction and which concern the property covered by this escrow.

20. RIGHT OF RESIGNATION

Escrow has the right to resign upon ten (10) calendar days written notice delivered to the principals herein. If such right is exercised, Escrow may return all funds less costs and documents to the party who deposited them and Escrow shall have no liability hereunder.

21. PROCEEDS TO TITLE HOLDERS

Escrow will issue proceeds payable to the current vested owner of record and/or Buyer/Borrower acquiring title to said transaction. Exceptions will be made for proceeds paid in connection with IRC 1031 Exchange transactions.

22. REQUESTED INFORMATION

Documents relating to this escrow, including your personal information, may be disclosed if Escrow is served with a subpoena or court order.

23. HAWAII LAW GOVERNS

Hawaii Law shall govern this escrow. Each Party agrees to submit to the exclusive jurisdiction of the courts of the State of Hawaii or the United States District Court for the District of Hawaii and waives any objections to venue with respect to actions brought in such courts. The liability of all Parties shall be joint and several unless otherwise expressly stated. All duties, rights and benefits shall inure to and be binding upon the Parties and their respective heirs, personal representatives, successors and assigns.

(Rev 5/2017)






Fiscal Memo_Kamehamenui License_final

Final Audit Report

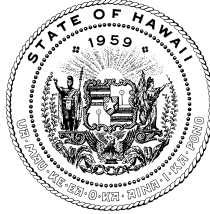
2020-10-15

Created:	2020-10-14
By:	Rubyrosa Terrago (rubyrosa.t.terrago@hawaii.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAANVfneNTRMI6Cde4awBbO6KpJMrxUz_T0

"Fiscal Memo_Kamehamenui License_final" History

-  Document created by Rubyrosa Terrago (rubyrosa.t.terrago@hawaii.gov)
2020-10-14 - 11:58:05 PM GMT- IP address: 50.113.31.4
-  Document emailed to Emma Yuen (emma.yuen@hawaii.gov) for signature
2020-10-14 - 11:59:13 PM GMT
-  Email viewed by Emma Yuen (emma.yuen@hawaii.gov)
2020-10-15 - 0:11:49 AM GMT- IP address: 204.210.113.46
-  Document e-signed by Emma Yuen (emma.yuen@hawaii.gov)
Signature Date: 2020-10-15 - 7:30:26 AM GMT - Time Source: server- IP address: 204.210.113.46
-  Agreement completed.
2020-10-15 - 7:30:26 AM GMT

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY


KALEO L. MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

October 14, 2020

TO: Cynthia Gomez, Fiscal Management Officer
CC: Raine Doi, Account Clerk (Revenue)
FROM: David G. Smith, Administrator 
SUBJECT: Establish new license #fwm0003 to Diamond B Ranch, LLC

Tenant Code/Doc. No.: #fwm0003

Applicant/Tenant name: Brendan Balthazar, Diamond B Ranch, LLC; 103 Maha Road, Makawao HI 96768

Request type: (CP use only. Status: Future/Notice/Current/Evict/Past)

A. () **Deposit monies:** (For all deposits, indicate revenue split in D below.)

	<u>Credit Amt.</u>		<u>Credit Amt.</u>
() Appraisal deposit [1651-5]	\$	() Rent/royalty payment	\$
() Advertising dep. [1651-11]	\$	for period:	
() Document fee [1022]	\$	Rent: \$_____ per month/year	
() Survey map fee [1024]	\$	() Consideration [lease][sale]	\$
() Shoreline appl fee [1038]	\$	() Cash perf. bond [1651-7]	\$
() Other: _____	\$	() Security deposit [1651-1]	\$
Remarks/additional information:			

B. () **Make refund:**

In the amount of \$ _____. Explain and itemize charges and receipts:

C. (X) **Establish recur billing:** (Fiscal use only. Unit type: _____)

Term start date: October 1, 2020 Term end date: December 31, 2030

Rent/sale price amount: \$ 1,200/month per mo./yr./one-time Percentage rent:
(Indicate revenue split in D below.)

Billing period: () Monthly (X) Quarterly () Semi-Annually () Annually

Waiver period (if any):

1% service charge: () Yes (X) No

(Attach Check Here)

Reopenings (list dates):

Remarks (if establishing account prior to executed docs, explain why and provide billing address):
\$3,600.00 to be billed quarterly on October 1st, January 1st, April 1st and July 1st. Payment for
October 1, 2020 – December 31, 2020 received/deposited (attached UAC form and deposit slip)

D. () Revenue split:

- Trust lands (5(b), (e), P.L. 88-233 lands) (§10-13.5) → 20% to OHA
- Non-Trust lands (5(a), acq after 1959) (§171-19) → Special Land & Dev. Fund
- DHHL-owned lands (HHCA) → 100% to DHHL
- Water license (Art. XII, Sec. 1 of State Const.) → 30% DHHL; 25% SLDF; 25% SCWRM
- Former sugarcane lands (State Const.) → 30% to DHHL
- Current sugarcane lease (State Const.) → 30% to DHHL
- Lease of govt-owned fishpond (§171-28) → Special Land & Dev. Fund
- Designated industrial park (§171-138) → Special Land & Dev. Fund
- Designated beach lands (§171-156) → Beach Fund
- Lease of existing seawall or revetment (§171-156) → Beach Fund
- Lease of State marine waters (§190D-33) → Special Land & Dev. Fund [0519]
- Shoreline Application Fee (§171-19 & §205a-42) → 100% Special Land & Dev Fund
- Reimbursement of Expenses (HAR §13-222-7(d)) → See attached for distribution

E. () Bill tenant:

- Additional security deposit in the amount of: \$
- Clean-up costs in the amount of: \$
- (Attach copies of PO's & invoices.)* **Fiscal:** Reimburse Land Maint. Fund (S-318) upon collection.
- Other:

F. () Change recur bill:

- Reopening – regularly scheduled Lease Amendment
- Reopening – with lease extension Withdrawal
- (For reopenings, attach copies of Chair approval of rent & offer letter acceptance or arbitration findings letter.)*

FROM: \$ _____ per year TO: \$ _____ per year
Effective date: Starting _____ to _____

G. () Change start/end billing dates:

FROM: _____ TO: _____

Reason:

H. () Change recur billing period:

FROM: Monthly Quarterly Semi-Annually Annually
TO: Monthly Quarterly Semi-Annually Annually

Reason:

I. () Stop billing/Close account:

- Stop billing
- Close account
- Refund rent
- Refund security deposit/cash performance bond
- Apply security deposit/cash performance bond against delinquent rent
- Send delinquency to collectors

Other:

Effective date:

Reason (*attach applicable documents*):

J. Sign/deposit/release security:

Sign & return Deposit at B&F Release from B&F

(*For signing and deposits, security must be attached.*)

Type of security:

Name on instrument:

Policy/account number:

K. Process Special Installment Agreement:

(*Copy of signed SIA must be attached.*)

L. Other: Revenue:

Revenue from forest reserves (§195F-4) → 100% to Forest Stewardship Fund S-347; Activity Code 387

UAC Codes: Forest Stewardship Fund (100%): S-20-347-C-0251-0440-387

Other attachments: Lease agreement (including first amendment, assignment of lease, estoppel/extension of lease), board submittal, and UAC form with copy of deposit slip for rent for period October 1, 2020 – December 31, 2020

Please contact Tanya Rubenstein at 333-6803 for any questions.

ASSIGNMENT OF LEASE

THIS INDENTURE is made effective as of Aug 31, 2020, by and between **THE TRUST FOR PUBLIC LAND**, a California nonprofit public benefit corporation, whose address is 101 Montgomery Street, Suite 900, San Francisco, California 94104, hereinafter referred to as the "Assignor", and **STATE OF HAWAII**, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter referred to as the "Assignee";

WITNESSETH:

That the Assignor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to the Assignor paid by the Assignee, receipt whereof is hereby acknowledged, and of the covenants and agreements of the Assignee hereinafter contained and on the part of the Assignee to be faithfully kept and performed, does hereby sell, assign, transfer, set over and deliver unto the Assignee all of the Assignor's leasehold estate and interest created by that certain unrecorded Amended and Restated Grazing Lease and Hunting License Agreement dated January 1, 2006 (the "Lease"), as assigned by mesne assignments, by unrecorded Assignment of Lease dated July 31, 2010 to Assignor, and as amended by unrecorded First Amendment to Amended and Restated Grazing Lease and Hunting License Agreement dated August 1, 2020 (the "Lease"), made between The Trust for Public Land as Lessor and Diamond B Ranch, LLC, a Hawaii limited liability company, as assignee Lessee, and Brendan Balthazar, as assignor Lessee.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith unto the Assignee, and its successors in trust and assigns, for and during the remainder of the term of said Lease, subject to any encumbrances hereinabove or hereinafter mentioned.

SUBJECT, HOWEVER, to the observance and performance by the Assignee of all of the covenants and conditions contained in the Lease, which, according to the terms and provisions thereof, are or ought to be observed and performed by the Lessor therein named.

AND the Assignor, in consideration of the premises, does hereby covenant and agree to and with the Assignee as follows: That the Assignor is the lawful owner of the leasehold estate and interest created under the Lease; that the Lease is in full force and effect and not in default by Assignor; that the leasehold estate and interest are free and clear of and from all encumbrances made by Assignor; that the Assignor has good right to sell and assign the leasehold estate and interest; and that the Assignor will WARRANT AND DEFEND the title of Assignor to the leasehold estate and interest created by the Lease unto the Assignee against the lawful claims and demands of all persons claiming by, through or under Assignor.

AND the Assignee, in consideration of the premises, does hereby promise, covenant and agree to and with the Assignor, and to and with the Lessee under the Lease, that the Assignee will faithfully observe and perform all of the covenants and conditions contained in the Lease which are or ought to be observed and performed by the Lessor therein named.

IT IS MUTUALLY AGREED that the terms "Assignor", "Assignee", "Lessor" and "Lessee", as and when used hereinabove or hereinbelow shall mean and include the masculine



or feminine, the singular or plural number, individuals, associations, trustees, corporations or partnerships, and their and each of their respective successors in interest, successors in trust, heirs, personal representatives, executors, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more Assignors or by two or more Assignees, all covenants of such parties shall be and for all purposes deemed to be joint and several.

IN WITNESS WHEREOF, the Assignor and the Assignee have signed these presents effective as of the day and year first above written.

Assignor:

**The Trust for Public Land, a California nonprofit
public benefit corporation**



Tily Shue, Legal Director

Assignee:

STATE OF HAWAII

By _____
SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

APPROVED AS TO LEGALITY AND
FORM:

Julie H. China
Deputy Attorney General



or feminine, the singular or plural number, individuals, associations, trustees, corporations or partnerships, and their and each of their respective successors in interest, successors in trust, heirs, personal representatives, executors, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more Assignors or by two or more Assignees, all covenants of such parties shall be and for all purposes deemed to be joint and several.

IN WITNESS WHEREOF, the Assignor and the Assignee have signed these presents effective as of the day and year first above written.


Assignor:

The Trust for Public Land, a California nonprofit public benefit corporation


Tily Shue, Legal Director

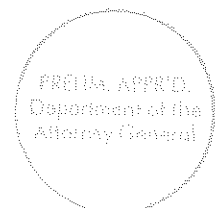
Assignee:

STATE OF HAWAII

By 
SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

APPROVED AS TO LEGALITY AND
FORM:


Julie H. China
Deputy Attorney General



ESTOPPEL CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That, as of this 1 day of AUGUST, 2020, Diamond B Ranch, LLC, whose address is 103 Maha Road, Makawao, Hawaii 96768, hereinafter referred to as the "Lessee," certifies to the State of Hawai'i, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, that:

1. Brendan Balthazar is the lessee under that certain unrecorded Amended and Restated Grazing Lease and Hunting License Agreement ("Lease"), effective January 1, 2006, as amended by First Amendment to Amended and Restated Grazing Lease and Hunting License ("Amended Lease") (collectively, the "Lease"), effective as of August __, 2020; and
2. Brendan Balthazar assigned the Lease to Diamond B Ranch LLC pursuant to the Amended Lease; and
3. A true and correct copy of the Lease is attached hereto as Exhibit 1; and
4. The Trust for Public Land, a California nonprofit public benefit corporation, is the current Lessor under the Lease; and
5. The Lessee is not in default in any respect as of this date, nor has any event occurred which with the passage of time or the giving of notice would constitute a default; and
6. The Lessee is not aware of the Lessor being in default in any respect as of this date, nor has any event occurred which with the passage of time or the giving of notice would constitute a default; and
7. There are no claims for damages, rents due, or other liability which the Lessee is aware of against the Lessor arising out of Lease or performance of the terms, covenants or conditions of the Lease; and
8. The Lessee has not undertaken or initiated the undertaking of any "Lienable Construction," as that term is defined in Paragraph 20 of the Lease; and
9. The Lessee has never transferred, mortgaged, or assigned the Lease, or any rights thereunder, to any party; and
10. The Lease is in full force and effect; and
11. No other agreement exists between the Lessee and the Lessor relating to Tax Map Key Nos. (2) 2-3-005:002 or (2) 2- 3-005:014.

IN WITNESS WHEREOF, the Lessee has caused these presents to be executed the day, month and year first above written.


BRENDAN BALTHAZAR

LESSEE

EXHIBIT 1

AMENDED AND RESTATED GRAZING LEASE AND HUNTING LICENSE

AGREEMENT

This Grazing Lease Lease ("Lease") is made effective as of January 1, 2006, and is by and between KJZ LLC, a Hawaii limited liability company, hereinafter called "Lessor", and Brendan Balthazar, hereinafter called "Lessee".

Whereas, Lessor is the owner of certain land located on the island of Maui, state of Hawaii;

Whereas, Lessee is desirous of utilizing Lessor's property for grazing livestock and the operation of a ranch; and

Whereas, Lessor and Lessee, entered into that Grazing Lease and Hunting License Agreement, effective January 1, 2006, with a term expiring on December 31, 2015, and the parties desire to amend and restate such agreement and extend its term by five years by entering into this Lease, which expires as set forth below on December 31, 2020;

Now, therefore, in consideration of the rent hereinafter set forth and of the covenants and conditions herein contained and on the part of the Lessee to be kept, observed and performed, the parties hereto agree as follows:

1. Lease of Premises. Subject to the terms and conditions contained in this Lease, Lessor does hereby demise and lease to the Lessee the lands located in the District of Kula, island and county of Maui, state of Hawaii, and designated as Maui tax key nos. 2-3-005-002-0000 (area approximately 3,335 acres (hereinafter referred to as the "Premises"), to have and to hold the Premises unto the Lessee, together with the water system, pipes, tanks, troughs, and other similar equipment or improvements on the Premises, for grazing and cattle ranch purposes only.

Reserving, however, unto the Lessor, the following:

(i) All prehistoric and historic remains found in, on or under the Premises.

(ii) The ownership of improvements of whatever kind or nature, including but not limited to fences and stock water systems located on the Premises prior to or on the commencement date of this Lease, excluding those improvements constructed during the term of the Lease unless otherwise provided herein.

(iii) The right or privilege of withdrawing from the operation and effect of this Lease, at any time or times during the Term, all or any portion of the Premises of the Lessor's own selection for any purposes, Lessor, in its sole and absolute discretion may deem appropriate; provided, however, the exercise of such right or privilege of withdrawal shall be conditioned upon (1) a reduction in the rent herein reserved for the remainder of the then rental period in the proportion that the value of the land withdrawn shall bear to the value of the entire land under this Lease prior to such withdrawal, such values to be based on the livestock "carrying capacities" of such land, as determined by the parties by mutual agreement, or, failing agreement, by appraisers or arbitrators as hereinafter provided, (2) construction and maintenance by the Lessor of any fencing required by reason of the exercise of this withdrawal privilege, (3) payment to Lessee of the Lessee's reasonable documented undepreciated material and labor costs for any improvements built on the withdrawn land either during the first two years of the initial lease term or thereafter, provided that documentation of such costs are provided to Lessor within twelve (12) months of such costs being incurred (depreciated proportionately over the initial lease term for costs incurred during the Term or, as the case may be, over the extended lease term for costs incurred during the extended lease term) and (4) Lessor giving Lessee twelve (12) months prior notice of such withdrawal. Where the portion so withdrawn renders the remainder unsuitable for the use or uses for which the Premises 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 a reasonable time period.

(iv) The right, at any time, with reasonable notice and without compensation, to take possession of any part of the Premises which may be required for laying out and constructing new roads or improving or changing the line and grade of old roads, and taking such soil, rock or gravel as may be necessary for the construction or improvement of any road; provided, however, that Lessee shall not be required to erect and maintain fences along newly constructed roads; but if the Lessee shall deem such fencing desirable and the Lessor or other tenants fail or refuse to erect and/or maintain such fences within a reasonable time following the request to do so by the Lessee, the Lessee may perform such work and deduct the costs thereof from the rental payment or payments next thereafter due to the Lessor; and provided, further, that where the amount of land so taken for roads exceeds two acres in area, there shall be a reduction in the rent herein reserved for the remainder of the then rental period in the proportion that the value of the land withdrawn shall bear to the value of the entire land under this Lease prior to such withdrawal, such values to be based on the livestock "carrying capacities" of such land, as determined by the parties by mutual agreement, or, failing agreement, by appraisers or arbitrators as hereinafter provided.

(v) The right and privilege to issue written permits to individuals to hunt, subject to the rules and regulations issued by the Hawaii State Department of Agriculture; provided, however, that the parties hereto acknowledge that Lessee is obtaining hunting license rights as provided for in more detail in the last paragraph of the Lease, which the parties agree and acknowledge do not represent an interest in real property.

2. Term. This Lease shall continue for a term ("Term") of ten (10) years commencing on January 1, 2006, and expiring on December 31, 2020.

3. Rent. Rent payable by Lessee to Lessor for the Term shall be One Thousand Two Hundred Dollars (\$1,200) per month, representing a total rental amount due every six months of \$7,200. Lessee shall pay to Lessor, in arrears, the rent for successive six-month periods of the Term, with the first payment being due on or before July 1, 2006

4. Fencing. Lessee will, wholly at Lessee's own cost and expense, keep and maintain in good order and in a stock-proof condition throughout the period of this Lease the fences constructed by Lessee and those now existing on the Premises. Lessee will maintain and, if necessary, construct, at its own cost and expense, such fences as may be required for Lessee's use of the Premises by any law, rule, regulations or ordinance now in force or that may hereafter be enacted.

5. Taxes, Assessments, Etc. for Lessee's Operations. The Lessee shall pay or cause to be paid, when due, all taxes, rates, assessments and other outgoings of every description with respect to Lessee's use and operation of the Premises, during the term of this Lease.

6. Repair and Maintenance. Lessee will, at Lessee's own expense, at all times during the said term, maintain well and substantially repair, maintain, amend, and keep the Premises and improvements thereon covered by this Lease in good order, condition and repair, reasonable wear and tear excepted, and in a strictly clean and sanitary condition. It is agreed and understood that Lessee shall not dispose of rubbish or any waste materials anywhere on the Premises. Lessee will allow the Lessor or its agents free access to the Premises at all reasonable times for the purpose of examining the same and determining whether the covenants herein are being fully observed and performed, and will make good at Lessee's own cost and expense all repairs and amendments reasonably necessary of which notice shall be given within thirty (30) days after the giving of such notice; or if such repairs cannot be reasonably completed within said thirty (30) days, Lessee shall proceed diligently to complete such repairs as soon as reasonably possible thereafter; and shall

protect and hold harmless the Lessor and the Premises from any and all liens of any kind or character which may be levied for labor performed in connection with the maintenance of the Premises, and will indemnify the Lessor against all actions, suits, damages, and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of all laws, ordinances, rules and regulations, or of this covenant.

7. Compliance with Laws. 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 Premises, now in force or which may hereinafter be in force.

8. Utility Services. 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 the Lessee's use of the Premises relates or causes, regardless of whether such amounts are assessed to or initially payable by the Lessor or Lessee. The parties hereby expressly agree and acknowledge that the Lessee is not expected to separately contract for or use these services and that this provision is intended to only apply if the Lessee separately contracts for these services or otherwise uses them.

9. Inspection of Premises. In addition to any express and specific rights provided for herein, 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.

10. Liens and Recording of Lease. The Lessee will not commit or suffer any act or neglect whereby the Premises or any improvement thereon shall become subject to any attachment, lien, charge or encumbrance whatsoever, and shall indemnify and hold harmless the Lessor from and against all such attachments, liens, charges and encumbrances and all expenses resulting therefrom. Neither this Lease nor a memorandum thereof shall be recorded against the property.

11. Character of Use. The Lessee shall use or allow the Premises hereby demised to be used solely for grazing cattle and other livestock ranch purposes. The Premises shall not be used for purposes not specifically authorized in writing by the Lessor, which authorization may be withheld by Lessor in its sole and absolute discretion. The parties acknowledge that the Lessee is receiving certain hunting license rights in the last paragraph of the Lease, and that such rights do not comprise an interest in real property.

12. Assignments, Etc. The Lessee shall not transfer, assign or permit any other person to occupy or use the Premises or any portion thereof,

or transfer or assign this Lease or any interest therein, either voluntarily or by operation of law, and any such occupancy, use, transfer or assignment so made shall be null and void and shall entitle Lessor, immediately and without notice, to terminate this Lease and be restored to the sole, exclusive possession of the Premises.

13. Mortgage. The Lessee will not mortgage, hypothecate or pledge the Premises or any portion thereof or any interest therein without the prior written approval of the Lessor, which approval may be withheld in the sole discretion of Lessor, and any such mortgage, hypothecation or pledge without such approval shall be null and void.

14. Indemnity. The Lessee will 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 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, including aerial drift or the use of chemicals, pesticides, herbicides, fungicides, mematicides and plant growth regulations (hormones), and from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

15. 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 including reasonable attorney's fees; furthermore, the Lessee shall and will pay all costs and expenses including reasonable attorney's fees that 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 rent, taxes and any and all other charges.

16. Liability, Property Damage and Insurance. The Lessee will indemnify and hold the Lessor harmless from claims or demands by third persons and from any losses or damages, including without limitation reasonable attorney's fees, for property damages or personal injury or death arising out of any accident or happening on or from the Premises, including nonexclusive access rights-of way, and will at its own expense, carry and keep in force during the term of the Lease, or any extension, a policy or policies of landlord's, owner's, and tenant's liability insurance or the equivalent with minimum limits of not less than Three Million Dollars (\$3,000,000.00) each

occurrence for bodily injury, not less than One Million Dollars (\$3,000,000) per occurrence for property damage and not less than Three Million Dollars (\$3,000,000) general aggregate combined single limit for bodily injury and property damage liability, said policy or policies to name the Lessor as additional insured and require thirty (30) days notice to the Lessor of any intent on the part of the insurer to cancel said policy or policies. The Lessee shall furnish the Lessor with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, 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 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 adequacy of the coverage afforded by the liability insurance shall be subject to review by the Lessor from time to time, and if it appears in such a review that a prudent businessman in Hawaii operating a business similar to that operated by the Lessee on the Premises would increase the limits of his liability insurance, the Lessee shall forthwith increase such limits to that extent.

17. Fire Insurance. The Lessee will insure and keep insured against loss or damage by fire at its own expense with extended coverage and in a sum as near as may be practicable to the value thereof all buildings placed upon the Premises with an established insurance company or companies satisfactory to the Lessor, the loss, if any, to be payable to the Lessor; and in case the said buildings or any part thereof shall at any time during the said term be destroyed or damaged by fire, then and as often as the same shall happen all monies received in respect of such insurance shall with all convenient speed be laid out in rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner, according to the plans of the buildings so destroyed or damaged by fire or according to such other plan or in such other manner as shall be previously approved by the Lessor in writing. Lessee will at all times furnish the Lessor with satisfactory evidence that such policy or policies is in full force and effect. Such policy or policies shall require thirty (30) days written notice to the Lessor of the insurer's intent to cancel.

18. Water System. The Lessee will operate the demised water system in an efficient manner, and will make such repairs thereto at its own expense as may become necessary to maintain the said system, and that at the expiration of the term of this Lease it will return to the Lessor the said water system substantially as it now is, natural wear and deterioration excepted, and that it will pay all water charges as metered against the said system. Any improvements in the water system that the Lessor makes and pays for

consistent with the provisions of Section 1(iii)(3) shall remain the property of the Lessee to the extent such improvements have not been fully depreciated. As provided for in more detail in Section 24, it is the intent of the parties that, to the extent this lease terminates for any reason when the Lessee has any ownership interests in such improvements, the Lessor shall have the option of either purchasing such improvements for the undepreciated cost of them or providing the Lessee the right to remove such improvements.

19. Breach. Time is of the essence of this agreement and if the Lessee shall fail to yield to pay any rent or any part thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the Premises; or if this Lease and the Premises shall be attached or otherwise be taken by operation of law, or if any assignment 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 thirty (30) 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, 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 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.

20. Construction Bond. Lessee will, before undertaking any "Lienable Construction" (as defined below) on the Premises, notify Lessor of the fact that such Lienable Construction is to be undertaken. Lessor may, at such time, require Lessee to display the ability to pay for any such Lienable Construction, which determination of ability to pay shall be made by Lessor in its reasonable judgment. If, in Lessor's reasonable judgment, Lessee does not have the ability to pay for the Lienable Construction in question, Lessee shall deposit with Lessor a bond or certificate in form and amount with surety reasonably satisfactory to Lessor, guarantying the completion of the applicable Lienable Construction, free and clear of all mechanics' and materialmen's liens. For purposes hereof, the term "Lienable Construction" shall mean the construction of any alteration, addition or improvement on the Premises (i) which costs in excess of Twenty Thousand Dollars (\$20,000) (or, when aggregated with all other alterations, additions or improvements to be constructed at any one time, aggregate in excess of Twenty Thousand Dollars (\$20,000)) and (ii) with respect to which a statutory mechanics' or materialmen's lien may be asserted.

21. 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, any county or any governmental authority, the rent 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 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 Premises occupied by the Lessee. Where the portion so taken renders the remainder unsuitable for the use or uses for which the Premises 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.

22. Improvements. The Lessee shall not at any time during said term construct, place, maintain and install on the Premises any building, structure or improvement of any kind and description whatsoever except with the prior written approval of the Lessor and upon such reasonable conditions as the Lessor may impose in its sole discretion.

23. Quiet Enjoyment. The Lessor hereby covenants and agrees with the Lessee that upon payment of 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 the use of the Premises for the term hereof, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through or under it.

24. Expiration of Term of this Lease. On the expiration of the term of this Lease or sooner termination as herein provided, or upon termination for whatsoever cause, Lessee will peaceably and quietly leave and surrender and deliver up to the Lessor possession of the Premises, together with all improvements thereon, in good repair, order and condition, reasonable wear and tear and damage by acts of God excepted. Lessee shall, however, remove all improvements at its cost if Lessor requires Lessee to do so; provided further on the expiration on the term hereunder the ownership of all water system improvements and all fences and roadway improvements, at Lessor's option, shall revert to Lessor and shall be the property of the Lessor. If and to the extent there is any such reversion to the Lessor, to the extent there is a reversion of undepreciated costs, consistent with the provisions of Section 1(iii)(3), Lessor shall pay for the undepreciated costs.

25. Condition of Premises.

(a) Lessee acknowledges that it is familiar with the Premises and has made such independent investigations and reviewed such documents as it deems necessary or appropriate concerning the use of the Premises for grazing and ranching purposes, including, but not limited to, any desired investigations or analysis of the economic value of the Premises or the feasibility of utilizing the Premises for the purposes intended by Lessee and permitted by Lessor; the size, dimensions, location or topography of the Premises; any surface, soil, subsoil or other physical conditions of or affecting the Premises; all present or future governmental laws, statutes, rules, regulations, ordinances, limitations, restrictions or requirements concerning the use, density, location or suitability of the Premises (collectively "Regulations"), including, but not limited to, zoning, subdivision, land use, environmental, ecological, building code, or other such Regulations; the necessity or availability of any general or special plan amendments, rezoning, zone variances, conditional use permits, building permits, environmental impact reports, parcel or subdivision maps or any other governmental permits, approvals or acts (collectively the "Permits"); the necessity or existence of any dedications, fees, charges, costs or assessments that may be imposed in connection with any Regulations or the obtaining of any required Permits; all other matters concerning the conditions and use of the Premises.

(b) Lessee is relying solely upon its own inspection, investigation and analysis of the foregoing matters in executing this Lease and is not relying in any way upon any representations, statements, agreements, warranties, studies, reports, descriptions, guidelines or other information or material furnished by Lessor or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding any of the foregoing matters.

(c) Lessee will be using the Premises "as is", in its present state and condition, without representation by Lessor or its representatives as to any matter, whether or not expressly mentioned above. No patent or latent condition affecting the Premises in any way, such as, but not limited to, the matters listed in subparagraph (a) of this paragraph 25, whether or not known or discoverable or hereafter discovered, shall affect Lessee's rights or obligations as set forth in this Lease, nor shall give rise to any right of damages or otherwise against Lessor.

26. Good Husbandry, Conservation Program and Hazardous Materials.

(a) The Lessee shall at all times practice good husbandry with regard to the use of the Premises for the use herein permitted and shall carry out a program of conservation developed by the Lessee. Good husbandry and conservation includes taking reasonable steps to ensure that clear pasture

areas do not become overtaken by large trees or other growths, but does not include reclaiming portions of pasture that have already been overtaken by large trees, eucalyptus, pine and wattle.

(b) The Lessee will not commit or suffer any strip or "waste" or any unlawful, improper or offensive use of the Premises or any part thereof. The term "waste" shall be deemed to include, but shall not be considered restricted to (1) overgrazing to the detriment of the whole or any portion of the Premises; (2) suffering the Premises or any portion thereof to become unduly eroded without reasonable efforts being taken to correct the same; (3) the severance of any trees whose diameter exceeds 10 inches now or hereafter growing on the Premises, except by written permission of the Lessor; and (4) suffering any noxious weed, shrub or tree coverage to remain or become established on lands which are economically feasible for grazing use; the term "noxious weeds, shrub or tree" shall be deemed to include, but shall not be considered restricted to such pests as fire bush, Gorse, Black Wattle, Eucalyptus, Guava and Spiny Amaranth, Broom Sedge grass, and cane grass; provided, however, the Lessee shall not be considered to have committed waste for suffering the growth on said land, or any portion thereof, of any plant, shrub, or tree of a noxious character which is not referenced herein or which has not been designated noxious by the State Department of Agriculture, or its successor or which has not been designated noxious by Lessor and notice in writing of such designation being given the Lessee by the Lessor; provided further, the Lessee will practice accepted principles of good husbandry, pest control and good pasture management.

(c) Lessee covenants that (i) the Premises shall be kept free of Hazardous Materials and (ii) neither Lessee nor any occupant of the Premises shall use, transport, store, dispose of or in any manner deal with Hazardous Materials on the Premises. "Hazardous Material" as used herein shall mean any hazardous or toxic substance or material that is or becomes regulated by any local, state or federal authority.

27. Force Majeure. If and to the extent that the Premises are affected by earthquake, fire, flood, volcanic eruption, civil disturbance, war, or act of God, which renders the Premises unusable for Lessee's purpose (grazing and ranching operations), then upon thirty (30) days prior written notice to the Lessor, Lessee may suspend or terminate its obligations under this Lease.

28. Arbitration. If at any time during the term of this Lease or after termination thereof, any dispute, difference or question shall arise between the parties hereto with respect to the rental amount, land value, or the provisions, construction, meaning or effect of this Lease or anything herein contained or the rights or limitations of the parties under this Lease, every such dispute, difference or question shall, at the desire of any party, be submitted to

and be determined by a single arbitrator, if the parties so mutually agree, or in the absence of such agreement by a board of three impartial arbitrators. Either the single arbitrator or the two arbitrators appointed by the parties as hereinafter provided in case a single arbitrator cannot be agreed upon shall be persons experienced and knowledgeable, in the case of disputes involving rental or land value, in the appraisal of real property, or in all other disputes, in agricultural land management matters. In case a single arbitrator cannot be agreed upon, the impanelment of a board of three arbitrators shall be as follows: The party desiring to have the matter in dispute submitted to arbitration shall give the other party written notice of such desire and shall name one arbitrator in such notice. Within twenty (20) days after the receipt of such notice, the other party shall name a second arbitrator, and in case of failure to do so the party who first named an arbitrator may have the second arbitrator selected or appointed by a judge of the Circuit Court of the Second Circuit, State of Hawaii, and the two arbitrators so appointed in either manner shall select and appoint a third arbitrator, and if the two arbitrators so appointed shall fail to appoint the third arbitrator within twenty (20) days after the naming of the second arbitrator, either party may have the third arbitrator selected or appointed by one of said judges, and the three arbitrators so appointed shall thereupon proceed to determine the matter in question, disagreement or difference, and the decision of any two of them shall be final, conclusive and binding upon the parties, all as provided in Chapter 658, Hawaii Revised Statutes, as the same may be amended, and judgment may be entered upon any such decision by the Circuit Court as provided in said statute. In all cases of arbitration, each of the parties hereto shall pay the expense of its own attorneys and witnesses, and all other expenses of such arbitration shall be divided equally between the parties. If the issue or dispute submitted to arbitration involves the payment of money, the amount in dispute shall be deposited by the party to be charged with payment into an interest-bearing account, with an institution acceptable to both parties, pending the completion of the arbitration and interest accrued shall be paid with payment of the principal after the award.

29. Notices. Any notice to be given to or served upon any of the parties hereto shall be deemed to have been sufficiently given or served for all purposes when actually delivered by messenger or by certified mail, return receipt requested, delivered as follows (supplementary copies may be deemed delivered if sent by fax or email, and expressly recognized by the party receiving the correspondence):

In the case of Lessor:
KJZ LLC
c/o West Maui Financial Services
5095 Napilihau Street, Suite 202
Lahaina, Hawaii 96761

Tel.: (808) 667-1000
Fax: (808) 667-1002
Email: John.Zwaanstra@wmflc.com

In the case of Lessee:
Brendan Balthazar
103 Maha Road
Makawao, Hawaii 96768
Tel.: (808) 281-1723 Fax: (808) 572-2820
Email: DiamondBRanchHI@aol.com

30. No Party Deemed Drafter. The parties agree that no party shall be deemed to be the drafter of this Lease and further that in the event that this Lease is ever construed by an arbitrator(s) or a court of law, such arbitrator(s) or such court shall not construe this Lease or any provision of this Lease against any party as the drafter of the Lease.

31. Amendments. This Lease shall not be modified except by an instrument in writing signed by all of the parties.

32. Governing Law. This Lease shall be governed and construed in accordance with the laws of the State of Hawaii.

33. Late Charge. Any amount owing by Lessee to Lessor under the term of this Lease shall be subject to interest from the date of the same originally becomes due until paid at the rate of the lesser of one percent (1%) per month or the highest rate allowable under applicable law, whether or not Lessor has demanded same, for suit of collection thereof, granting any extension(s) for payment thereof, or exercise or fail to exercise any other right or remedy in respect thereto, and said interest shall be considered as a part of the rental payable herein.

34. Nonwaiver. The acceptance of the rent by Lessor shall not be deemed to be a waiver by Lessor of any breach of continuing breach by Lessee of any covenant herein contained, nor of Lessor's right to terminate this Lease for breach of continuing breach of covenant.

35. Lessor's Mortgage. Lessee agrees that upon the request of Lessor it will subordinate this Lease and the lien hereof to the lien of any present or future mortgage or mortgages upon the Premises or any property of which the Premises are a part, irrespective of the time of execution or time of recording of any such mortgage or mortgages. Lessee agrees that it will upon the request of Lessor execute, acknowledge and deliver any and all instruments deemed by Lessor necessary or desirable to give effect to or notice of such subordination, provided only that said mortgagee enters into an agreement with

Lessee which provides that said mortgagee will not disturb the possession and other rights of Lessee so long as Lessee performs its obligations hereunder and that said mortgagee will accept Lessee as Lessee of the Premises under the terms and conditions of this Lease in the event of acquisition of title by said mortgagee through foreclosure proceedings or otherwise, and which further provides that Lessee will agree to recognize the holder of such mortgage as the Lessor in such event, said agreement to be expressly binding upon the successors and assigns of Lessee and of the mortgagee and upon anyone purchasing the Premises at any foreclosure sale. Lessee and Lessor agree to execute and deliver any appropriate instruments necessary to carry out the agreements in this section contained. Any such mortgage to which this Lease shall be subordinated may contain such other terms, provisions and conditions as the mortgagee deems usual or customary. Lessee also agrees that if it fails at any time to execute, acknowledge or deliver any such instrument requested by Lessor, then Lessor may, in addition to any other remedies available to them, execute, acknowledge and deliver such instrument as the attorney-in-fact of Lessee and in Lessee's name; and Lessee hereby makes, constitutes and irrevocably appoints Lessor as its attorney-in-fact for that purpose. The word "mortgage" as used herein includes mortgages, deeds of trust or other similar instruments and modifications, consolidations, extensions, renewals, replacements and substitutes thereof.

36. Time Of Essence. Time is of the essence of each provision of this Lease.

37. Section Headings. Section headings of this Lease are for convenience only and if there be any conflict, the text shall control.

38. Entire Lease. The parties agree that their entire contract has been stated herein and that this instrument and all of the terms and conditions herein contained, supersede any prior, oral, or written agreements or representations made by or between the parties in respect of any matter relating hereto, all of which have been merged herein.

39. Option to Extend Term. The Lessee shall have the option to extend the term of this Lease for one (1) additional ten (10) year period upon the condition that there is no default in performance or observance of any covenant or condition of this Lease of which a notice of default has been given to the Lessee at the expiration of the initial term described in paragraph 2; provided, however, that in case of any such default which cannot with due diligence be cured prior to the expiration of the initial term, if the Lessee shall have proceeded promptly after the service of notice of default with due diligence to cure such default, the Lessee may, nevertheless, be entitled to such extended term. Except with respect to the amount of the rent payable during the one (1) additional ten (10) year period and except that there shall be no privilege to

extend this Lease for any further periods, the said one (1) additional ten (10) year period shall be upon the same conditions as provided in this Lease. The Lessee shall exercise the option by giving the Lessor written notice at least ninety (90) days prior to the expiration of the initial term. An effective exercise shall be deemed to extend this Lease without the execution of any further lease or instrument.

During the one (1) additional ten (10) year period the rent payable by Lessee to Lessor shall be as mutually agreed upon by the Lessor and Lessee; provided, however, in the event the Lessor and Lessee shall fail to agree in writing to such rent at least sixty (60) days before the commencement date of the one (1) additional ten (10) year period, the rent shall be determined by the arbitration procedure set forth in paragraph 28, with the fair market value of the rent being determined by the arbitrators, given the specific facts unique to the Lease. The rent for the one (1) additional ten (10) year period, whether determined by mutual agreement or by arbitration, shall be not less than the rent for the initial ten (10) year period. If the rent has not been determined by the commencement of the one (1) additional ten (10) year period, the Lessee shall pay on account of rent to the Lessor in the same amount and in the same manner as the initial ten (10) year period. Within thirty (30) days after the rent has been determined, the Lessee shall pay the Lessor all additional amounts due by reason of such determination together with interest accrued thereon at 10% per annum from the date such additional rental would have been payable under the Lease had it been determined prior to the commencement of the extension period.

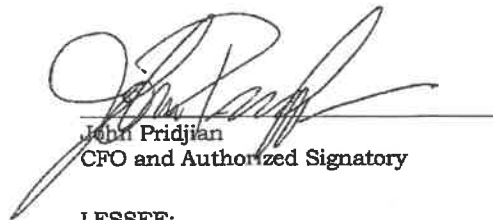
40. Hunting License. For no additional consideration, the Lessor hereby grants the Lessee the right and privilege to hunt for recreational non-business purposes, and to extend the same such right to (i) a limited number of individual employees or independent contractors who currently work with or for the Lessee in connection with utilizing the Premises for grazing livestock or the operation of a ranch and (ii) two members of the Lessee's family, provided such individuals exercise these rights only while being accompanied by Lessee. A list of the names of each such individual employee or independent contractor granted this right by Lessee will be provided to Lessor in writing in advance of any such use along with an appropriate photocopy of any such individual's Hawaii driver's license or comparable photographic identification. This list may be revised by time to time by Lessee in a similar writing delivered to the Lessor. If any individual, other than the Lessee and an individual set forth on the list of permitted individuals, is found exercising hunting rights on the Premises with the Lessee's permission, written or otherwise, or to have done so in the past during the Term or extension lease term, all hunting rights for the balance of the Term or extension lease term will be terminated and forfeited by Lessee.

It is the intention and understanding of the Lessor and Lessee that all hunting rights and any hunting activities conducted on the Premises will be conducted consistent with and subject to the rules and regulations issued by the Hawaii State Department of Agriculture, any applicable federal or local laws, and to further reasonable rules and regulations of Lessee. It is also the intention of the parties that while the license rights granted hereunder do not represent rights or interests in real property, all of the other provisions of this Lease concerning liability and indemnification shall apply. Without limiting the preceding sentence, for example, the provisions of paragraphs 14 and 15 (concerning the Lessee's obligation to indemnify the Lessor against claims and costs, including litigation costs, with respect to Lessee's use of the Premises) and paragraph 16 (concerning the obligation to obtain the appropriate amount of insurance and make Lessor as an additional insured) apply to the hunting rights provided in this paragraph. The insurance obtained pursuant to paragraph 16 shall include coverage for liability for hunting activities conducted directly or indirectly by Lessee.

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Lease effective as of the 1st day of January 2006.

LESSOR:

KJZ LLC, a Hawaii limited liability company


John Pridjian
CFO and Authorized Signatory

LESSEE:

BRENDAN BALTHAZAR



ASSIGNMENT OF LEASE

THIS INDENTURE is made effective as of Aug 31, 2020, by and between **THE TRUST FOR PUBLIC LAND**, a California nonprofit public benefit corporation, whose address is 101 Montgomery Street, Suite 900, San Francisco, California 94104, hereinafter referred to as the "Assignor", and **STATE OF HAWAII**, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter referred to as the "Assignee";

W I T N E S S E T H:

That the Assignor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to the Assignor paid by the Assignee, receipt whereof is hereby acknowledged, and of the covenants and agreements of the Assignee hereinafter contained and on the part of the Assignee to be faithfully kept and performed, does hereby sell, assign, transfer, set over and deliver unto the Assignee all of the Assignor's leasehold estate and interest created by that certain unrecorded Amended and Restated Grazing Lease and Hunting License Agreement dated January 1, 2006 (the "Lease"), as assigned by mesne assignments, by unrecorded Assignment of Lease dated July 31, 2010 to Assignor, and as amended by unrecorded First Amendment to Amended and Restated Grazing Lease and Hunting License Agreement dated August 1, 2020 (the "Lease"), made between The Trust for Public Land as Lessor and Diamond B Ranch, LLC, a Hawaii limited liability company, as assignee Lessee, and Brendan Balthazar, as assignor Lessee.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith unto the Assignee, and its successors in trust and assigns, for and during the remainder of the term of said Lease, subject to any encumbrances hereinabove or hereinafter mentioned.

SUBJECT, HOWEVER, to the observance and performance by the Assignee of all of the covenants and conditions contained in the Lease, which, according to the terms and provisions thereof, are or ought to be observed and performed by the Lessor therein named.

AND the Assignor, in consideration of the premises, does hereby covenant and agree to and with the Assignee as follows: That the Assignor is the lawful owner of the leasehold estate and interest created under the Lease; that the Lease is in full force and effect and not in default by Assignor; that the leasehold estate and interest are free and clear of and from all encumbrances made by Assignor; that the Assignor has good right to sell and assign the leasehold estate and interest; and that the Assignor will WARRANT AND DEFEND the title of Assignor to the leasehold estate and interest created by the Lease unto the Assignee against the lawful claims and demands of all persons claiming by, through or under Assignor.

AND the Assignee, in consideration of the premises, does hereby promise, covenant and agree to and with the Assignor, and to and with the Lessee under the Lease, that the Assignee will faithfully observe and perform all of the covenants and conditions contained in the Lease which are or ought to be observed and performed by the Lessor therein named.

IT IS MUTUALLY AGREED that the terms "Assignor", "Assignee", "Lessor" and "Lessee", as and when used hereinabove or hereinbelow shall mean and include the masculine



or feminine, the singular or plural number, individuals, associations, trustees, corporations or partnerships, and their and each of their respective successors in interest, successors in trust, heirs, personal representatives, executors, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more Assignors or by two or more Assignees, all covenants of such parties shall be and for all purposes deemed to be joint and several.

IN WITNESS WHEREOF, the Assignor and the Assignee have signed these presents effective as of the day and year first above written.

Assignor:

**The Trust for Public Land, a California nonprofit
public benefit corporation**



Tily Shue, Legal Director

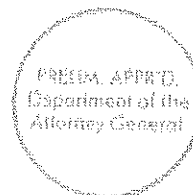
Assignee:

STATE OF HAWAII

By _____
SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

APPROVED AS TO LEGALITY AND
FORM:

Julie H. China
Deputy Attorney General



or feminine, the singular or plural number, individuals, associations, trustees, corporations or partnerships, and their and each of their respective successors in interest, successors in trust, heirs, personal representatives, executors, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more Assignors or by two or more Assignees, all covenants of such parties shall be and for all purposes deemed to be joint and several.

IN WITNESS WHEREOF, the Assignor and the Assignee have signed these presents effective as of the day and year first above written.


Assignor:

The Trust for Public Land, a California nonprofit public benefit corporation


Tily Shue, Legal Director

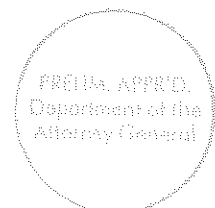
Assignee:

STATE OF HAWAII

By 
SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

APPROVED AS TO LEGALITY AND
FORM:


Julie H. China
Deputy Attorney General



FINAL BUYER SETTLEMENT STATEMENT

State of Hawaii

File Number: 21019124905
Escrow Officer: Jeremy Trueblood
Buyer: State of Hawaii
Seller: The Trust for Public Land
Tax Map: 2230050020000
Property Location: 2176 Kekaulike Ave
 KULA, HI 96790-8923
Settlement Date: 08/31/2020
Lender:
Loan No:

	Buyer	
	Debit	Credit
Financial Consideration		
Sale Price of Property	9,830,000.00	
Deposit		8,850,000.00
Deposit		1,000,000.00
Seller Credit for Pro-rata share of rent		1,200.00
Title Charges		
Re-Insurance 50% Credit to TITLE GUARANTY OF HAWAII LLC		4,935.00
Settlement Agent Fee to TITLE GUARANTY ESCROW SERVICES, INC.	7,853.40	
Title - Owner's Title Insurance to TITLE GUARANTY OF HAWAII LLC	9,870.00	
Policies issued:		
Owners Policy		
Coverage: 9,830,000.00	9,870.00	
Subtotals	9,847,723.40	9,856,135.00
Balance Due TO Buyer	8,411.60	
TOTALS	9,856,135.00	9,856,135.00

ADDENDUM TO FINAL BUYER SETTLEMENT STATEMENT

File Number: 21019124905

Property Location: 2176 Kekaulike Ave
KULA, HI 96790-8923

Tax Map: 2230050020000

Additional Properties: Kekaulike Ave
HI

Additional Tax Map: 2230050140000

Buyer: State of Hawaii

Seller: The Trust for Public Land

Please Review the Following Statement Notes:

RETAIN THIS STATEMENT for possible income tax purposes.

HOME EXEMPTIONS ONLY - If you intend to reside on the property you have just purchased, you are allowed a Homeowners Exemption against your Real Property Taxes. Application should be made to the City and County Director of Finance in the respective counties. Contact the applicable County tax office for their application deadlines.

TAX NOTE - The County Tax Office may not send you a tax bill in time for the next payment. Payment dates are: first installment, Aug 20; 2nd installment, Feb 20. Be sure to contact the tax office if you do not receive a billing 30 days prior, and obtain the amount due.

Buyer/Borrower: If you have purchased title insurance in this transaction, you may be eligible for a title insurance premium credit if you close a future transaction involving this property with Title Guaranty within the next eight years.

BUYER: PROPERTY EXPENSES such as Real Property Taxes, Maintenance Fees, Association Dues, Lease Rent, Sewer Fees, etc. (if applicable) are your responsibility after closing and must be paid by you direct to the agency that collects it.

ESCROW INSTRUCTIONS and GENERAL PROVISIONS

The Escrow Instructions and General Provisions (the "Escrow Instructions") under which this escrow will be processed are printed below. Please read them carefully. If you have any questions, please contact your escrow officer. Any requested changes to these Escrow Instructions must be in writing, received and accepted by Escrow and all other parties to this escrow within ten days of the date of Escrow's opening letter. Otherwise, all of the Escrow Instructions on these pages will govern this transaction.

ESCROW INSTRUCTIONS

To: **Title Guaranty Escrow Services, Inc.** ("Escrow")

The Parties agree to the sale and purchase, refinance, or exchange, of the referenced property.

Escrow will collect and hold all documents and funds delivered to Escrow pursuant to the Contract, Lender's Instructions, if applicable, and these Escrow Instructions. If the Parties have not delivered to Escrow all appropriate and necessary documents, Escrow is authorized to have them prepared for execution. When Escrow has obtained said documents and funds and when required conditions to the closing of the escrow transaction have been satisfied, Escrow is authorized to deliver or record, or both, said documents and to apply and disburse the funds delivered to Escrow pursuant to the Contract, Lender's Instructions, if applicable, these Escrow Instructions and the closing statement.

TENTATIVE CLOSING STATEMENTS ONLY

The tentative closing statement is based upon a pro-ration of charges as of a specified date and the understanding that all necessary payments will be current to that date by the Parties. If the pro-ration date changes or the necessary payments have not been kept current, Escrow is authorized to close this transaction and to make all necessary payments and adjust all pro-rations to the date of closing, unless another date has been agreed upon by the Parties.

GENERAL PROVISIONS

1. DEFINITIONS

"Contract" means the agreement (including amendments, if any) received by Escrow pertaining to this transaction. "Lender's Instructions" means instructions received by Escrow from a Lender pertaining to this transaction. "Escrow" means Title Guaranty Escrow Services, Inc., a Hawaii corporation. "Party" means each Buyer and Seller as identified in the Contract; Borrower; Lender; and, in any exchange transaction, each Principal. Unless otherwise agreed to in writing by the relevant parties, all notices and communications must be in writing and may be delivered by: U.S. Mail, courier service, hand-delivery, facsimile or other electronic transmission.

2. TIME IS OF THE ESSENCE

Time is of the essence in this transaction. Any Party, not being in default, shall have all legal remedies against any other Party for such other Party's default. If this transaction is not in a condition to close as provided in the Contract, or at the time of any extensions made pursuant to the Contract, any Party may, in writing, demand the delivery of any money, property or documents deposited with Escrow by that Party. Escrow shall deliver a copy of such demand to the other Party. Unless the other Party objects to the demand in writing within fifteen (15) days of the date of mailing of Escrow's notice of such demand, Escrow shall have the right to either comply with the demand or proceed under the Disputes paragraph. If the agreed upon closing date has passed, and Escrow has not received a written demand, Escrow may continue to process this transaction and close. However, at Escrow's sole discretion, if there is no action taken on this escrow within six (6) months after the contracted 'closing' date or written extension thereof, Escrow can elect to resign from this transaction as described in the Right of Resignation paragraph.

3. DEPOSITS & INSURANCE

To avoid delays, not less than 48 hours prior to a scheduled disbursement, deposits need to be made by wire transfer or cashier's check drawn on a Hawaii financial institution. Escrow shall verify that all deposits have been cleared by the financial institution to which they are submitted before funds can be disbursed. Funds received in this escrow may be deposited with other escrow funds in any Federally-insured Hawaii financial institution. The Parties acknowledge that Federal law and regulations limit the amount of insurance on insured deposit accounts per depositor. For insurance coverage, see www.fdic.gov. Escrow may have other deposit accounts in the financial institution in which the funds for this escrow are deposited. The cumulative effect of other accounts of Escrow may limit the amount of insurance available for the funds deposited in this escrow. The Parties agree that Escrow has no liability in the event of failure, insolvency or inability of a financial institution to pay any funds so deposited, including earnings thereon. The sole responsibility of Escrow is to make the deposit.

4. INTEREST ON DEPOSITS

Hawaii law provides that when Escrow holds funds in escrow, any earnings on those funds shall accrue to the credit of the Buyer in the transaction unless written instructions to the contrary are given to Escrow by the Parties. To defray the costs of special handling and accounting for such earnings, an administrative fee of Fifty Dollars (\$50.00) will be added to the normal escrow fees, to be paid by the Party to whom the earnings are paid. Because in many instances the administrative charge will exceed any accrued earnings, unless the Parties otherwise instruct Escrow in writing, the Parties will be deemed to have waived the right to receive such earnings and these Escrow Instructions constitute written instructions to Escrow not to open and hold the funds in an earnings accrual account, in which case the \$50.00 charge will not be applicable, and the funds may be placed in deposits in financial institutions, as permitted by Hawaii law. All earnings on the deposits will accrue and be payable to Escrow. If the Parties instruct Escrow to open an earnings accrual account, the \$50.00 charge will be applicable and the Party to whom the earnings accrue must supply the applicable Social Security Number or other Tax Identification number. A minimum of two (2) business days will be required prior to closing to withdraw and disburse invested funds. Further, in such event, the Party entitled to the earnings and not Escrow will be responsible for any early withdrawal penalty.

5. FEES & CHARGES

The Parties agree to pay all charges, including the fees of Escrow, incurred in connection with this transaction, even if the transaction does not close. The Parties further agree that all consent fees and other fees required to be paid in advance in order to process this transaction may be paid by Escrow prior to closing from funds held in escrow. In the event of cancellation, Escrow is not responsible for payment of third party service vendors.

6. POST-CLOSING WITHHOLDING

The withholding of funds after closing are subject to additional escrow service charges. These fees will be deducted from the funds held.

7. WRITTEN INSTRUCTIONS TO ESCROW

Escrow's sole responsibility shall be to comply with the written instructions given to Escrow by the Parties and accepted by Escrow. Any amendment to these Escrow Instructions must be in writing and accepted by Escrow. If there is any conflict between the Contract or Lender's Instructions and these Escrow Instructions, these Escrow Instructions will control.

8. DISCLOSURE REQUIREMENT

Escrow is neither responsible for, nor assumes any liability for the obligation of any Party to comply with disclosure requirements under Federal and Hawaii law, including without limitation, Haw. Rev. Stat. 508-D, 514A-61, 514B, Part V, 516-71, and 516D-11.

9. TENTATIVE & FINAL CLOSING STATEMENTS

In most instances, each Party's tentative closing statement and final closing statement will differ. Copies of such statements will be furnished to the Party named therein and such Party's real estate agent. Escrow shall send the applicable closing statements to the appropriate lending institutions in compliance with governmental guidelines.

10. PRO-RATIONS

Unless otherwise agreed upon, all pro-rations and adjustments shall be made as of the date upon which the appropriate documents are recorded. All adjustments and pro-rations shall be made on the basis of a 30-day month.

11. CONDITION OF TITLE

The Parties acknowledge that Escrow is not a title abstractor or title insurer. It is the duty of the Parties to determine the condition of title and all physical attributes of the property, including without limitation, any facts which a correct survey, archaeological report or inspection of the property would disclose. Without limiting the generality of the foregoing, it is the Parties' responsibility to review and understand the contents of any deed, mortgage, and other transaction documents. Escrow does not render legal or financial advice as to the sufficiency or legal effect of such instruments.

12. DISPUTES

If any dispute arises with respect to this transaction, or any demand is received by Escrow and Escrow is uncertain as to its duties hereunder, Escrow may at its sole election and without any liability: (1) await, without taking any action, the determination of such dispute by the Parties; or (2) file a suit in interpleader or institute other action in any court of competent jurisdiction for the purpose of having the respective rights and duties of Escrow and the Parties adjudicated. The Parties shall be liable to Escrow for all costs and expenses, including reasonable attorney's fees, incurred by Escrow in connection with any dispute or legal action. The Parties agree that such fees and expenses can be deducted from the funds held in Escrow. The Parties agree to indemnify and hold Escrow harmless against liabilities, damages and costs incurred by Escrow, including reasonable attorney's fees and costs, except to the extent that such liabilities, damages and costs were caused by the gross negligence or willful misconduct of Escrow.

13. WITHHOLDING REQUIREMENTS

To comply with certain Federal and State withholding requirements, Seller shall provide to Escrow a Non-Foreign affidavit or other exemption form pursuant to the IRS Code (FIRPTA) and a Non-Resident affidavit or other exemption form pursuant to Hawaii law (HARPTA), if applicable. If FIRPTA/HARPTA payments are to be made by Escrow to the IRS and/or State of Hawaii Department of Taxation, Escrow may prepare the FIRPTA/HARPTA forms to attach to the payments and charge Seller \$50.00 for the FIRPTA forms and \$50.00 for the HARPTA forms. The Parties understand both State of Hawaii forms and Federal forms require Federal Identification Numbers from the Buyer and Seller, and in some situations, these forms are circulated to each Party for compliance purposes. If the transaction involves payment to a non-resident alien, Escrow may also be required to withhold up to thirty percent (30%) of such payment under Federal law. Escrow does not provide tax advice and recommends that any Party affected by these withholdings consult with a tax consultant.

14. ESCHEAT

Escrow reserves the right to give notice to an appropriate Party if funds are subject to escheat under Hawaii law, and to escheat such funds in accordance with Chapter 523A, Hawaii Revised Statutes.

15. RELEASE OF MORTGAGES

If on the date of recordation, Escrow does not hold a release of mortgage, Escrow will charge a Release Processing Fee of \$55.00. This fee will cover the follow-up and processing of any such release. The fee will be charged to the Seller.

16. DOCUMENT PREPARATION

Real estate documents required for this transaction may be prepared by an attorney designated by a Party. If the Party does not designate the attorney to prepare the documents, Escrow is authorized to select the attorney to prepare the documents. The attorney is not the agent of Escrow. Escrow recommends that the Parties consult and obtain legal advice for this transaction.

17. SIGNATORY OF DOCUMENTS

These Escrow Instructions and other instructions, agreements, approvals or notices regarding this transaction may be signed in counterparts, and unless otherwise required in writing by a Party or by Escrow, a facsimile or electronically-transmitted signature or communication as permitted by the Uniform Electronic Transactions Act, shall be as binding and effective for all purposes as the original. Escrow shall have no duty to inquire into or have responsibility for the form, content, due execution, genuineness, validity, sufficiency or enforceability of any agreement, documents, certification, or other papers received by Escrow. The Parties acknowledge that Escrow will assume that all papers received by it have been signed by the proper person, that each such person had capacity and authority to so sign, and that such papers have been signed by the persons whose signatures purport to appear thereon.

18. ELECTRONIC DELIVERY

Escrow reserves the right to electronically deliver (e-record) original documents for recording in accordance with the Bureau of Conveyances, Title 13 Chapter 16 Hawaii Admin Rules, as revised. Paper originals of recorded documents will be destroyed after recordation.

19. NO DUTY TO INFORM

Escrow shall have no duty to inform any Party regarding any facts which Escrow may have acquired outside this transaction and which concern the property covered by this escrow.

20. RIGHT OF RESIGNATION

Escrow has the right to resign upon ten (10) calendar days written notice delivered to the principals herein. If such right is exercised, Escrow may return all funds less costs and documents to the party who deposited them and Escrow shall have no liability hereunder.

21. PROCEEDS TO TITLE HOLDERS

Escrow will issue proceeds payable to the current vested owner of record and/or Buyer/Borrower acquiring title to said transaction. Exceptions will be made for proceeds paid in connection with IRC 1031 Exchange transactions.

22. REQUESTED INFORMATION

Documents relating to this escrow, including your personal information, may be disclosed if Escrow is served with a subpoena or court order.

23. HAWAII LAW GOVERNS

Hawaii Law shall govern this escrow. Each Party agrees to submit to the exclusive jurisdiction of the courts of the State of Hawaii or the United States District Court for the District of Hawaii and waives any objections to venue with respect to actions brought in such courts. The liability of all Parties shall be joint and several unless otherwise expressly stated. All duties, rights and benefits shall inure to and be binding upon the Parties and their respective heirs, personal representatives, successors and assigns.

(Rev 5/2017)

First Amendment to Amended and Restated Grazing Lease and Hunting License

This First Amendment to Amended and Restated Grazing Lease and Hunting License (“Amendment”) is made effective as of August 1, 2020, and is by and between The Trust for Public Land, a California nonprofit public benefit corporation, whose address is 101 Montgomery Street, Suite 900, San Francisco, CA 94104 hereinafter called "Lessor", and Brendan Balthazar, whose address is 103 Maha Road, Makawao, HI 96768; ph: (808) 281-1723; email: DiamondBRanchHI@aol.com, hereinafter called "Lessee".

Recitals:

- A. Lessee entered into that certain Grazing Lease and Hunting License Agreement (“Lease”), effective January 1, 2006 with KJZ LLC, a Hawaii limited liability company as “Lessor”.
- B. The Lease was amended by Amended and Restated Grazing Lease and Hunting License (“Restated Lease”), effective as of January 1, 2006.
- C. An Assignment of Lessor’s Interest in Lease was entered into on March 26, 2015 between KJZ LLC and Shizuka Zwaanstra, aka Shizuka Asakawa.
- D. An Assignment of Lease was entered into on July 31, 2020 between Shizuka Asakawa, Trustee of the Shizuka Asakawa Revocable Trust Agreement dated April 19, 2016 and The Trust for Public Land.
- E. Lessor and Lessee now desire to amend the terms of the Restated Lease to revise the provisions relating to rent payment, assignment, and the supply and maintenance of utilities to the Premises under the Restated Lease.
- F. Unless specifically otherwise defined in this Amendment, all capitalized terms shall have the same meanings as ascribed to them in the Restated Lease.

NOW, THEREFORE, in consideration of the foregoing, and of the conditions, terms, covenants and agreements set forth herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree that the Restated Lease is amended as follows:

1. **Rent.** Effective July 1, 2020, Lessee has made rent payment, in advance, for the current calendar quarter, in the amount of Three Thousand Six Hundred Dollars (\$3,600.00). Section 3 of the Amended Lease is hereby amended by deleting it in its entirety and replacing it with the following provision;

“Rent payable by Lessee to Lessor shall be One Thousand Two Hundred Dollars (\$1,200.00) per month, in legal tender of United States of America, and payable in advance, without notice or demand, in quarterly installments of each and every year during the term, representing a total rental amount due every three months of Three Thousand Six Hundred Dollars (\$3,600.00). The first payment due under this Lease shall be on or before October 1, 2020.”

2. **Utility Services.** Notwithstanding anything to the contrary in the Restated Lease, effective the date of this Amendment, Lessee shall contract and pay for any and all utilities and services used and provided to the Premises, including without limitation, water, gas, heat, light, power, septic/sewer charges, telephone service, and shall maintain at Lessee's expense all pipelines, systems and structures except to the extent maintained by the utility provider.
3. **Assignment.** Paragraph 12 of the Restated Lease is hereby deleted in its entirety and replaced with the following paragraph:

"12. Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises, or any portion, or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Lessor the assignment and transfer of this lease, or any portion, may be made in accordance with current industry standards, as determined by the Lessor; provided, further, that prior to the approval of any assignment of lease, the Lessor shall have the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight line depreciated cost of improvements and trade fixtures being transferred to the Assignee."

4. **Approval of Assignment.** Pursuant to Paragraph 12, as amended by this Amendment, and Lessee's request which is herein acknowledged, Lessee's assignment for good and valuable consideration of his entire interest in the Lease to Diamond B Ranch, LLC, whose address is 103 Maha Road, Makawao, HI 96768, and whose sole member is Brendan Balthazar, and Diamond B Ranch, LLC's assumption of all of Lessee's obligations under the Lease, is hereby approved by Lessor.
5. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument when each party has signed one such counterpart. This Amendment may be executed and delivered to the other party by electronic transmission and an electronic signature shall have the same legal effect as an original signature.
6. **Entire Agreement.** The Restated Lease, as amended by this Amendment, constitutes the full and complete agreement and understanding between the parties hereto and shall supersede all prior communications, representations, understandings or agreements, if any, whether oral or written, concerning the subject matter contained in the Restated Lease, as so amended, and no provision of the Restated Lease, as so amended, may be modified, amended, waived or discharged, in whole or in part, except by a written instrument executed by all of the parties hereto.

7. **Force and Effect.** Except as modified by this Amendment, the terms and provisions of the Restated Lease are hereby ratified and confirmed and are and shall remain in full force and effect. Should any inconsistency arise between this Amendment and the Restated Lease as to the specific matters which are the subject of this Amendment, the terms and conditions of this Amendment shall control. This Amendment shall be construed to be a part of the Restated Lease and shall be deemed incorporated in the Restated Lease by this reference.

IN WITNESS WHEREOF, the Parties have executed this Amendment on the dates indicated.

LESSOR:

The Trust for Public Land,
a California nonprofit public
benefit corporation

By: *Stmetily*
Tily Shue, Legal Director

Dated: *as of 8/1/2020*

ASSIGNEE:

Diamond B Ranch, LLC,
a Hawaii limited liability company

By: *Brendan Balthazar*
Brendan Balthazar, Member

Dated: *8/1/20*

LESSEE AND ASSIGNOR:

Brendan Balthazar

By: *Brendan Balthazar*

Dated: *8/1/20*

AMENDED AND RESTATED GRAZING LEASE AND HUNTING LICENSE

AGREEMENT

This Grazing Lease Lease ("Lease") is made effective as of January 1, 2006, and is by and between KJZ LLC, a Hawaii limited liability company, hereinafter called "Lessor", and Brendan Balthazar, hereinafter called "Lessee".

Whereas, Lessor is the owner of certain land located on the island of Maui, state of Hawaii;

Whereas, Lessee is desirous of utilizing Lessor's property for grazing livestock and the operation of a ranch; and

Whereas, Lessor and Lessee, entered into that Grazing Lease and Hunting License Agreement, effective January 1, 2006, with a term expiring on December 31, 2015, and the parties desire to amend and restate such agreement and extend its term by five years by entering into this Lease, which expires as set forth below on December 31, 2020;

Now, therefore, in consideration of the rent hereinafter set forth and of the covenants and conditions herein contained and on the part of the Lessee to be kept, observed and performed, the parties hereto agree as follows:

1. Lease of Premises. Subject to the terms and conditions contained in this Lease, Lessor does hereby demise and lease to the Lessee the lands located in the District of Kula, island and county of Maui, state of Hawaii, and designated as Maui tax key nos. 2-3-005-002-0000 (area approximately 3,335 acres (hereinafter referred to as the "Premises"), to have and to hold the Premises unto the Lessee, together with the water system, pipes, tanks, troughs, and other similar equipment or improvements on the Premises, for grazing and cattle ranch purposes only.

Reserving, however, unto the Lessor, the following:

(i) All prehistoric and historic remains found in, on or under the Premises.

(ii) The ownership of improvements of whatever kind or nature, including but not limited to fences and stock water systems located on the Premises prior to or on the commencement date of this Lease, excluding those improvements constructed during the term of the Lease unless otherwise provided herein.

(iii) The right or privilege of withdrawing from the operation and effect of this Lease, at any time or times during the Term, all or any portion of the Premises of the Lessor's own selection for any purposes, Lessor, in its sole and absolute discretion may deem appropriate; provided, however, the exercise of such right or privilege of withdrawal shall be conditioned upon (1) a reduction in the rent herein reserved for the remainder of the then rental period in the proportion that the value of the land withdrawn shall bear to the value of the entire land under this Lease prior to such withdrawal, such values to be based on the livestock "carrying capacities" of such land, as determined by the parties by mutual agreement, or, failing agreement, by appraisers or arbitrators as hereinafter provided, (2) construction and maintenance by the Lessor of any fencing required by reason of the exercise of this withdrawal privilege, (3) payment to Lessee of the Lessee's reasonable documented undepreciated material and labor costs for any improvements built on the withdrawn land either during the first two years of the initial lease term or thereafter, provided that documentation of such costs are provided to Lessor within twelve (12) months of such costs being incurred (depreciated proportionately over the initial lease term for costs incurred during the Term or, as the case may be, over the extended lease term for costs incurred during the extended lease term) and (4) Lessor giving Lessee twelve (12) months prior notice of such withdrawal. Where the portion so withdrawn renders the remainder unsuitable for the use or uses for which the Premises 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 a reasonable time period.

(iv) The right, at any time, with reasonable notice and without compensation, to take possession of any part of the Premises which may be required for laying out and constructing new roads or improving or changing the line and grade of old roads, and taking such soil, rock or gravel as may be necessary for the construction or improvement of any road; provided, however, that Lessee shall not be required to erect and maintain fences along newly constructed roads; but if the Lessee shall deem such fencing desirable and the Lessor or other tenants fail or refuse to erect and/or maintain such fences within a reasonable time following the request to do so by the Lessee, the Lessee may perform such work and deduct the costs thereof from the rental payment or payments next thereafter due to the Lessor; and provided, further, that where the amount of land so taken for roads exceeds two acres in area, there shall be a reduction in the rent herein reserved for the remainder of the then rental period in the proportion that the value of the land withdrawn shall bear to the value of the entire land under this Lease prior to such withdrawal, such values to be based on the livestock "carrying capacities" of such land, as determined by the parties by mutual agreement, or, failing agreement, by appraisers or arbitrators as hereinafter provided.

(v) The right and privilege to issue written permits to individuals to hunt, subject to the rules and regulations issued by the Hawaii State Department of Agriculture; provided, however, that the parties hereto acknowledge that Lessee is obtaining hunting license rights as provided for in more detail in the last paragraph of the Lease, which the parties agree and acknowledge do not represent an interest in real property.

2. Term. This Lease shall continue for a term ("Term) of ten (10) years commencing on January 1, 2006, and expiring on December 31, 2020.

3. Rent. Rent payable by Lessee to Lessor for the Term shall be One Thousand Two Hundred Dollars (\$1,200) per month, representing a total rental amount due every six months of \$7,200. Lessee shall pay to Lessor, in arrears, the rent for successive six-month periods of the Term, with the first payment being due on or before July 1, 2006

4. Fencing. Lessee will, wholly at Lessee's own cost and expense, keep and maintain in good order and in a stock-proof condition throughout the period of this Lease the fences constructed by Lessee and those now existing on the Premises. Lessee will maintain and, if necessary, construct, at its own cost and expense, such fences as may be required for Lessee's use of the Premises by any law, rule, regulations or ordinance now in force or that may hereafter be enacted.

5. Taxes, Assessments, Etc. for Lessee's Operations. The Lessee shall pay or cause to be paid, when due, all taxes, rates, assessments and other outgoings of every description with respect to Lessee's use and operation of the Premises, during the term of this Lease.

6. Repair and Maintenance. Lessee will, at Lessee's own expense, at all times during the said term, maintain well and substantially repair, maintain, amend, and keep the Premises and improvements thereon covered by this Lease in good order, condition and repair, reasonable wear and tear excepted, and in a strictly clean and sanitary condition. It is agreed and understood that Lessee shall not dispose of rubbish or any waste materials anywhere on the Premises. Lessee will allow the Lessor or its agents free access to the Premises at all reasonable times for the purpose of examining the same and determining whether the covenants herein are being fully observed and performed, and will make good at Lessee's own cost and expense all repairs and amendments reasonably necessary of which notice shall be given within thirty (30) days after the giving of such notice; or if such repairs cannot be reasonably completed within said thirty (30) days, Lessee shall proceed diligently to complete such repairs as soon as reasonably possible thereafter; and shall

protect and hold harmless the Lessor and the Premises from any and all liens of any kind or character which may be levied for labor performed in connection with the maintenance of the Premises, and will indemnify the Lessor against all actions, suits, damages, and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of all laws, ordinances, rules and regulations, or of this covenant.

7. Compliance with Laws. 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 Premises, now in force or which may hereinafter be in force.

8. Utility Services. 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 the Lessee's use of the Premises relates or causes, regardless of whether such amounts are assessed to or initially payable by the Lessor or Lessee. The parties hereby expressly agree and acknowledge that the Lessee is not expected to separately contract for or use these services and that this provision is intended to only apply if the Lessee separately contracts for these services or otherwise uses them.

9. Inspection of Premises. In addition to any express and specific rights provided for herein, 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.

10. Liens and Recording of Lease. The Lessee will not commit or suffer any act or neglect whereby the Premises or any improvement thereon shall become subject to any attachment, lien, charge or encumbrance whatsoever, and shall indemnify and hold harmless the Lessor from and against all such attachments, liens, charges and encumbrances and all expenses resulting therefrom. Neither this Lease nor a memorandum thereof shall be recorded against the property.

11. Character of Use. The Lessee shall use or allow the Premises hereby demised to be used solely for grazing cattle and other livestock ranch purposes. The Premises shall not be used for purposes not specifically authorized in writing by the Lessor, which authorization may be withheld by Lessor in its sole and absolute discretion. The parties acknowledge that the Lessee is receiving certain hunting license rights in the last paragraph of the Lease, and that such rights do not comprise an interest in real property.

12. Assignments, Etc. The Lessee shall not transfer, assign or permit any other person to occupy or use the Premises or any portion thereof,

or transfer or assign this Lease or any interest therein, either voluntarily or by operation of law, and any such occupancy, use, transfer or assignment so made shall be null and void and shall entitle Lessor, immediately and without notice, to terminate this Lease and be restored to the sole, exclusive possession of the Premises.

13. Mortgage. The Lessee will not mortgage, hypothecate or pledge the Premises or any portion thereof or any interest therein without the prior written approval of the Lessor, which approval may be withheld in the sole discretion of Lessor, and any such mortgage, hypothecation or pledge without such approval shall be null and void.

14. Indemnity. The Lessee will 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 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, including aerial drift or the use of chemicals, pesticides, herbicides, fungicides, mematicides and plant growth regulations (hormones), and from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

15. 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 including reasonable attorney's fees; furthermore, the Lessee shall and will pay all costs and expenses including reasonable attorney's fees that 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 rent, taxes and any and all other charges.

16. Liability, Property Damage and Insurance. The Lessee will indemnify and hold the Lessor harmless from claims or demands by third persons and from any losses or damages, including without limitation reasonable attorney's fees, for property damages or personal injury or death arising out of any accident or happening on or from the Premises, including nonexclusive access rights-of way, and will at its own expense, carry and keep in force during the term of the Lease, or any extension, a policy or policies of landlord's, owner's, and tenant's liability insurance or the equivalent with minimum limits of not less than Three Million Dollars (\$3,000,000.00) each

occurrence for bodily injury, not less than One Million Dollars (\$3,000,000) per occurrence for property damage and not less than Three Million Dollars (\$3,000,000) general aggregate combined single limit for bodily injury and property damage liability, said policy or policies to name the Lessor as additional insured and require thirty (30) days notice to the Lessor of any intent on the part of the insurer to cancel said policy or policies. The Lessee shall furnish the Lessor with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, 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 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 adequacy of the coverage afforded by the liability insurance shall be subject to review by the Lessor from time to time, and if it appears in such a review that a prudent businessman in Hawaii operating a business similar to that operated by the Lessee on the Premises would increase the limits of his liability insurance, the Lessee shall forthwith increase such limits to that extent.

17. Fire Insurance. The Lessee will insure and keep insured against loss or damage by fire at its own expense with extended coverage and in a sum as near as may be practicable to the value thereof all buildings placed upon the Premises with an established insurance company or companies satisfactory to the Lessor, the loss, if any, to be payable to the Lessor; and in case the said buildings or any part thereof shall at any time during the said term be destroyed or damaged by fire, then and as often as the same shall happen all monies received in respect of such insurance shall with all convenient speed be laid out in rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner, according to the plans of the buildings so destroyed or damaged by fire or according to such other plan or in such other manner as shall be previously approved by the Lessor in writing. Lessee will at all times furnish the Lessor with satisfactory evidence that such policy or policies is in full force and effect. Such policy or policies shall require thirty (30) days written notice to the Lessor of the insurer's intent to cancel.

18. Water System. The Lessee will operate the demised water system in an efficient manner, and will make such repairs thereto at its own expense as may become necessary to maintain the said system, and that at the expiration of the term of this Lease it will return to the Lessor the said water system substantially as it now is, natural wear and deterioration excepted, and that it will pay all water charges as metered against the said system. Any improvements in the water system that the Lessor makes and pays for

consistent with the provisions of Section 1(iii)(3) shall remain the property of the Lessee to the extent such improvements have not been fully depreciated. As provided for in more detail in Section 24, it is the intent of the parties that, to the extent this lease terminates for any reason when the Lessee has any ownership interests in such improvements, the Lessor shall have the option of either purchasing such improvements for the undepreciated cost of them or providing the Lessee the right to remove such improvements.

19. Breach. Time is of the essence of this agreement and if the Lessee shall fail to yield to pay any rent or any part thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be attached or otherwise be taken by operation of law, or if any assignment 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 thirty (30) 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, 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 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.

20. Construction Bond. Lessee will, before undertaking any "Lienable Construction" (as defined below) on the Premises, notify Lessor of the fact that such Lienable Construction is to be undertaken. Lessor may, at such time, require Lessee to display the ability to pay for any such Lienable Construction, which determination of ability to pay shall be made by Lessor in its reasonable judgment. If, in Lessor's reasonable judgment, Lessee does not have the ability to pay for the Lienable Construction in question, Lessee shall deposit with Lessor a bond or certificate in form and amount with surety reasonably satisfactory to Lessor, guarantying the completion of the applicable Lienable Construction, free and clear of all mechanics' and materialmen's liens. For purposes hereof, the term "Lienable Construction" shall mean the construction of any alteration, addition or improvement on the Premises (i) which costs in excess of Twenty Thousand Dollars (\$20,000) (or, when aggregated with all other alterations, additions or improvements to be constructed at any one time, aggregate in excess of Twenty Thousand Dollars (\$20,000)) and (ii) with respect to which a statutory mechanics' or materialmen's lien may be asserted.

21. 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, any county or any governmental authority, the rent 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 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 Premises occupied by the Lessee. Where the portion so taken renders the remainder unsuitable for the use or uses for which the Premises 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.

22. Improvements. The Lessee shall not at any time during said term construct, place, maintain and install on the Premises any building, structure or improvement of any kind and description whatsoever except with the prior written approval of the Lessor and upon such reasonable conditions as the Lessor may impose in its sole discretion.

23. Quiet Enjoyment. The Lessor hereby covenants and agrees with the Lessee that upon payment of 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 the use of the Premises for the term hereof, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through or under it.

24. Expiration of Term of this Lease. On the expiration of the term of this Lease or sooner termination as herein provided, or upon termination for whatsoever cause, Lessee will peaceably and quietly leave and surrender and deliver up to the Lessor possession of the Premises, together with all improvements thereon, in good repair, order and condition, reasonable wear and tear and damage by acts of God excepted. Lessee shall, however, remove all improvements at its cost if Lessor requires Lessee to do so; provided further on the expiration on the term hereunder the ownership of all water system improvements and all fences and roadway improvements, at Lessor's option, shall revert to Lessor and shall be the property of the Lessor. If and to the extent there is any such reversion to the Lessor, to the extent there is a reversion of undepreciated costs, consistent with the provisions of Section 1(iii)(3), Lessor shall pay for the undepreciated costs.

25. Condition of Premises.

(a) Lessee acknowledges that it is familiar with the Premises and has made such independent investigations and reviewed such documents as it deems necessary or appropriate concerning the use of the Premises for grazing and ranching purposes, including, but not limited to, any desired investigations or analysis of the economic value of the Premises or the feasibility of utilizing the Premises for the purposes intended by Lessee and permitted by Lessor; the size, dimensions, location or topography of the Premises; any surface, soil, subsoil or other physical conditions of or affecting the Premises; all present or future governmental laws, statutes, rules, regulations, ordinances, limitations, restrictions or requirements concerning the use, density, location or suitability of the Premises (collectively "Regulations"), including, but not limited to, zoning, subdivision, land use, environmental, ecological, building code, or other such Regulations; the necessity or availability of any general or special plan amendments, rezoning, zone variances, conditional use permits, building permits, environmental impact reports, parcel or subdivision maps or any other governmental permits, approvals or acts (collectively the "Permits"); the necessity or existence of any dedications, fees, charges, costs or assessments that may be imposed in connection with any Regulations or the obtaining of any required Permits; all other matters concerning the conditions and use of the Premises.

(b) Lessee is relying solely upon its own inspection, investigation and analysis of the foregoing matters in executing this Lease and is not relying in any way upon any representations, statements, agreements, warranties, studies, reports, descriptions, guidelines or other information or material furnished by Lessor or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding any of the foregoing matters.

(c) Lessee will be using the Premises "as is", in its present state and condition, without representation by Lessor or its representatives as to any matter, whether or not expressly mentioned above. No patent or latent condition affecting the Premises in any way, such as, but not limited to, the matters listed in subparagraph (a) of this paragraph 25, whether or not known or discoverable or hereafter discovered, shall affect Lessee's rights or obligations as set forth in this Lease, nor shall give rise to any right of damages or otherwise against Lessor.

26. Good Husbandry, Conservation Program and Hazardous Materials.

(a) The Lessee shall at all times practice good husbandry with regard to the use of the Premises for the use herein permitted and shall carry out a program of conservation developed by the Lessee. Good husbandry and conservation includes taking reasonable steps to ensure that clear pasture

areas do not become overtaken by large trees or other growths, but does not include reclaiming portions of pasture that have already been overtaken by large trees, eucalyptus, pine and wattle.

(b) The Lessee will not commit or suffer any strip or "waste" or any unlawful, improper or offensive use of the Premises or any part thereof. The term "waste" shall be deemed to include, but shall not be considered restricted to (1) overgrazing to the detriment of the whole or any portion of the Premises; (2) suffering the Premises or any portion thereof to become unduly eroded without reasonable efforts being taken to correct the same; (3) the severance of any trees whose diameter exceeds 10 inches now or hereafter growing on the Premises, except by written permission of the Lessor; and (4) suffering any noxious weed, shrub or tree coverage to remain or become established on lands which are economically feasible for grazing use; the term "noxious weeds, shrub or tree" shall be deemed to include, but shall not be considered restricted to such pests as fire bush, Gorse, Black Wattle, Eucalyptus, Guava and Spiny Amaranth, Broom Sedge grass, and cane grass; provided, however, the Lessee shall not be considered to have committed waste for suffering the growth on said land, or any portion thereof, of any plant, shrub, or tree of a noxious character which is not referenced herein or which has not been designated noxious by the State Department of Agriculture, or its successor or which has not been designated noxious by Lessor and notice in writing of such designation being given the Lessee by the Lessor; provided further, the Lessee will practice accepted principles of good husbandry, pest control and good pasture management.

(c) Lessee covenants that (i) the Premises shall be kept free of Hazardous Materials and (ii) neither Lessee nor any occupant of the Premises shall use, transport, store, dispose of or in any manner deal with Hazardous Materials on the Premises. "Hazardous Material" as used herein shall mean any hazardous or toxic substance or material that is or becomes regulated by any local, state or federal authority.

27. Force Majeure. If and to the extent that the Premises are affected by earthquake, fire, flood, volcanic eruption, civil disturbance, war, or act of God, which renders the Premises unusable for Lessee's purpose (grazing and ranching operations), then upon thirty (30) days prior written notice to the Lessor, Lessee may suspend or terminate its obligations under this Lease.

28. Arbitration. If at any time during the term of this Lease or after termination thereof, any dispute, difference or question shall arise between the parties hereto with respect to the rental amount, land value, or the provisions, construction, meaning or effect of this Lease or anything herein contained or the rights or limitations of the parties under this Lease, every such dispute, difference or question shall, at the desire of any party, be submitted to

and be determined by a single arbitrator, if the parties so mutually agree, or in the absence of such agreement by a board of three impartial arbitrators. Either the single arbitrator or the two arbitrators appointed by the parties as hereinafter provided in case a single arbitrator cannot be agreed upon shall be persons experienced and knowledgeable, in the case of disputes involving rental or land value, in the appraisal of real property, or in all other disputes, in agricultural land management matters. In case a single arbitrator cannot be agreed upon, the impanelment of a board of three arbitrators shall be as follows: The party desiring to have the matter in dispute submitted to arbitration shall give the other party written notice of such desire and shall name one arbitrator in such notice. Within twenty (20) days after the receipt of such notice, the other party shall name a second arbitrator, and in case of failure to do so the party who first named an arbitrator may have the second arbitrator selected or appointed by a judge of the Circuit Court of the Second Circuit, State of Hawaii, and the two arbitrators so appointed in either manner shall select and appoint a third arbitrator, and if the two arbitrators so appointed shall fail to appoint the third arbitrator within twenty (20) days after the naming of the second arbitrator, either party may have the third arbitrator selected or appointed by one of said judges, and the three arbitrators so appointed shall thereupon proceed to determine the matter in question, disagreement or difference, and the decision of any two of them shall be final, conclusive and binding upon the parties, all as provided in Chapter 658, Hawaii Revised Statutes, as the same may be amended, and judgment may be entered upon any such decision by the Circuit Court as provided in said statute. In all cases of arbitration, each of the parties hereto shall pay the expense of its own attorneys and witnesses, and all other expenses of such arbitration shall be divided equally between the parties. If the issue or dispute submitted to arbitration involves the payment of money, the amount in dispute shall be deposited by the party to be charged with payment into an interest-bearing account, with an institution acceptable to both parties, pending the completion of the arbitration and interest accrued shall be paid with payment of the principal after the award.

29. Notices. Any notice to be given to or served upon any of the parties hereto shall be deemed to have been sufficiently given or served for all purposes when actually delivered by messenger or by certified mail, return receipt requested, delivered as follows (supplementary copies may be deemed delivered if sent by fax or email, and expressly recognized by the party receiving the correspondence):

In the case of Lessor:
KJZ LLC
c/o West Maui Financial Services
5095 Napilihau Street, Suite 202
Lahaina, Hawaii 96761

Tel.: (808) 667-1000
Fax: (808) 667-1002
Email: John.Zwaanstra@wmflc.com

In the case of Lessee:
Brendan Balthazar
103 Maha Road
Makawao, Hawaii 96768
Tel.: (808) 281-1723 Fax: (808) 572-2820
Email: DiamondBRanchHI@aol.com

30. No Party Deemed Drafter. The parties agree that no party shall be deemed to be the drafter of this Lease and further that in the event that this Lease is ever construed by an arbitrator(s) or a court of law, such arbitrator(s) or such court shall not construe this Lease or any provision of this Lease against any party as the drafter of the Lease.

31. Amendments. This Lease shall not be modified except by an instrument in writing signed by all of the parties.

32. Governing Law. This Lease shall be governed and construed in accordance with the laws of the State of Hawaii.

33. Late Charge. Any amount owing by Lessee to Lessor under the term of this Lease shall be subject to interest from the date of the same originally becomes due until paid at the rate of the lesser of one percent (1%) per month or the highest rate allowable under applicable law, whether or not Lessor has demanded same, for suit of collection thereof, granting any extension(s) for payment thereof, or exercise or fail to exercise any other right or remedy in respect thereto, and said interest shall be considered as a part of the rental payable herein.

34. Nonwaiver. The acceptance of the rent by Lessor shall not be deemed to be a waiver by Lessor of any breach of continuing breach by Lessee of any covenant herein contained, nor of Lessor's right to terminate this Lease for breach of continuing breach of covenant.

35. Lessor's Mortgage. Lessee agrees that upon the request of Lessor it will subordinate this Lease and the lien hereof to the lien of any present or future mortgage or mortgages upon the Premises or any property of which the Premises are a part, irrespective of the time of execution or time of recording of any such mortgage or mortgages. Lessee agrees that it will upon the request of Lessor execute, acknowledge and deliver any and all instruments deemed by Lessor necessary or desirable to give effect to or notice of such subordination, provided only that said mortgagee enters into an agreement with

Lessee which provides that said mortgagee will not disturb the possession and other rights of Lessee so long as Lessee performs its obligations hereunder and that said mortgagee will accept Lessee as Lessee of the Premises under the terms and conditions of this Lease in the event of acquisition of title by said mortgagee through foreclosure proceedings or otherwise, and which further provides that Lessee will agree to recognize the holder of such mortgage as the Lessor in such event, said agreement to be expressly binding upon the successors and assigns of Lessee and of the mortgagee and upon anyone purchasing the Premises at any foreclosure sale. Lessee and Lessor agree to execute and deliver any appropriate instruments necessary to carry out the agreements in this section contained. Any such mortgage to which this Lease shall be subordinated may contain such other terms, provisions and conditions as the mortgagee deems usual or customary. Lessee also agrees that if it fails at any time to execute, acknowledge or deliver any such instrument requested by Lessor, then Lessor may, in addition to any other remedies available to them, execute, acknowledge and deliver such instrument as the attorney-in-fact of Lessee and in Lessee's name; and Lessee hereby makes, constitutes and irrevocably appoints Lessor as its attorney-in-fact for that purpose. The word "mortgage" as used herein includes mortgages, deeds of trust or other similar instruments and modifications, consolidations, extensions, renewals, replacements and substitutes thereof.

36. Time Of Essence. Time is of the essence of each provision of this Lease.

37. Section Headings. Section headings of this Lease are for convenience only and if there be any conflict, the text shall control.

38. Entire Lease. The parties agree that their entire contract has been stated herein and that this instrument and all of the terms and conditions herein contained, supersede any prior, oral, or written agreements or representations made by or between the parties in respect of any matter relating hereto, all of which have been merged herein.

39. Option to Extend Term. The Lessee shall have the option to extend the term of this Lease for one (1) additional ten (10) year period upon the condition that there is no default in performance or observance of any covenant or condition of this Lease of which a notice of default has been given to the Lessee at the expiration of the initial term described in paragraph 2; provided, however, that in case of any such default which cannot with due diligence be cured prior to the expiration of the initial term, if the Lessee shall have proceeded promptly after the service of notice of default with due diligence to cure such default, the Lessee may, nevertheless, be entitled to such extended term. Except with respect to the amount of the rent payable during the one (1) additional ten (10) year period and except that there shall be no privilege to

extend this Lease for any further periods, the said one (1) additional ten (10) year period shall be upon the same conditions as provided in this Lease. The Lessee shall exercise the option by giving the Lessor written notice at least ninety (90) days prior to the expiration of the initial term. An effective exercise shall be deemed to extend this Lease without the execution of any further lease or instrument.

During the one (1) additional ten (10) year period the rent payable by Lessee to Lessor shall be as mutually agreed upon by the Lessor and Lessee; provided, however, in the event the Lessor and Lessee shall fail to agree in writing to such rent at least sixty (60) days before the commencement date of the one (1) additional ten (10) year period, the rent shall be determined by the arbitration procedure set forth in paragraph 28, with the fair market value of the rent being determined by the arbitrators, given the specific facts unique to the Lease. The rent for the one (1) additional ten (10) year period, whether determined by mutual agreement or by arbitration, shall be not less than the rent for the initial ten (10) year period. If the rent has not been determined by the commencement of the one (1) additional ten (10) year period, the Lessee shall pay on account of rent to the Lessor in the same amount and in the same manner as the initial ten (10) year period. Within thirty (30) days after the rent has been determined, the Lessee shall pay the Lessor all additional amounts due by reason of such determination together with interest accrued thereon at 10% per annum from the date such additional rental would have been payable under the Lease had it been determined prior to the commencement of the extension period.

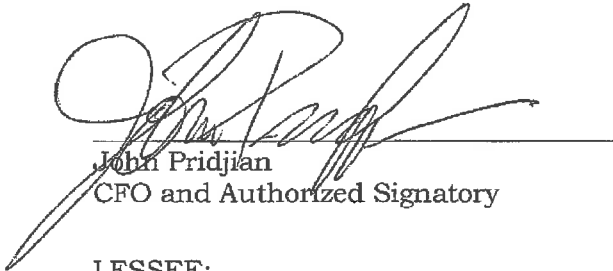
40. Hunting License. For no additional consideration, the Lessor hereby grants the Lessee the right and privilege to hunt for recreational non-business purposes, and to extend the same such right to (i) a limited number of individual employees or independent contractors who currently work with or for the Lessee in connection with utilizing the Premises for grazing livestock or the operation of a ranch and (ii) two members of the Lessee's family, provided such individuals exercise these rights only while being accompanied by Lessee. A list of the names of each such individual employee or independent contractor granted this right by Lessee will be provided to Lessor in writing in advance of any such use along with an appropriate photocopy of any such individual's Hawaii driver's license or comparable photographic identification. This list may be revised by time to time by Lessee in a similar writing delivered to the Lessor. If any individual, other than the Lessee and an individual set forth on the list of permitted individuals, is found exercising hunting rights on the Premises with the Lessee's permission, written or otherwise, or to have done so in the past during the Term or extension lease term, all hunting rights for the balance of the Term or extension lease term will be terminated and forfeited by Lessee.

It is the intention and understanding of the Lessor and Lessee that all hunting rights and any hunting activities conducted on the Premises will be conducted consistent with and subject to the rules and regulations issued by the Hawaii State Department of Agriculture, any applicable federal or local laws, and to further reasonable rules and regulations of Lessee. It is also the intention of the parties that while the license rights granted hereunder do not represent rights or interests in real property, all of the other provisions of this Lease concerning liability and indemnification shall apply. Without limiting the preceding sentence, for example, the provisions of paragraphs 14 and 15 (concerning the Lessee's obligation to indemnify the Lessor against claims and costs, including litigation costs, with respect to Lessee's use of the Premises) and paragraph 16 (concerning the obligation to obtain the appropriate amount of insurance and make Lessor as an additional insured) apply to the hunting rights provided in this paragraph. The insurance obtained pursuant to paragraph 16 shall include coverage for liability for hunting activities conducted directly or indirectly by Lessee.

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Lease effective as of the 1st day of January 2006.

LESSOR:

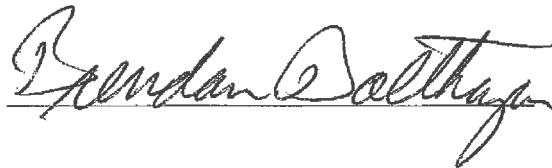
KJZ LLC, a Hawaii limited liability company



John Pridjian
CFO and Authorized Signatory

LESSEE:

BRENDAN BALTHAZAR



MAY 08 2020

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

May 8, 2020

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

MAUI

REQUEST APPROVAL OF: (1) ACQUISITION OF PRIVATE LANDS; (2) ISSUANCE OF MANAGEMENT RIGHT OF ENTRY TO THE DIVISION OF FORESTRY AND WILDLIFE; (3) AND AUTHORIZE THE DIVISION OF FORESTRY AND WILDLIFE TO CONDUCT PUBLIC HEARINGS ON THE ISLAND OF MAUI FOR PROPOSED ADDITION TO THE FOREST RESERVE SYSTEM, SITUATED AT KAMEHAMENUI, KULA, MAKAWAO, MAUI, TAX MAP KEY (2) 2-3-005:002 & 014.

AND

REQUEST DELEGATION OF AUTHORITY TO THE CHAIRPERSON TO ADMINISTER EXISTING GRAZING LEASE WITH BRENDAN BALTHAZAR REGARDING TAX MAP KEY (2) 2-3-005:002.

PRIVATE LANDOWNER:

The Trust For Public Lands (Seller), who is purchasing from Shizuka Asakawa, Trustee of the Shizuka Asakawa Revocable Trust Agreement (Landowner).

LEGAL REFERENCE:

Sections 107-10, 171-11 and 171-30, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Privately owned lands of Shizuka Asakawa, Trustee of the Shizuka Asakawa Revocable Trust Agreement, situate at Kamehamenui, Kula, Makawao, Maui, identified by Tax Map Key (2) 2-3-005:002 and 014, as shown on the attached map labeled **Exhibit A** and collectively referred to as "the Property".

AREA:

2-3-005:002: 3433.722 acres, more or less
2-3-005:014: 0.0275 acres, more or less

TOTAL: 3433.7495 acres, more or less

ZONING:

State Land Use District: Agriculture/Conservation
County of Maui Zoning: Agriculture

CURRENT USE:

Parcel 2-3-005:002 is encumbered by an "Amended and Restated Grazing Lease and Hunting License Agreement" to Brendan Balthazar, see Remarks section for further discussion.

Parcel 2-3-005:014 is vacant.

CONSIDERATION:

Total purchase price is \$9,830,000.00.

PURPOSE:

Forest Reserve purposes.

CHAPTER 343- ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 343-5(a)(1), HRS, an environmental assessment (EA) is not required where State or county funds are being used for the acquisition of unimproved real property. As the subject lands are unimproved, an EA is not required. Inasmuch as the Chapter 343 environmental requirements apply to Division's future management of the property, the Division will be responsible for compliance with Chapter 343, HRS, as amended.

REQUIREMENTS:

- 1) Obtain an appraisal report to determine the value of the properties to be acquired;
- 2) Process and obtain subdivision approval, as appropriate;
- 3) Provide survey maps and descriptions for the privately-owned property according to State DAGS standards;
- 4) Obtain a title report for the privately-owned property subject to review and approval by the Department;
- 5) Conduct a Phase I environmental site assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department.

Further discussion of the Requirements is contained in the Remarks section.

BACKGROUND:

Kamehamenui Forest Property, on the north slopes of Haleakalā, in the Kula District of Maui, was listed for sale in 2016. The Property is the site of the historic Von Tempsky's Erehwon Ranch founded in 1875 and immortalized in bestselling novels about the family's adventures on the property. In an effort to protect this iconic landscape of Haleakalā, the Division of Forestry and Wildlife in close partnership with the Trust for Public Lands (TPL) and the National Park Service began fundraising to acquire the Property for public purposes. Acquisition of the Kamehamenui Property will permanently protect over 3,433 acres of forest, native sub-alpine ecosystems and formerly forested grasslands. The Property includes two parcels, TMKs (2) 2-3-005:002 and 014, and consists of both agricultural and conservation zoned lands. Acquisition will secure high priority watersheds and native ecosystems that provide habitat for endangered wildlife. It will also add significant access and acreage for public outdoor recreation, as well as create opportunities for forest restoration, climate change mitigation and sustainable forestry. If acquired by the State, the intent is to add the Property to the Forest Reserve System. The Division will develop a comprehensive multi-use management plan, guided by community and stakeholder input.

Watershed management of the Kamehamenui Property will add to the landscape of public and private conservation and forest restoration projects dotting this majestic Maui landscape. Two watershed partnerships encompass the majority of Haleakalā (150,500 acres). The Property was once part of the Leeward Haleakalā Watershed Restoration Partnership (LHWRP), but was removed due to change in ownership, leaving a significant gap in watershed management. Nestled between Kula Forest Reserve and Haleakalā National Park, the Property is strategically located, and its acquisition is critical to achieve the overarching goal to restore the “mauna lei”, the band of forest that once encompassed Haleakalā. Restoring this contiguous lei of habitat around the mountain, will ensure biological connectivity and restore ecological services in the form of watershed function, endangered species recovery, forest product opportunity, and climate change resilience.

The County of Maui estimates the demand for water on the NW slopes of Haleakalā and Wailuku will increase by 46.5% by 2030. Kamehamenui contributes to the groundwater recharge of the Makawao aquifer that has been identified as a potential source to meet this demand. According to the USGS groundwater recharge modeling dataset, the Property currently contributes approximately 3.37 million gallons of water per day. The Division estimates that habitat management and reforestation efforts could increase water production to 4.19 MGD, which translates into an additional 296 million gallons of water per year.

Acquisition of the Kamehamenui Property will also provide important forest access for the public, as it is immediately adjacent to Kula Forest Reserve, one of the most popular forest recreation areas on Maui. Acquisition will provide an additional forest access from Kekaulike Avenue to this popular recreational area and could also become an extension of the recreational experience in Kula Forest Reserve through the development of new trails.

This project will protect the Property's ecosystems, including a native subalpine ecosystem in the upper elevations (>8000'), which are designated federal critical habitat for 10 rare plant and bird species. These areas are relatively intact and native species are expected to regenerate naturally once the area is protected from feral ungulates. These areas are expected to be important for species adaptation to climate change as habitats shift under changing conditions. Lower elevation portions of the property are well suited for reforestation with ecologically and economically valuable species such as koa (*Acacia koa*) and sandalwood (*Santalum haleakalae* var. *haleakalae*) that would provide for additional carbon sequestration at the site.

Once acquired, the Division is planning habitat management and habitat restoration to enhance recovery efforts for the endangered wildlife including the 'ua'u, or Hawaiian petrel (*Pterodroma phaeopygia sandwichensis*), nēnē or Hawaiian goose (*Branta sandvicensis*), Hawaiian hoary bat - 'ōpe'ape'a (*Lasirus cinereus semotus*), Maui parrotbill – kiwikiu (*Pseudonestor xanthophrys*), and the crested honeycreeper – 'ākohekohe (*Palmeria dolei*). Acquisition of the Property will also provide additional outplanting and recovery sites for several critically endangered plants species including the 'ahinahina or Haleakalā silversword (*Argyroxiphium sandwicense subsp. macrocephalum*). These areas will be vital for species migration due to climate change.

On the island of Maui, three wind energy complexes provide 72 MW of power, but have also resulted in incidental take of the federally listed endangered ua'u, nēnē, 'ōpe'ape'a, and Blackburn's sphinx moth (*Manduca blackburni*). Acquisition of the Kamehamenui Property will complement required mitigation being performed pursuant to the respective Habitat Conservation Plans for these species by protecting and restoring suitable habitat, managing threats, and increasing survival and reproductive success and contributing the overall recovery of those species. Additionally, keeping the Property undeveloped will ensure continued corridors for nesting seabirds between Haleakalā National Park and the ocean. Ua'u are highly impacted by artificial lights that can cause disorientation, resulting in grounding and predation of downed birds.

The Kamehamenui Property acquisition will increase fresh water drinking supplies, increase opportunity for forest recreation, mitigate impacts of climate change, protect unique ecosystems, and provide critical habitat for endangered species. The project will preserve open space and protect the natural resources of the iconic landscape of Haleakalā for the residents and visitors of Maui for present and future generations in perpetuity.

REMARKS:

The Division has secured funding from both state and federal sources for this acquisition as follows:

State Capital Improvement Project Appropriation:	\$4,000,000
U.S. Forest Service Forest Legacy Program:	\$3,830,000
U.S. Fish and Wildlife Service Habitat Conservation Plan:	\$2,000,000
TOTAL:	\$9,830,000

A draft warranty deed that has been negotiated for this acquisition is attached as **Exhibit B**, and details the various funding sources and management requirements that will govern the future management of the Property.

The Division was assisted in conducting due diligence for this acquisition by Land Division and the Office of the Attorney General. An appraisal of the Property was prepared by CBRE, Inc dated November 6, 2018. The initial appraisal determined the total fair market value of the property to be \$10,200,000.00. The appraisal was reviewed and accepted by both the U.S. Fish and Wildlife Service and U.S. Forest Service; both agencies accepted the fair market value and determined that the appraisal was compliant with the assignment and both the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA). A survey map and description for the Property was submitted to the State Surveyor for review and approval. Upon review by the State Surveyor, boundary discrepancies were discovered between the survey and existing records. The property surveyor, in consultation with the State Surveyor, revised the survey accordingly and delivered a corrected description and map, which was approved. The revised survey adjusted the boundary of the Property, resulting a total area of 3433.7495 acres more or less, an increase of approximately 157.0655 acres than what was previously contemplated for acquisition. The Division will obtain a final updated survey map and description for the property that will address revision of approximately five existing utility and waterline easements that were affected accordingly. The Division will also obtain a supplemental appraisal for the revised and increased area of the Property. In the event the fair market value increases due to the additional area, the purchase price will remain the same.

A title report for the Property was provided by TPL. Upon review of the report, the Division informed TPL, by letter dated November 9, 2018, of the exceptions that are acceptable to remain on title. Although not an exception on the title report, parcel (2) 2-3-005:002 is encumbered by an unrecorded Amended and Restated Grazing Lease and Hunting License Agreement (Lease), dated January 1, 2006, with Brendan Balthazar (Lessee). The Division does not object to the Lease under the conditions that the Lessee is in compliance, and the Lease document provided for review has not been amended, nor will be prior to closing. As a condition to closing, the Lessee will be required to execute a Certificate of Estoppel, a draft of which is attached as **Exhibit C**.

The Division believes that the use of the Property for grazing provided under this existing Lease can support the Division's long-term management objectives and funding requirements. With the overall wildfire threat in the region and to the Property, the Division plans to establish a network of managed fuel breaks, which may be maintained using prescribed grazing practices. Additionally, the Division anticipates restoring the forest over the course of several years and will need to manage the fuel loads during this period. The Lease provides the lessor the right to withdraw portions or all of the leased premises at the lessor's discretion for any purpose. The Division's management priorities may be compatible with a withdrawal of limited areas of the Property, phased over a period of time, rather than the withdrawal of the entire Property at once from the Lease. This may reduce the impacts to the Lessee's business operations, as well as provide for continued management of portions of the Property by the Lessee until the Division is prepared to assume management at the point of withdrawal. Prescribed grazing over the short-term in portions of the property may also support management of threats from encroachment by invasive weed species. Any hunting activities conducted pursuant to the Lease shall be subject to all applicable

laws and rules regarding hunting on State lands. To support the ongoing management of the Property and Lease, the Division is requesting delegation to the Chairperson to negotiate and amend the Lease, as may be necessary, appropriate, and agreed upon by the Department and Lessee.

TPL retained Ford & Associates, Inc. (Ford) to conduct a Phase I Environmental Site Assessment (ESA) for the Property. The Phase I ESA identified a recognized environmental condition (REC), described as potential substance spills or leaks from containers at three locations on the western portion of the Property. Conditions observed included surface staining that appeared as oil, as well as distressed vegetation in the immediately surrounding area. To address the REC, Ford developed a remediation plan to remove and dispose of the containers and contaminated soil. TPL conducted remediation of the affected areas, including the removal of contaminated soil, with residual contamination in limited volumes remaining in the subsurface at the three sites. To resolve the residual contamination Ford conducted an Environmental Hazard Evaluation and prepared an Environmental Hazard Management Plan (Management Plan). After review by the State Department of Health Hazard Evaluation and Emergency Response (HEER) Office, a determination of "No Further Action" (NFA) was issued on September 20, 2019,

Although not considered a REC, the Phase I ESA identified a dumpsite in a gulch on the Property. However, from observations of the site it appears that the dump consists of household refuse, with no evidence of hazardous substances or petroleum products. Ford, at TPL and the Division's request, surveyed the area and did not observe any hazardous materials present on the site. Additionally, the Phase I ESA also notes that portions of the Property are inaccessible due to terrain and heavy vegetation, preventing a thorough assessment of conditions in those areas, but this is not considered a REC. Ford prepared a new Phase I ESA to account for the increased land area, which resulted in no change from its previous findings.

In regard to the State's warranty deed form, the Seller has accepted the majority of the Department's standard provisions except for refusing to accept the indemnification for the release of hazardous materials. The Division agreed to the landowner's request, subject to Board approval, and the draft warranty deed for this acquisition omits provisions relating to the environmental condition of the Property entirely. The Attorney General has advised the Division about this matter and about the potential risks associated with the modification to the warranty deed. Land Division has strongly recommended that the hazardous material indemnification language be retained and required in the warranty deed for the Property to minimize the risk to the Department. The Division acknowledges the expressed concerns and has reviewed the potential risk as outline in the Phase I ESA. The Division believes that based on the historic low impact and rural use of the property (i.e.: as grazing and unimproved lands) as well as the intended management purpose as undeveloped wilderness, open space, and plans for forest restoration, this Property has a low risk associated with hazardous materials impacts. Additionally, with TPL's remediation of the REC sites, the Division believes that the extensive public benefits that will be realized from this acquisition substantially outweigh the risks that may result from the potential for environmental-related issues discussed above. Based on the above considerations, the Division respectfully requests that the Board approve the acquisition pursuant to the foregoing terms and conditions.

Furthermore, the Division believes that the proposed transaction sufficiently protects the State from potential liability. First, the Lease contains a general indemnity provision. As the Lessee has had possession and control of parcel 2-3-005:002 (which constitutes the majority of the Property) for a longer period of time than the Seller, the Division believes that this is an acceptable substitute for the warranty deed indemnity. Second, even if the warranty deed indemnity is removed, the State shall retain all rights to pursue potential claims against any appropriate party under law. Finally, the Division notes that the Lessee will be responsible for compliance with the Management Plan in their use and management of those areas.

A draft Purchase and Sale Agreement (PSA) between the State and TPL, attached as **Exhibit D**, is attached for Board's review and approval. Upon closing, the Division will enter into a management right-of entry for the Property. The Division will then proceed with conducting public hearings to add the Property to the Forest Reserve System. Upon completion, the Division will return to the Board to seek approval to designate the Property as part of the Forest Reserve System and obtain an Executive Order as appropriate.

RECOMMENDATION: That the Board:

1. Authorize the acquisition of the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:
 - A. The terms and conditions of the attached draft deed document, as may be amended;
 - B. Review and approval by the Department of the Attorney General;
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the issuance of a management right-of-entry permit to the Division of Forestry and Wildlife covering the subject area under the terms and conditions cited above, effective immediately upon acquisition by the State, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
 - C. Delegate authority from the Chairperson to the Maui Branch Manager to issue access permits for these parcels under Chapter 171, HRS.
3. Pursuant to Section 183-11, HRS, as amended, authorize the Division of Forestry and Wildlife to conduct a public hearing on the Island of Maui regarding the

proposed addition of the Property to the Forest Reserve System. Further, pursuant to 183-12, HRS, authorize the Chairperson to:

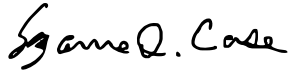
- A. Set the date, location and time of the public hearing; and
 - B. Appoint a hearing master(s) for the public hearing.
4. Delegate authority to the Chairperson to administer all aspects of the Amended and Restated Grazing Lease and Hunting License Agreement, dated January 1, 2006, with Brendan Balthazar.

Respectfully Submitted,



David G. Smith
Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

- Exhibit A: Property Map
- Exhibit B: Draft Warranty Deed
- Exhibit C: Draft Certificate of Estoppel
- Exhibit D: Draft Purchase and Sale Agreement

AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in any ways appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances, except as described on **Exhibit "C"**, attached hereto and made a part hereof.

The Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that the Grantor is lawfully seised in fee simple and possessed of the above-described Property that it has a good and lawful right and title to sell and convey the same as aforesaid, that the same is free and clear of all liens and encumbrances, except as noted herein and in **Exhibit "C"** hereto, and that it will and its successors and assigns, shall WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the claims and demands of all persons whomsoever.

The Grantor shall be responsible for payment of all real property taxes up to the date of execution of this Warranty Deed.

NOTICE OF FEDERAL PARTICIPATION

1. United States Department of Agriculture (USDA) Forest Service

Purpose & authority. The purpose of this acquisition is to effect the Forest Legacy Program in accordance with the provisions of the Cooperative Forestry Assistance Act of 1978, P.L. 95-313 as amended (codified at 16 U.S.C. 2101 *et seq.*) on the herein described land, which purposes include protecting environmentally important forest areas that are threatened by conversion to nonforest uses and for promoting forest land protection and other conservation opportunities. The purposes also include the protection and preservation of important scenic, cultural, fish, wildlife and recreational resources, riparian area, and other ecological values, and to ensure that the Property is available for the sustainable and cost-effective harvesting of forest products in a silviculturally sound manner, all of which meet the objectives of the Forest Legacy Program (FLP).

Transfer & disposal. This deed may be transferred or assigned only (i) to a government agency that (a) is eligible to hold this deed under the FLP, (b) is willing and able to hold this deed for the purpose for which it was created, and (c) expressly agrees to assume the responsibility imposed by the terms of this deed and (ii) with the consent of the State of Hawai'i, by its Board of Land and Natural Resources for the state lead agency, the Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW). If the deed holder ever ceases to exist or is no longer willing and able to hold this deed for the purpose for which it was created or carry out the responsibility imposed on the holder by the terms of this deed, the state lead agency must identify and select an appropriate entity to which this deed must be transferred.

The STATE OF HAWAI‘I, by its Board of Land and Natural Resources, the owner of the Deed, pursuant to the grant agreement “Kamehamehenui Forest Project” Grant Number 18-DG-11052021-217 awarded by the United States Department of Agriculture (USDA) Forest Service on June 27, 2018, to the grant recipient, STATE OF HAWAI‘I, DLNR/DOFAW, acknowledges that the USDA Forest Service Forest Legacy Program funding for this acquisition is authorized by the Cooperative Forestry Assistance Act of 1978, P.L. 95-313, as amended (codified at 16 U.S.C. § 2101 *et seq.*), and that the interest acquired cannot be sold, exchanged, or otherwise disposed. Except, however, the USDA Secretary of Agriculture (Secretary) may exercise discretion to consent to such sale, exchange, or disposition upon the grant recipient's tender of equal valued consideration acceptable to the Secretary and under the requirement that the United States is reimbursed the market value of the interest, proportional to its contribution in the original acquisition, at the time of disposal. The grant agreement is housed in the USDA Forest Service Pacific Southwest Region Office at 1323 Club Drive, Vallejo, California, 94592, or in an archival facility per Agency policy.

The USDA Forest Service’s proportionate share is 39%, which was determined by dividing the FLP’s contribution to the acquisition by the value of the acquisition, at the time it was acquired, and expressing the result as a percentage.

The market value of this fee simple interest or the portion thereof that is disposed shall be the market value of such interest immediately before the disposal as determined by an appraisal that meets the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and is completed by a certified general appraiser approved by the grant recipient and the USDA Forest Service Pacific Southwest Region Office.

The form of the USDA Forest Service’s reimbursement under this paragraph (whether it is received in cash or in kind) shall be in the sole and absolute discretion of the Secretary but shall in all events be used for FLP or similar conservation purposes. This fee simple deed shall not be deemed disposed in whole or in part until the USDA Forest Service receives reimbursement as provided in this paragraph.

No inaction or silence by the Secretary shall be construed as approval of a disposal or as an abandonment of this fee simple deed in whole or in part. Any purported disposal executed without the prior written consent of the Secretary will be null and void. The provisions of this paragraph shall survive any partial disposal.

If the deed owner is notified of a proposal to condemn all or any portion of the property subject to this fee simple deed, the grant recipient and the USDA Forest Service must immediately be notified.

Management objectives. The Property will be managed in a manner consistent with and in accordance with the FLP and a Multi-Resource Management Plan to ensure long-term sustainability and protection of the forest resources and other conservation values for which the Property was acquired. The initial plan will designate specific areas targeted for reforestation/afforestation, including a timeline to complete reforestation to achieve 75% cover across the Property within 10 years of acquisition, or as soon as silviculturally possible; subsequent plan updates will provide for maintenance of at least 75% forest cover thereafter.

There will be no surface disturbance of the property other than what is necessary for management activities which are needed for long-term forest health and sustainability. Disturbance must be limited but could include construction of new recreational or forest management roads or trails, construction or replacement of culverts or construction of structures that are necessary to meet the purposes of the acquisition including public access and forest-based recreation. There may be limited extraction of sand or gravel for onsite management activities. Such activities and construction will be outlined in the Multi-Resource Management Plan. Protection of the forest is the primary purpose of this acquisition; any management, structures, disturbance or alteration will be done only if needed for effective protection, management or restoration of the forest.

There will be no conveyance or subdivision of the subject property except that limited portions may be conveyed as part of bona fide boundary dispute resolutions in consultation with the appropriate Court. The holder of the subject property shall not enter into long term contracts, agreement, leases or easements that could impact the long-term title of this property or the purposes for which the property entered the FLP.

Ecosystem service markets. No agreements relating to ecosystem service markets shall be made regarding the Property that is or is likely to become inconsistent with the Purposes or Terms of this Deed, the terms of the FLP grant, State of Hawai‘i Forest Action Plan or other documents incorporated by reference. If the State of Hawai‘i wishes to enter such an agreement it must notify the USDA Forest Service explaining what the State proposes to do and explain why it believes market participation is compatible. The USDA Forest Service will respond with its denial or approval and include instructions if applicable.

2. U.S. Department of the Interior, Fish and Wildlife Service

The State of Hawai‘i, DLNR, acknowledges that the Kamehamenui Forest Acquisition, located in Maui County, State of Hawai‘i (the “Property”), was acquired, in part, with funds awarded by the U.S. Department of the Interior, Fish and Wildlife Service (the “USFWS”) including grant funds received from the Cooperative Endangered Species Conservation Fund Habitat Conservation Plan (HCP) Land Acquisition Grant Program (CFDA #15.615) established under Section 6 of the Endangered Species Act, 16 U.S.C. § 1535 (the “Program”). The Program is administered by the USFWS, Division of Wildlife and Sport Fish Restoration, and its successors and assigns. The Property is subject to all the terms and conditions of Grant Award F18AP00085 (Award), the purpose of which is to enhance recovery efforts for federally listed endangered species, including Hawaiian petrel (*Pterodroma sandwichensis*) (Hawaiian name - ua‘u), Hawaiian goose (*Branta sandvicensis*) (Hawaiian name - nēnē), Hawaiian hoary bat (*Lasiurus semotus*) (Hawaiian name - ‘ope‘ape‘a), and Blackburn’s sphinx moth (*Manduca blackburni*). A copy of the Award is kept on file at the offices of the USFWS, 911 NE 11th Avenue, Portland, Oregon 97232 and DLNR, Division of Forestry and Wildlife, 1151 Punchbowl Street, Room 325, Honolulu, Hawaii 96813.

DLNR acknowledges that the Property was acquired in part for the USFWS-approved purpose of protecting the Property in perpetuity to enhance recovery efforts for Hawaiian petrel, nēnē, Hawaiian hoary bat, and Blackburn’s sphinx moth. The purpose of this acquisition project

is to complement required mitigation being performed pursuant to the respective HCPs and to contribute to the long-term recovery of the covered species as well as for 10 additional endangered species. The acquisition is anticipated to protect and restore suitable habitat, increasing survival and reproductive success of those listed species. Acquisition and management of the Property is expected to result in an increase in the populations of each species, contributing to their overall recovery.

DLNR will develop a multi-resource management plan for the property which includes management strategies and recovery efforts to benefit federal listed species on the Property. The USFWS will be consulted during the development of the multi-resource management plan to ensure the forest management activities including but not limited to the harvesting of forest products will consider impacts to listed species. The Property possesses significant natural and open space values associated with habitat for fish and wildlife. DLNR’s responsibilities and the federal interest shall last in perpetuity and pass to any successors unless provided for otherwise through disposal pursuant to 2 C.F.R. §200.311.

DLNR, as a recipient of Award funds, hereby confirms its obligations and responsibilities with regards to the Property pursuant to the terms and conditions associated with the Award, including the obligation to obtain the consent of the USFWS prior to the conveyance of any interest in the Property or the use of the Property for any purpose inconsistent with the USFWS-approved purpose. In the event the Property is no longer necessary for the purpose of the Award, DLNR will request disposition instructions from the USFWS, which will be provided in accordance with 2 C.F.R. §200.311(c).

Funding contributions toward the total purchase of the Property are as follows:

Contributing Partner	Amount	% of total
State of Hawaii CIP	\$4,000,000	41%
U.S. Forest Service - Forest Legacy Program/DLNR	\$3,830,000	39%
U.S. Fish and Wildlife Service-HCP /DLNR	\$2,000,000	20%
Total	\$9,830,000	100%

DLNR shall not authorize or tolerate any activities on the Property that are incompatible with its originally authorized purpose, and will endeavor while working with partners, to stop these activities immediately should they occur without DLNR’s permission.

DLNR acknowledges that there must be no discrimination during the useful life of the project (43 C.F.R. 17.204(c)(2)).

IT IS MUTUALLY AGREED that the terms “Grantor” and “Grantee,” as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations, partnerships, or other entities and their and each of their respective successors in interest, heirs, executors, personal

representatives, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more grantors, or by two or more grantees, all covenants of such parties shall be and for all purposes deemed to be their joint and several covenants.

The parties agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, The Trust for Public Land, aforesaid, the Grantor herein, has caused these presents to be executed this ____ day of _____, 2020, and the STATE OF HAWAII, by its Board of Land and Natural Resources, the Grantee herein, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be executed this ____ day of _____, 20__, both effective as of the day, month, and year first above written.

THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit corporation

Approved by the Board of Land and Natural
Resources at its meeting(s) held on
_____.

Tily Shue, Senior Counsel
GRANTOR

APPROVED AS TO LEGALITY,
FORM, EXCEPTIONS, AND
RESERVATIONS:

STATE OF HAWAII

Deputy Attorney General

By _____
SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

Dated: _____

GRANTEE

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }

COUNTY OF _____ }

On _____ before me , _____,
Notary Public, personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that
by his/her/their signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____(Seal)

OPTIONAL

Description of Attached Document

Title or Type of Document: _____

Number of Pages: _____

Document Date: _____

Other: _____

EXHIBIT "A"

Legal Description of the Real Property

-ITEM I:

PARCEL 2

Being Portions of Royal Patent 4388, Land Commission Award 8452, Apana 6 to A. Keohokalole and Royal Patent 7453, Land Commission Award 8452, Apana 21 to A. Keohokalole; Situate at Kamehamenui and Kealahou 3 & 4, Makawao, Maui, Hawaii

Beginning at a ½" pipe at the Northwest corner of this parcel of land, along the East side of Kekaulike Highway (F.A.P. 13-A), being also the Southwest corner of Lot 40 of the Kamehameiki-Pulehuiki Homesteads, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PANE", being 17,037.83 feet South and 3,117.76 feet East and running by azimuths measured clockwise from true South:

1. 289° 33' 00" 2528.21 feet along Lots 40 and 44 of the Kamehameiki - Pulehuiki Homesteads, being also along Grant 3874 to Chi Lung and Grant 3873 to Ah Fu to a ½" pipe;

2. 290° 25' 52" 8890.57 feet along Grant 3502 to J. T. Baker to a cave at the bottom of Hapapa Gulch marked by a nail on rock;

Thence along centerline of gulch, along Royal Patent 8140, Land Commission Award Number 5230 to Keaweamahi, for the next five (5) courses, the direct azimuths and distances between points being:

3. 293° 35' 00" 1127.65 feet to a spike;

4. 294° 08' 45" 1258.20 feet to a ½" pipe;

5. 297° 46' 10" 260.02 feet to nail on rock;

6. 277° 07' 50" 161.42 feet to a "+" cut on rock;

7. 295° 52' 20" 1303.98 feet to a ½" pipe;



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

CIVIL ENGINEERS • SURVEYORS

501 SUMNER STREET, SUITE 521
HONOLULU, HAWAII 96817-5031

1871 WILI PA LOOP, SUITE A
WAILUKU, MAUI, HAWAII 96793

100 PAUAAHI STREET, SUITE 207
HILO, HAWAII 96720

8. 299° 27' 30" 3050.18 feet along Royal Patent 8140, Land Commission Award Number 5230 to Keaweamahi;
9. 306° 47' 00" 5640.30 feet along same to a point being an azimuth and distance of 126°47' 890.70 feet from a peak called Kilohana marked by a "K" on a large lava rock;
10. 33° 46' 30" 7959.00 feet along the Hawaii Volcano National Park (CSF 4532), being also along the remainder of R.P. 4388, L.C. Aw. 8452, Ap. 6 to A. Keohokalole and R.P. 7453, L.C. Aw. 8452, Ap. 21 to A. Keohokalole to a 1-1/4" pipe (fnd);
11. 40° 10' 30" 463.07 feet along Government Land being also along former Kahikinui Forest Reserve to a 1-1/4" pipe (fnd);
12. 127° 41' 00" 6365.00 feet along Government Land being also along Kula Forest Reserve;
13. 121° 43' 00" 2830.00 feet along same;
14. 135° 31' 41" 6923.48 feet along same to a fence post;
15. 134° 27' 30" 2731.80 feet along Grant 9325 Apana 3 to Haleakala Ranch Company;
16. 135° 09' 00" 1294.00 feet along Grant 4289 to Antone C. de Silva;
17. 134° 56' 20" 617.84 feet along Grant 3868 to Antone dos Reis;
18. 129° 12' 45" 883.83 feet along same to a 1/2" pipe (fnd);

-2-



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

CIVIL ENGINEERS • SURVEYORS

501 SUMNER STREET, SUITE 521
HONOLULU, HAWAII 96817-5031

1871 WILI PA LOOP, SUITE A
WAILUKU, MAUI, HAWAII 96793

100 PAUAHI STREET, SUITE 213
HILO, HAWAII 96720

19. 129° 35' 30" 1613.80 feet along Homestead Road to a ½" pipe (fnd);

20. 129° 01' 15" 657.53 feet along portion of Lot 1-A of the Kealahou Homesteads (Reg. Map 2239) to a ½" pipe;

Thence along the East side of Kekaulike Highway (F.A.P. 13-A) on a curve to the right with a radius of 1402.50 feet, the chord azimuth and distance being:

21. 228° 27' 17" 109.89 feet;

22. 230° 42' 00" 1045.10 feet along the East side of Kekaulike Highway (F.A.P. 13-A) to a concrete monument (fnd);

Thence along the East side of Kekaulike Highway (F.A.P. 13-A) on a curve to the left with a radius of 507.50 feet, the chord azimuth and distance being:

23. 213° 39' 20" 297.51 feet to a ½" pipe (fnd);

24. 281° 16' 00" 215.56 feet along Maui Electric Co. Ltd. Kula Substation No. 13, being also along the remainder of R.P. 4388, L.C. Aw. 8452, Ap. 6 to A. Keohokalole to a ½" pipe (fnd);

25. 183° 34' 30" 200.00 feet along same to a ½" pipe (fnd);

26. 101° 16' 00" 202.36 feet along same to a ½" pipe (fnd);

27. 183° 34' 30" 435.89 feet along the East side of Kekaulike Highway (F.A.P. 13-A);



28. 273° 34' 30" 40.00 feet along the remainder of R.P. 4388, L.C. Aw. 8452, Ap. 6 to A. Keohokalole;
29. 183° 34' 30" 30.00 feet along same;
30. 93° 34' 30" 40.00 feet along same;
31. 183° 34' 30" 240.93 feet along the East side of Kekaulike Highway (F.A.P. 13-A), to the point of beginning and containing a gross area of 3,446.536 acres, more or less and a net area of 3,433.722 acres, more or less.

Exclusions:

a.	TMK: 2-3-05: 07	9.192 Acres
b.	TMK: 2-3-05: 08	3.622 Acres
		<u>12.814 Acres</u>

Subject, However, to the following Easements:

1. Easement A-1 (28,057 sq. ft.) for access purposes in favor of Parcels 7 and 8 of Tax Map Key 2-3-05.
2. Easement U-1 (18,103 sq. ft.) for utility purposes in favor of Parcels 7 and 8 of Tax Map Key 2-3-05.
3. Easement W-1 (21,687 sq. ft.) for waterline purposes in favor of Parcel 7 of Tax Map Key 2-3-05.
4. Easement W-2 (18,779 sq. ft.) for waterline purposes in favor of Parcel 8 of Tax Map Key 2-3-05.
5. Easement C-1 (156,700 sq. ft.) for view corridor purposes in favor of Parcel 8 of Tax Map Key 2-3-05.
6. Easement 20 (18,990 sq. ft.) for electrical and communication purposes in favor of Maui Electric Company Ltd.
7. Easement 21 (564 sq. ft.) for electrical and communication purposes in favor of Maui Electric Company Ltd.





Description Prepared By:

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

 *Erik S. Kaneshiro* **EXP 04/20**

ERIK S. KANESHIRO
Licensed Professional Land Surveyor
Certificate No. 9826

Honolulu, Hawaii
January 11, 2002
Rev. March 10, 2020
TMK: (2) 2-3-05: 02
X:\19-349\DESC\PARCEL 2.docx



BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR: SHIZUKA ASAKAWA, Trustee of the Shizuka Asakawa Revocable Trust Agreement, dated April 19, 2016, with full powers to sell, mortgage, lease or otherwise deal with the land

GRANTEE: THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation, whose address is 101 Montgomery Street, Suite 900, San Francisco, CA 94104

DATED: _____
RECORDED: _____

-ITEM II:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 4388, Land Commission Award Number 8452, Apana 6 to A. Keohokalole) situate, lying and being at Kamehamenui, Makawao, Island and County of Maui, State of Hawaii, being PARCEL 14, and thus bounded and described as per survey of Erik S. Kaneshiro, Land Surveyor, with Austin, Tsutsumi & Associates, Inc., dated January 11, 2002, to-wit:

Beginning at the northwest corner of this parcel of land, along the east side of Kekaulike Highway (F.A.P. 13-A), the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PANE", being 17,278.28 feet south and 3,102.74 feet east and running by azimuths measured clockwise from true South:

- 1. 273° 34' 30" 40.00 feet along the remainder of R.P. 4388, L.C. Aw. 8452, Ap. 6 to A. Keohokalole;
- 2. 3° 34' 30" 30.00 feet along same;
- 3. 93° 34' 30" 40.00 feet along same;
- 4. 183° 34' 30" 30.00 feet along the east side of Kekaulike Highway (F.A.P. 13-A), to the point of beginning and containing an area of 1,200 square feet, more or less.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR: SHIZUKA ASAKAWA, Trustee of the Shizuka Asakawa Revocable Trust Agreement dated April 19, 2016, with full powers to sell, mortgage, lease or otherwise deal with the land

GRANTEE: THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation, whose address is 101 Montgomery Street, Suite 900, San Francisco, CA 94104

DATED: _____
RECORDED: _____

EXHIBIT “B”

Survey Map, C.S.F. No.

EXHIBIT "C"

The land described on Exhibit "A" and Exhibit "B" hereto is subject to the following:

1. Mineral and water rights of any nature.
2. Any and all existing roadways, trails, easements, rights of way, flumes and irrigation ditches.
3. -AS TO ITEM I:-

(A) GRANT

TO: MAUI ELECTRIC COMPANY, LIMITED
DATED: March 14, 1978
RECORDED: Liber 12791 Page 735
GRANTING: a right and easement for utility purposes over Easements "20" and "21"

(B) GRANT

TO: MAUI ELECTRIC COMPANY, LIMITED
DATED: March 13, 1978
RECORDED: Liber 13521 Page 90
GRANTING: an easement of right-of-way over, under and across Easements "20" and "21" for pole and wire lines

(C) GRANT

TO: ROBERT GORDON VON TEMPSKY, JR. and MARY B. VON TEMPSKY, Trustees of the R. Gordon Von Tempsky, Jr. Trust established by Trust Agreement dated April 11, 1979, as amended
DATED: November 26, 2001
RECORDED: Document No. 2001-195576
GRANTING: a nonexclusive easement in favor of Tax Key (2) 2-3-005-007 for access purposes over Easement "A-1", more particularly described therein

(D) GRANT

TO: ROBERT GORDON VON TEMPSKY, JR. and MARY B. VON TEMPSKY, Trustees of the R. Gordon Von Tempsky Jr.

Trust established by Trust Agreement dated April 11, 1979, as amended

DATED: November 26, 2001
RECORDED: Document No. 2001-195578
GRANTING: a nonexclusive right and easement in favor of Tax Key (2) 2-3-005-007 for utility purposes over Easement "U-1", more particularly described therein

(E) GRANT

TO: ROBERT GORDON VON TEMPSKY, JR. and MARY B. VON TEMPSKY, Trustees of the R. Gordon Von Tempsky, Jr. Trust established by Trust Agreement dated April 11, 1979, as amended

DATED: November 26, 2001
RECORDED: Document No. 2001-195580
GRANTING: a nonexclusive easement for waterline purposes over Easement "W-1", more particularly described therein

(F) GRANT

TO: ROBERT GORDON VON TEMPSKY, JR. and MARY B. VON TEMPSKY, Trustees of the R. Gordon Von Tempsky, Jr. Trust established by Trust Agreement dated April 11, 1979, as amended

DATED: November 26, 2001
RECORDED: Document No. 2002-021609
GRANTING: a nonexclusive easement for waterline purposes over Easement "W-2", more particularly described therein

(G) The terms and provisions contained in the following:

INSTRUMENT: DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

DATED: November 26, 2001
RECORDED: Document No. 2002-021610

(H) GRANT

TO: ROBERT GORDON VON TEMPSKY, JR. and MARY B. VON TEMPSKY, Trustees of the R. Gordon Von Tempsky, Jr. Trust established by Trust Agreement dated April 11, 1979, as amended

DATED: November 26, 2001
RECORDED: Document No. 2002-021611
GRANTING: a nonexclusive easement for access purposes over Easement "A-1", more particularly described therein

(I) GRANT

TO: ROBERT GORDON VON TEMPSKY, JR. and MARY B. VON TEMPSKY, Trustees of the R. Gordon Von Tempsky, Jr. Trust established by Trust Agreement dated April 11, 1979, as amended

DATED: November 26, 2001
RECORDED: Document No. 2002-021612
GRANTING: a nonexclusive right and easement for utility purposes over Easement "U-1", more particularly described therein

(J) GRANT

TO: MAUI ELECTRIC COMPANY, LIMITED, and HAWAIIAN TELCOM, INC.

DATED: May 13, 2014
RECORDED: Document No. A-52910750
GRANTING: an easement for utility purposes

(K) GRANT

TO: STATE OF HAWAII, DEPARTMENT OF AGRICULTURE

DATED: October 23, 2015
RECORDED: Document No. A-58000819
GRANTING: an easement for waterline purposes over Easement "2", being more particularly described therein, as shown on map attached thereto

(L) GRANT

TO: STATE OF HAWAII, DEPARTMENT OF AGRICULTURE

DATED: October 23, 2015
RECORDED: Document No. A-58000820
GRANTING: an easement over Easement "W-8" for waterline purposes, being more particularly described therein, as shown on map attached thereto

(M) Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

4. GRANT

TO: VON TEMPSKY FP, a Hawaii limited partnership, and KULA RIDGE MAUKA LLC, a Hawaii limited liability company

DATED: January 9, 2009, September 2, 2009 and September 3, 2009

RECORDED: Document No. 2009-162580

GRANTING: an easement for the transmission of water purposes, being more particularly described therein

5. Encroachments or any other matters as shown on survey map(s) prepared by Erik S. Kaneshiro, Land Surveyor, with Austin, Tsutsumi & Associates, Inc., dated January 11, 2002.
6. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
7. Unrecorded Amended and Restated Grazing Lease and Hunting License Agreement dated January 1, 2006 with Brendan Balthazar as Lessee.

EXHIBIT C

Tax Map Key No. (2) 2-3-005:002

ESTOPPEL CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That, as of this ____ day of _____, 2020, BRENDAN BALTHAZAR, whose address is _____, hereinafter referred to as the "Lessee," certifies to the STATE OF HAWAII, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, that:

(1) The Lessee is the lessee under that certain unrecorded Amended and Restated Grazing Lease and Hunting License Agreement ("Lease"), effective January 1, 2006, which expires on December 31, 2020; and

(2) A true and correct copy of the Lease is attached hereto as Exhibit 1; and

(3) Said Lease has never been amended, modified, or supplemented; and

(4) To date, the Lessee has not exercised the option to extend the term of the Lease for one (1) additional ten (10) year period pursuant to Paragraph 39 of the Lease; and

(5) Shizuka Asakawa, as Trustee of the Shizuka Asakawa Revocable Trust Agreement, dated April 19, 2016, is the current Lessor under the Lease; and

(6) The Lessee is not in default in any respect as of this date, nor has any event occurred which with the passage of time or the giving of notice would constitute a default; and

(7) The Lessee is not aware of the Lessor being in default in any respect as of this date, nor has any event occurred which with the passage of time or the giving of notice would constitute a default; and

(8) There are no claims for damages, rents due, or other liability which the Lessee is aware of against the Lessor arising out of Lease or performance of the terms, covenants or conditions of the Lease; and

(9) The Lessee has not undertaken or initiated the undertaking of any "Lienable Construction," as that term is

AMENDED AND RESTATED GRAZING LEASE AND HUNTING LICENSE

AGREEMENT

This Grazing Lease Lease ("Lease") is made effective as of January 1, 2006, and is by and between KJZ LLC, a Hawaii limited liability company, hereinafter called "Lessor", and Brendan Balthazar, hereinafter called "Lessee".

Whereas, Lessor is the owner of certain land located on the island of Maui, state of Hawaii;

Whereas, Lessee is desirous of utilizing Lessor's property for grazing livestock and the operation of a ranch; and

Whereas, Lessor and Lessee, entered into that Grazing Lease and Hunting License Agreement, effective January 1, 2006, with a term expiring on December 31, 2015, and the parties desire to amend and restate such agreement and extend its term by five years by entering into this Lease, which expires as set forth below on December 31, 2020;

Now, therefore, in consideration of the rent hereinafter set forth and of the covenants and conditions herein contained and on the part of the Lessee to be kept, observed and performed, the parties hereto agree as follows:

1. Lease of Premises. Subject to the terms and conditions contained in this Lease, Lessor does hereby demise and lease to the Lessee the lands located in the District of Kula, island and county of Maui, state of Hawaii, and designated as Maui tax key nos. 2-3-005-002-0000 (area approximately 3,335 acres (hereinafter referred to as the "Premises"), to have and to hold the Premises unto the Lessee, together with the water system, pipes, tanks, troughs, and other similar equipment or improvements on the Premises, for grazing and cattle ranch purposes only.

Reserving, however, unto the Lessor, the following:

(i) All prehistoric and historic remains found in, on or under the Premises.

(ii) The ownership of improvements of whatever kind or nature, including but not limited to fences and stock water systems located on the Premises prior to or on the commencement date of this Lease, excluding those improvements constructed during the term of the Lease unless otherwise provided herein.

(iii) The right or privilege of withdrawing from the operation and effect of this Lease, at any time or times during the Term, all or any portion of the Premises of the Lessor's own selection for any purposes, Lessor, in its sole and absolute discretion may deem appropriate; provided, however, the exercise of such right or privilege of withdrawal shall be conditioned upon (1) a reduction in the rent herein reserved for the remainder of the then rental period in the proportion that the value of the land withdrawn shall bear to the value of the entire land under this Lease prior to such withdrawal, such values to be based on the livestock "carrying capacities" of such land, as determined by the parties by mutual agreement, or, failing agreement, by appraisers or arbitrators as hereinafter provided, (2) construction and maintenance by the Lessor of any fencing required by reason of the exercise of this withdrawal privilege, (3) payment to Lessee of the Lessee's reasonable documented undepreciated material and labor costs for any improvements built on the withdrawn land either during the first two years of the initial lease term or thereafter, provided that documentation of such costs are provided to Lessor within twelve (12) months of such costs being incurred (depreciated proportionately over the initial lease term for costs incurred during the Term or, as the case may be, over the extended lease term for costs incurred during the extended lease term) and (4) Lessor giving Lessee twelve (12) months prior notice of such withdrawal. Where the portion so withdrawn renders the remainder unsuitable for the use or uses for which the Premises 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 a reasonable time period.

(iv) The right, at any time, with reasonable notice and without compensation, to take possession of any part of the Premises which may be required for laying out and constructing new roads or improving or changing the line and grade of old roads, and taking such soil, rock or gravel as may be necessary for the construction or improvement of any road; provided, however, that Lessee shall not be required to erect and maintain fences along newly constructed roads; but if the Lessee shall deem such fencing desirable and the Lessor or other tenants fail or refuse to erect and/or maintain such fences within a reasonable time following the request to do so by the Lessee, the Lessee may perform such work and deduct the costs thereof from the rental payment or payments next thereafter due to the Lessor; and provided, further, that where the amount of land so taken for roads exceeds two acres in area, there shall be a reduction in the rent herein reserved for the remainder of the then rental period in the proportion that the value of the land withdrawn shall bear to the value of the entire land under this Lease prior to such withdrawal, such values to be based on the livestock "carrying capacities" of such land, as determined by the parties by mutual agreement, or, failing agreement, by appraisers or arbitrators as hereinafter provided.

(v) The right and privilege to issue written permits to individuals to hunt, subject to the rules and regulations issued by the Hawaii State Department of Agriculture; provided, however, that the parties hereto acknowledge that Lessee is obtaining hunting license rights as provided for in more detail in the last paragraph of the Lease, which the parties agree and acknowledge do not represent an interest in real property.

2. Term. This Lease shall continue for a term ("Term") of ten (10) years commencing on January 1, 2006, and expiring on December 31, 2020.

3. Rent. Rent payable by Lessee to Lessor for the Term shall be One Thousand Two Hundred Dollars (\$1,200) per month, representing a total rental amount due every six months of \$7,200. Lessee shall pay to Lessor, in arrears, the rent for successive six-month periods of the Term, with the first payment being due on or before July 1, 2006

4. Fencing. Lessee will, wholly at Lessee's own cost and expense, keep and maintain in good order and in a stock-proof condition throughout the period of this Lease the fences constructed by Lessee and those now existing on the Premises. Lessee will maintain and, if necessary, construct, at its own cost and expense, such fences as may be required for Lessee's use of the Premises by any law, rule, regulations or ordinance now in force or that may hereafter be enacted.

5. Taxes, Assessments, Etc. for Lessee's Operations. The Lessee shall pay or cause to be paid, when due, all taxes, rates, assessments and other outgoings of every description with respect to Lessee's use and operation of the Premises, during the term of this Lease.

6. Repair and Maintenance. Lessee will, at Lessee's own expense, at all times during the said term, maintain well and substantially repair, maintain, amend, and keep the Premises and improvements thereon covered by this Lease in good order, condition and repair, reasonable wear and tear excepted, and in a strictly clean and sanitary condition. It is agreed and understood that Lessee shall not dispose of rubbish or any waste materials anywhere on the Premises. Lessee will allow the Lessor or its agents free access to the Premises at all reasonable times for the purpose of examining the same and determining whether the covenants herein are being fully observed and performed, and will make good at Lessee's own cost and expense all repairs and amendments reasonably necessary of which notice shall be given within thirty (30) days after the giving of such notice; or if such repairs cannot be reasonably completed within said thirty (30) days, Lessee shall proceed diligently to complete such repairs as soon as reasonably possible thereafter; and shall

protect and hold harmless the Lessor and the Premises from any and all liens of any kind or character which may be levied for labor performed in connection with the maintenance of the Premises, and will indemnify the Lessor against all actions, suits, damages, and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of all laws, ordinances, rules and regulations, or of this covenant.

7. Compliance with Laws. 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 Premises, now in force or which may hereinafter be in force.

8. Utility Services. 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 the Lessee's use of the Premises relates or causes, regardless of whether such amounts are assessed to or initially payable by the Lessor or Lessee. The parties hereby expressly agree and acknowledge that the Lessee is not expected to separately contract for or use these services and that this provision is intended to only apply if the Lessee separately contracts for these services or otherwise uses them.

9. Inspection of Premises. In addition to any express and specific rights provided for herein, 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.

10. Liens and Recording of Lease. The Lessee will not commit or suffer any act or neglect whereby the Premises or any improvement thereon shall become subject to any attachment, lien, charge or encumbrance whatsoever, and shall indemnify and hold harmless the Lessor from and against all such attachments, liens, charges and encumbrances and all expenses resulting therefrom. Neither this Lease nor a memorandum thereof shall be recorded against the property.

11. Character of Use. The Lessee shall use or allow the Premises hereby demised to be used solely for grazing cattle and other livestock ranch purposes. The Premises shall not be used for purposes not specifically authorized in writing by the Lessor, which authorization may be withheld by Lessor in its sole and absolute discretion. The parties acknowledge that the Lessee is receiving certain hunting license rights in the last paragraph of the Lease, and that such rights do not comprise an interest in real property.

12. Assignments, Etc. The Lessee shall not transfer, assign or permit any other person to occupy or use the Premises or any portion thereof,

or transfer or assign this Lease or any interest therein, either voluntarily or by operation of law, and any such occupancy, use, transfer or assignment so made shall be null and void and shall entitle Lessor, immediately and without notice, to terminate this Lease and be restored to the sole, exclusive possession of the Premises.

13. Mortgage. The Lessee will not mortgage, hypothecate or pledge the Premises or any portion thereof or any interest therein without the prior written approval of the Lessor, which approval may be withheld in the sole discretion of Lessor, and any such mortgage, hypothecation or pledge without such approval shall be null and void.

14. Indemnity. The Lessee will 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 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, including aerial drift or the use of chemicals, pesticides, herbicides, fungicides, mematicides and plant growth regulations (hormones), and from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

15. 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 including reasonable attorney's fees; furthermore, the Lessee shall and will pay all costs and expenses including reasonable attorney's fees that 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 rent, taxes and any and all other charges.

16. Liability, Property Damage and Insurance. The Lessee will indemnify and hold the Lessor harmless from claims or demands by third persons and from any losses or damages, including without limitation reasonable attorney's fees, for property damages or personal injury or death arising out of any accident or happening on or from the Premises, including nonexclusive access rights-of way, and will at its own expense, carry and keep in force during the term of the Lease, or any extension, a policy or policies of landlord's, owner's, and tenant's liability insurance or the equivalent with minimum limits of not less than Three Million Dollars (\$3,000,000.00) each

occurrence for bodily injury, not less than One Million Dollars (\$3,000,000) per occurrence for property damage and not less than Three Million Dollars (\$3,000,000) general aggregate combined single limit for bodily injury and property damage liability, said policy or policies to name the Lessor as additional insured and require thirty (30) days notice to the Lessor of any intent on the part of the insurer to cancel said policy or policies. The Lessee shall furnish the Lessor with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, 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 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 adequacy of the coverage afforded by the liability insurance shall be subject to review by the Lessor from time to time, and if it appears in such a review that a prudent businessman in Hawaii operating a business similar to that operated by the Lessee on the Premises would increase the limits of his liability insurance, the Lessee shall forthwith increase such limits to that extent.

17. Fire Insurance. The Lessee will insure and keep insured against loss or damage by fire at its own expense with extended coverage and in a sum as near as may be practicable to the value thereof all buildings placed upon the Premises with an established insurance company or companies satisfactory to the Lessor, the loss, if any, to be payable to the Lessor; and in case the said buildings or any part thereof shall at any time during the said term be destroyed or damaged by fire, then and as often as the same shall happen all monies received in respect of such insurance shall with all convenient speed be laid out in rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner, according to the plans of the buildings so destroyed or damaged by fire or according to such other plan or in such other manner as shall be previously approved by the Lessor in writing. Lessee will at all times furnish the Lessor with satisfactory evidence that such policy or policies is in full force and effect. Such policy or policies shall require thirty (30) days written notice to the Lessor of the insurer's intent to cancel.

18. Water System. The Lessee will operate the demised water system in an efficient manner, and will make such repairs thereto at its own expense as may become necessary to maintain the said system, and that at the expiration of the term of this Lease it will return to the Lessor the said water system substantially as it now is, natural wear and deterioration excepted, and that it will pay all water charges as metered against the said system. Any improvements in the water system that the Lessor makes and pays for

consistent with the provisions of Section 1(iii)(3) shall remain the property of the Lessee to the extent such improvements have not been fully depreciated. As provided for in more detail in Section 24, it is the intent of the parties that, to the extent this lease terminates for any reason when the Lessee has any ownership interests in such improvements, the Lessor shall have the option of either purchasing such improvements for the undepreciated cost of them or providing the Lessee the right to remove such improvements.

19. Breach. Time is of the essence of this agreement and if the Lessee shall fail to yield to pay any rent or any part thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be attached or otherwise be taken by operation of law, or if any assignment 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 thirty (30) 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, 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 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.

20. Construction Bond. Lessee will, before undertaking any "Lienable Construction" (as defined below) on the Premises, notify Lessor of the fact that such Lienable Construction is to be undertaken. Lessor may, at such time, require Lessee to display the ability to pay for any such Lienable Construction, which determination of ability to pay shall be made by Lessor in its reasonable judgment. If, in Lessor's reasonable judgment, Lessee does not have the ability to pay for the Lienable Construction in question, Lessee shall deposit with Lessor a bond or certificate in form and amount with surety reasonably satisfactory to Lessor, guarantying the completion of the applicable Lienable Construction, free and clear of all mechanics' and materialmen's liens. For purposes hereof, the term "Lienable Construction" shall mean the construction of any alteration, addition or improvement on the Premises (i) which costs in excess of Twenty Thousand Dollars (\$20,000) (or, when aggregated with all other alterations, additions or improvements to be constructed at any one time, aggregate in excess of Twenty Thousand Dollars (\$20,000)) and (ii) with respect to which a statutory mechanics' or materialmen's lien may be asserted.

21. 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, any county or any governmental authority, the rent 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 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 Premises occupied by the Lessee. Where the portion so taken renders the remainder unsuitable for the use or uses for which the Premises 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.

22. Improvements. The Lessee shall not at any time during said term construct, place, maintain and install on the Premises any building, structure or improvement of any kind and description whatsoever except with the prior written approval of the Lessor and upon such reasonable conditions as the Lessor may impose in its sole discretion.

23. Quiet Enjoyment. The Lessor hereby covenants and agrees with the Lessee that upon payment of 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 the use of the Premises for the term hereof, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through or under it.

24. Expiration of Term of this Lease. On the expiration of the term of this Lease or sooner termination as herein provided, or upon termination for whatsoever cause, Lessee will peaceably and quietly leave and surrender and deliver up to the Lessor possession of the Premises, together with all improvements thereon, in good repair, order and condition, reasonable wear and tear and damage by acts of God excepted. Lessee shall, however, remove all improvements at its cost if Lessor requires Lessee to do so; provided further on the expiration on the term hereunder the ownership of all water system improvements and all fences and roadway improvements, at Lessor's option, shall revert to Lessor and shall be the property of the Lessor. If and to the extent there is any such reversion to the Lessor, to the extent there is a reversion of undepreciated costs, consistent with the provisions of Section 1(iii)(3), Lessor shall pay for the undepreciated costs.

25. Condition of Premises.

(a) Lessee acknowledges that it is familiar with the Premises and has made such independent investigations and reviewed such documents as it deems necessary or appropriate concerning the use of the Premises for grazing and ranching purposes, including, but not limited to, any desired investigations or analysis of the economic value of the Premises or the feasibility of utilizing the Premises for the purposes intended by Lessee and permitted by Lessor; the size, dimensions, location or topography of the Premises; any surface, soil, subsoil or other physical conditions of or affecting the Premises; all present or future governmental laws, statutes, rules, regulations, ordinances, limitations, restrictions or requirements concerning the use, density, location or suitability of the Premises (collectively "Regulations"), including, but not limited to, zoning, subdivision, land use, environmental, ecological, building code, or other such Regulations; the necessity or availability of any general or special plan amendments, rezoning, zone variances, conditional use permits, building permits, environmental impact reports, parcel or subdivision maps or any other governmental permits, approvals or acts (collectively the "Permits"); the necessity or existence of any dedications, fees, charges, costs or assessments that may be imposed in connection with any Regulations or the obtaining of any required Permits; all other matters concerning the conditions and use of the Premises.

(b) Lessee is relying solely upon its own inspection, investigation and analysis of the foregoing matters in executing this Lease and is not relying in any way upon any representations, statements, agreements, warranties, studies, reports, descriptions, guidelines or other information or material furnished by Lessor or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding any of the foregoing matters.

(c) Lessee will be using the Premises "as is", in its present state and condition, without representation by Lessor or its representatives as to any matter, whether or not expressly mentioned above. No patent or latent condition affecting the Premises in any way, such as, but not limited to, the matters listed in subparagraph (a) of this paragraph 25, whether or not known or discoverable or hereafter discovered, shall affect Lessee's rights or obligations as set forth in this Lease, nor shall give rise to any right of damages or otherwise against Lessor.

26. Good Husbandry, Conservation Program and Hazardous Materials.

(a) The Lessee shall at all times practice good husbandry with regard to the use of the Premises for the use herein permitted and shall carry out a program of conservation developed by the Lessee. Good husbandry and conservation includes taking reasonable steps to ensure that clear pasture

areas do not become overtaken by large trees or other growths, but does not include reclaiming portions of pasture that have already been overtaken by large trees, eucalyptus, pine and wattle.

(b) The Lessee will not commit or suffer any strip or "waste" or any unlawful, improper or offensive use of the Premises or any part thereof. The term "waste" shall be deemed to include, but shall not be considered restricted to (1) overgrazing to the detriment of the whole or any portion of the Premises; (2) suffering the Premises or any portion thereof to become unduly eroded without reasonable efforts being taken to correct the same; (3) the severance of any trees whose diameter exceeds 10 inches now or hereafter growing on the Premises, except by written permission of the Lessor; and (4) suffering any noxious weed, shrub or tree coverage to remain or become established on lands which are economically feasible for grazing use; the term "noxious weeds, shrub or tree" shall be deemed to include, but shall not be considered restricted to such pests as fire bush, Gorse, Black Wattle, Eucalyptus, Guava and Spiny Amaranth, Broom Sedge grass, and cane grass; provided, however, the Lessee shall not be considered to have committed waste for suffering the growth on said land, or any portion thereof, of any plant, shrub, or tree of a noxious character which is not referenced herein or which has not been designated noxious by the State Department of Agriculture, or its successor or which has not been designated noxious by Lessor and notice in writing of such designation being given the Lessee by the Lessor; provided further, the Lessee will practice accepted principles of good husbandry, pest control and good pasture management.

(c) Lessee covenants that (i) the Premises shall be kept free of Hazardous Materials and (ii) neither Lessee nor any occupant of the Premises shall use, transport, store, dispose of or in any manner deal with Hazardous Materials on the Premises. "Hazardous Material" as used herein shall mean any hazardous or toxic substance or material that is or becomes regulated by any local, state or federal authority.

27. Force Majeure. If and to the extent that the Premises are affected by earthquake, fire, flood, volcanic eruption, civil disturbance, war, or act of God, which renders the Premises unusable for Lessee's purpose (grazing and ranching operations), then upon thirty (30) days prior written notice to the Lessor, Lessee may suspend or terminate its obligations under this Lease.

28. Arbitration. If at any time during the term of this Lease or after termination thereof, any dispute, difference or question shall arise between the parties hereto with respect to the rental amount, land value, or the provisions, construction, meaning or effect of this Lease or anything herein contained or the rights or limitations of the parties under this Lease, every such dispute, difference or question shall, at the desire of any party, be submitted to

and be determined by a single arbitrator, if the parties so mutually agree, or in the absence of such agreement by a board of three impartial arbitrators. Either the single arbitrator or the two arbitrators appointed by the parties as hereinafter provided in case a single arbitrator cannot be agreed upon shall be persons experienced and knowledgeable, in the case of disputes involving rental or land value, in the appraisal of real property, or in all other disputes, in agricultural land management matters. In case a single arbitrator cannot be agreed upon, the impanelment of a board of three arbitrators shall be as follows: The party desiring to have the matter in dispute submitted to arbitration shall give the other party written notice of such desire and shall name one arbitrator in such notice. Within twenty (20) days after the receipt of such notice, the other party shall name a second arbitrator, and in case of failure to do so the party who first named an arbitrator may have the second arbitrator selected or appointed by a judge of the Circuit Court of the Second Circuit, State of Hawaii, and the two arbitrators so appointed in either manner shall select and appoint a third arbitrator, and if the two arbitrators so appointed shall fail to appoint the third arbitrator within twenty (20) days after the naming of the second arbitrator, either party may have the third arbitrator selected or appointed by one of said judges, and the three arbitrators so appointed shall thereupon proceed to determine the matter in question, disagreement or difference, and the decision of any two of them shall be final, conclusive and binding upon the parties, all as provided in Chapter 658, Hawaii Revised Statutes, as the same may be amended, and judgment may be entered upon any such decision by the Circuit Court as provided in said statute. In all cases of arbitration, each of the parties hereto shall pay the expense of its own attorneys and witnesses, and all other expenses of such arbitration shall be divided equally between the parties. If the issue or dispute submitted to arbitration involves the payment of money, the amount in dispute shall be deposited by the party to be charged with payment into an interest-bearing account, with an institution acceptable to both parties, pending the completion of the arbitration and interest accrued shall be paid with payment of the principal after the award.

29. Notices. Any notice to be given to or served upon any of the parties hereto shall be deemed to have been sufficiently given or served for all purposes when actually delivered by messenger or by certified mail, return receipt requested, delivered as follows (supplementary copies may be deemed delivered if sent by fax or email, and expressly recognized by the party receiving the correspondence):

In the case of Lessor:
KJZ LLC
c/o West Maui Financial Services
5095 Napilihau Street, Suite 202
Lahaina, Hawaii 96761

Tel.: (808) 667-1000
Fax: (808) 667-1002
Email: John.Zwaanstra@wmflc.com

In the case of Lessee:
Brendan Balthazar
103 Maha Road
Makawao, Hawaii 96768
Tel.: (808) 281-1723 Fax: (808) 572-2820
Email: DiamondBRanchHI@aol.com

30. No Party Deemed Drafter. The parties agree that no party shall be deemed to be the drafter of this Lease and further that in the event that this Lease is ever construed by an arbitrator(s) or a court of law, such arbitrator(s) or such court shall not construe this Lease or any provision of this Lease against any party as the drafter of the Lease.

31. Amendments. This Lease shall not be modified except by an instrument in writing signed by all of the parties.

32. Governing Law. This Lease shall be governed and construed in accordance with the laws of the State of Hawaii.

33. Late Charge. Any amount owing by Lessee to Lessor under the term of this Lease shall be subject to interest from the date of the same originally becomes due until paid at the rate of the lesser of one percent (1%) per month or the highest rate allowable under applicable law, whether or not Lessor has demanded same, for suit of collection thereof, granting any extension(s) for payment thereof, or exercise or fail to exercise any other right or remedy in respect thereto, and said interest shall be considered as a part of the rental payable herein.

34. Nonwaiver. The acceptance of the rent by Lessor shall not be deemed to be a waiver by Lessor of any breach of continuing breach by Lessee of any covenant herein contained, nor of Lessor's right to terminate this Lease for breach of continuing breach of covenant.

35. Lessor's Mortgage. Lessee agrees that upon the request of Lessor it will subordinate this Lease and the lien hereof to the lien of any present or future mortgage or mortgages upon the Premises or any property of which the Premises are a part, irrespective of the time of execution or time of recording of any such mortgage or mortgages. Lessee agrees that it will upon the request of Lessor execute, acknowledge and deliver any and all instruments deemed by Lessor necessary or desirable to give effect to or notice of such subordination, provided only that said mortgagee enters into an agreement with

Lessee which provides that said mortgagee will not disturb the possession and other rights of Lessee so long as Lessee performs its obligations hereunder and that said mortgagee will accept Lessee as Lessee of the Premises under the terms and conditions of this Lease in the event of acquisition of title by said mortgagee through foreclosure proceedings or otherwise, and which further provides that Lessee will agree to recognize the holder of such mortgage as the Lessor in such event, said agreement to be expressly binding upon the successors and assigns of Lessee and of the mortgagee and upon anyone purchasing the Premises at any foreclosure sale. Lessee and Lessor agree to execute and deliver any appropriate instruments necessary to carry out the agreements in this section contained. Any such mortgage to which this Lease shall be subordinated may contain such other terms, provisions and conditions as the mortgagee deems usual or customary. Lessee also agrees that if it fails at any time to execute, acknowledge or deliver any such instrument requested by Lessor, then Lessor may, in addition to any other remedies available to them, execute, acknowledge and deliver such instrument as the attorney-in-fact of Lessee and in Lessee's name; and Lessee hereby makes, constitutes and irrevocably appoints Lessor as its attorney-in-fact for that purpose. The word "mortgage" as used herein includes mortgages, deeds of trust or other similar instruments and modifications, consolidations, extensions, renewals, replacements and substitutes thereof.

36. Time Of Essence. Time is of the essence of each provision of this Lease.

37. Section Headings. Section headings of this Lease are for convenience only and if there be any conflict, the text shall control.

38. Entire Lease. The parties agree that their entire contract has been stated herein and that this instrument and all of the terms and conditions herein contained, supersede any prior, oral, or written agreements or representations made by or between the parties in respect of any matter relating hereto, all of which have been merged herein.

39. Option to Extend Term. The Lessee shall have the option to extend the term of this Lease for one (1) additional ten (10) year period upon the condition that there is no default in performance or observance of any covenant or condition of this Lease of which a notice of default has been given to the Lessee at the expiration of the initial term described in paragraph 2; provided, however, that in case of any such default which cannot with due diligence be cured prior to the expiration of the initial term, if the Lessee shall have proceeded promptly after the service of notice of default with due diligence to cure such default, the Lessee may, nevertheless, be entitled to such extended term. Except with respect to the amount of the rent payable during the one (1) additional ten (10) year period and except that there shall be no privilege to

extend this Lease for any further periods, the said one (1) additional ten (10) year period shall be upon the same conditions as provided in this Lease. The Lessee shall exercise the option by giving the Lessor written notice at least ninety (90) days prior to the expiration of the initial term. An effective exercise shall be deemed to extend this Lease without the execution of any further lease or instrument.

During the one (1) additional ten (10) year period the rent payable by Lessee to Lessor shall be as mutually agreed upon by the Lessor and Lessee; provided, however, in the event the Lessor and Lessee shall fail to agree in writing to such rent at least sixty (60) days before the commencement date of the one (1) additional ten (10) year period, the rent shall be determined by the arbitration procedure set forth in paragraph 28, with the fair market value of the rent being determined by the arbitrators, given the specific facts unique to the Lease. The rent for the one (1) additional ten (10) year period, whether determined by mutual agreement or by arbitration, shall be not less than the rent for the initial ten (10) year period. If the rent has not been determined by the commencement of the one (1) additional ten (10) year period, the Lessee shall pay on account of rent to the Lessor in the same amount and in the same manner as the initial ten (10) year period. Within thirty (30) days after the rent has been determined, the Lessee shall pay the Lessor all additional amounts due by reason of such determination together with interest accrued thereon at 10% per annum from the date such additional rental would have been payable under the Lease had it been determined prior to the commencement of the extension period.

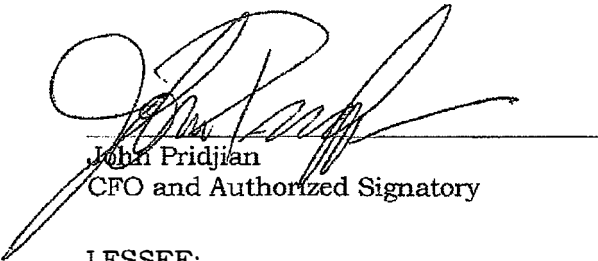
40. Hunting License. For no additional consideration, the Lessor hereby grants the Lessee the right and privilege to hunt for recreational non-business purposes, and to extend the same such right to (i) a limited number of individual employees or independent contractors who currently work with or for the Lessee in connection with utilizing the Premises for grazing livestock or the operation of a ranch and (ii) two members of the Lessee's family, provided such individuals exercise these rights only while being accompanied by Lessee. A list of the names of each such individual employee or independent contractor granted this right by Lessee will be provided to Lessor in writing in advance of any such use along with an appropriate photocopy of any such individual's Hawaii driver's license or comparable photographic identification. This list may be revised by time to time by Lessee in a similar writing delivered to the Lessor. If any individual, other than the Lessee and an individual set forth on the list of permitted individuals, is found exercising hunting rights on the Premises with the Lessee's permission, written or otherwise, or to have done so in the past during the Term or extension lease term, all hunting rights for the balance of the Term or extension lease term will be terminated and forfeited by Lessee.

It is the intention and understanding of the Lessor and Lessee that all hunting rights and any hunting activities conducted on the Premises will be conducted consistent with and subject to the rules and regulations issued by the Hawaii State Department of Agriculture, any applicable federal or local laws, and to further reasonable rules and regulations of Lessee. It is also the intention of the parties that while the license rights granted hereunder do not represent rights or interests in real property, all of the other provisions of this Lease concerning liability and indemnification shall apply. Without limiting the preceding sentence, for example, the provisions of paragraphs 14 and 15 (concerning the Lessee's obligation to indemnify the Lessor against claims and costs, including litigation costs, with respect to Lessee's use of the Premises) and paragraph 16 (concerning the obligation to obtain the appropriate amount of insurance and make Lessor as an additional insured) apply to the hunting rights provided in this paragraph. The insurance obtained pursuant to paragraph 16 shall include coverage for liability for hunting activities conducted directly or indirectly by Lessee.

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Lease effective as of the 1st day of January 2006.

LESSOR:

KJZ LLC, a Hawaii limited liability company


John Pridjian
CFO and Authorized Signatory

LESSEE:

BRENDAN BALTHAZAR

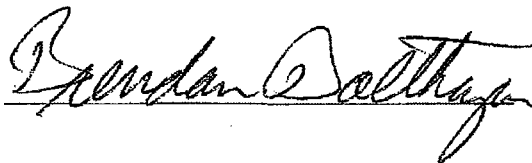


Exhibit D: Draft Purchase and Sale Agreement

AGREEMENT OF SALE (Kamehamenui Property)

This is an Agreement of Sale (“Agreement”) dated _____, 2020, between **The Trust for Public Land**, a California nonprofit public benefit corporation, authorized to do business in the State of Hawai’i (“Seller”), and the **State of Hawaii**, by its Board of Land and Natural Resources (“Buyer”).

RECITALS

A. The address and telephone numbers of the parties to this Agreement are as follows: Telephone numbers are included for information only:

SELLER:

The Trust for Public Land
101 Montgomery St., Ste. 900
San Francisco, CA 94104
Attn: Tily Shue
tily.shue@tpl.org
Tel: (415) 800-5308
FAX: (415) 495-0541

Copies of any notices to Seller should also be sent to:

The Trust for Public Land
1003 Bishop St. Ste. 740
Honolulu, Hawaii 96813
Attn: Stephen Rafferty
stephen.rafferty@tpl.org
Tel: (808) 524-8560
FAX: (808) 566-0005

BUYER:

State of Hawaii
Board of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809-0621
Attn: Suzanne D. Case, Chairperson
suzanne.case@hawaii.com
Tel: (808) 587-0401
FAX: (808) 587-0390

Copies of any notices to Buyer should also be sent to:

State of Hawaii
Dept. of Land and Natural Resources
Land Division
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813
Attn: Ian C. Hirokawa
ian.c.hirokawa@hawaii.gov
Tel: (808) 587-0420
FAX: (808) 312-6357

B. Before the Deed Recordation(as defined below), the parties expect that Seller will purchase certain real property, commonly called the “Kamehamenui” or “Erehwon Ranch” property, located on the Island of Maui, Hawaii, Tax Map Key Nos. (2) 2-3-005:002 and (2) 2-3-005:014, described in Exhibit A and depicted in Exhibit B, both attached to this Agreement and incorporated herein by this reference, together with Seller’s interest in all improvements, fixtures, timber, water, oil, gas and mineral and metallic mines of every kind or description, if any, and all rights appurtenant to the property, including but not limited to timber rights, water rights, grazing rights, access rights, and geothermal rights, if any will be referred to in this Agreement as the “Property.”

Exhibit D: Draft Purchase and Sale Agreement

C. Seller has an existing binding legal right to purchase the Property from its current owner, Shizuka Asakawa, Trustee of the Shizuka Asakawa Revocable Trust Agreement (“Asakawa”). Buyer wishes to purchase the Property from Seller and Seller wishes to sell the Property to Buyer on the terms and conditions set forth in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. **Purchase and Sale**. Seller agrees to sell the Property to Buyer and Buyer agrees to buy the Property from Seller on the terms and conditions set forth herein.
2. **Purchase Price**. The purchase price for the Property is Nine Million Eight Hundred Thirty Thousand Dollars (\$9,830,000.00) (the “Purchase Price”). The Purchase Price will be payable, in cash or immediately available funds, on Deed Recordation, as defined in Section 7.
3. **Effective Date**. This Agreement will be effective on the date that it is signed by both parties hereto and approved as to form, legality, exceptions and reservations by the Attorney General on behalf of Buyer, as shown on the signature pages to this Agreement (the “Effective Date”).
4. **Conditions Precedent to Closing**. The parties’ respective obligations to close the purchase and sale of the Property are conditioned upon all of the following happening at least one (1) business day before the Closing (as defined in Section 7(a) below):
 - (a) Seller receives approval of the transaction which is the subject of this Agreement by the Seller’s Board of Directors which approval is subject to said Board’s sole discretion;
 - (b) Buyer has approved the title, physical, and structural condition of the Property not later than June 30, 2020 (the “Review Deadline”);
 - (c) Buyer has approved the environmental condition of the Property;
 - (d) Buyer receives approval by the State of Hawaii, Board of Land and Natural Resources (“BLNR”) to enter into this Agreement and to acquire the Property, which approval is subject to the Board’s sole discretion;
 - (e) Buyer receives all sources of grant funding which are to be used together to purchase the Property;
 - (f) Seller has provided Buyer with copies of the Property Information (as defined in Section 5(a)(ii) below) provided to Seller by the current landowner and the results of Seller’s due diligence. To the best of Seller’s knowledge, the Property Information contains all encumbrances, restrictions, and obligations, both recorded and unrecorded, pertaining to the Property;

Exhibit D: Draft Purchase and Sale Agreement

(g) Brendan Balthazar executes an estoppel certificate in connection with that certain unrecorded Amended and Restated Grazing Lease and Hunting License Agreement, dated as January 1, 2006 between KJZ LLC, as lessor, and Brendan Balthazar, as lessee (the “Grazing Lease”), for Tax Map Key No. (2) 2-3-005:002, and it is delivered to Escrow;

(h) The current landowner, Asakawa, as Lessor under the Grazing Lease, and Buyer execute an Assignment and Assumption of Grazing Lease for Tax Map Key No. (2) 2-3-005:002, and it is delivered to Escrow;

(i) Property acreage and boundaries to be resolved to Buyer’s satisfaction, including location of Hawaii Department of Agriculture, Maui Electric Company, and Hawaiian Tel Company easements; and

(j) Satisfaction of all obligations stated in this Agreement by both Buyer and Seller, within the periods provided in this Agreement (if any).

If any condition precedent is not satisfied or waived by the benefited party, Seller or Buyer may terminate this Agreement by written notice to the other party and to the Escrow Holder; in which event the Parties will have no further obligation to each other under this Agreement and Buyer will not be liable for any damages.

5. Condition of the Property.

(a) Buyer and Seller agree that, before the Review Deadline, as defined in Section 4(b) above:

(i) Buyer will have had the opportunity to study all aspects or circumstances of the Property which Buyer deems material or relevant;

(ii) Buyer will have had received from Seller the documents described in Exhibit C attached hereto and incorporated by this reference, which sets forth Property-related information (the “Property Information”);

(iii) Buyer will have had access to the Property; and

(iv) Buyer will have had the opportunity to make all inspections and verifications which Buyer deems necessary for the completion of Buyer’s due diligence review for the transaction covered by this Agreement.

(b) Except as otherwise expressly provided in this Agreement, Buyer hereby acknowledges and agrees that the sale of the Property hereunder is and will be made on an “as is, where is” basis and that neither Seller, nor any attorney, representative, agent, or employee of Seller has made, or will make, and except for Seller’s representations and express warranties set forth in this

Exhibit D: Draft Purchase and Sale Agreement

Agreement, Seller specifically negates and disclaims, any representations, warranties, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, future, or otherwise, of, as to, concerning or with respect to the Property.

(c) Buyer acknowledges that Seller has represented to Buyer that Section 5.5 of that certain Option Agreement dated as of February 14, 2018, as amended, between Seller, as “Buyer” thereunder, and Asakawa, as “Seller” thereunder, pursuant to which Seller acquires the Property from Asakawa, provides as follows:

“Remediation of Environmental Issues. Should Buyer determine, in its sole discretion, based on its investigation of the Property, that the environmental conditions on the Property are unacceptable (an “**Environmental Problem**”), Buyer will notify Seller of the Environmental Problem. At Seller’s election, either (a) Seller will pay for the cost of up to Twenty Thousand and 00/100 Dollars (\$20,000.00) towards the cost of the remediating the Environmental Problem, which shall be paid as a credit to Buyer at the Close of Escrow; or (b) Seller will hire a licensed contractor approved by Buyer to remedy all Environmental Problems by Close of Escrow to Buyer’s satisfaction, as determined by Buyer in Buyer’s sole and absolute discretion, including, if commercially reasonable given the nature of an Environmental Problem, obtaining a “no further action” letter from the appropriate government agency. In addition, if an Environmental Problem exists and if Seller cannot comply with the terms of subsection (b) above by the Close of Escrow (if Seller elects such option), in addition to and without waiving any of Buyer’s other remedies hereunder, Buyer may extend the Option Term and/or the Closing Date until the Environmental Problem has been remedied as provided herein.”

Buyer acknowledges that Seller has provided to Buyer (i) that certain Phase I Environmental Assessment Report dated June 8, 2018 (“Phase I ESA”) prepared by Ford Associates, Inc. (“Ford”), (ii) that certain updated Phase I ESA, prepared by Ford and dated as of February 13, 2019 (the “Phase I Update”), (iii) that certain Proposal to Conduct Removal and Disposal of Containers and Associated Petroleum Contaminated Soil (PCS) Located on the Western Portion of the Kamehamenui Property, in Kula, Maui, Hawaii, dated January 31, 2019, prepared by Ford, to perform cleanup on the Property of materials and soils identified in the Phase I ESA/Phase I Update; (iv) that certain Removal Action Report, dated May 30, 2019; (v) that certain Phase II Environmental Site Assessment dated May 30, 2019; (vi) that certain Environmental Hazard Management Plan, dated July 19, 2019; ; (vii) that certain No Further Action Letter, issued by State of Hawaii Department of Health Hazard Evaluation and Emergency Response (HEER) Office, dated September 20, 2019; and (viii) that certain Phase One Environmental Site Assessment, dated March 31, 2020.

Exhibit D: Draft Purchase and Sale Agreement

6. **Due Diligence.** Seller has provided to Buyer the Property Information and the opportunity to investigate and review a preliminary title report, the Property Information, and the physical condition of the Property, which investigation and review must be completed on or before the Review Deadline. If Buyer determines that it is dissatisfied with the condition of the Property, then Buyer may terminate this Agreement by delivering written notice to Seller on or before the Review Deadline. If Buyer fails to deliver any such written termination notice to Seller on or before the Review Deadline, then Buyer will be deemed to have elected to proceed to close escrow and acquire the Property.

7. **Escrow and Closing.**

(a) Seller has opened an escrow (the “Escrow”) with Title Guaranty of Hawaii, Inc., 235 Queen Street, Honolulu, Hawaii, 96813 Attn: Jeremy Trueblood (the “Escrow Holder”) for the purpose of consummating the purchase and sale of the Property (the “Closing”). Buyer and Seller will approve and submit joint escrow closing instructions. “Deed Recordation” which is defined as the date on which the Warranty Deed is recorded and the Purchase Price paid will occur on or before August 30, 2020, unless extended by agreement of the parties; the parties agree that if, despite their best efforts, any State and/or Federal funding source has not deposited its funds into escrow by August 29, 2020, the Closing will be extended for up to thirty (30) days to accommodate the late deposit of such funds.

(b) Buyer and Seller must deliver (or cause to be delivered) all final, fully executed documents and all funds into Escrow at least two (2) business days before the Deed Recordation.

(c) Seller will pay 100% of any documentary tax or real property transfer tax arising out of the conveyance of the Property. Any other closing expenses, fees, and charges will be borne by the Buyer; provided that the sum of these closing expenses, fees, and charges and the cost of standard coverage provided for in Section 9 borne by the Buyer shall not exceed \$20,000.00, which is payable solely from the U.S. Forest Service - Forest Legacy Program/DLNR grant, and to the extent the total sum exceeds \$20,000.00, the amount in excess shall be borne by the Seller.

8. **Title.** Seller will cause the Property to be conveyed to Buyer by a Warranty Deed in the form attached hereto as Exhibit D, incorporated herein by this reference (the “Deed”), a fee simple interest in the Property, free and clear of all monetary liens and encumbrances, except as shown in Exhibit “C” to the Deed.

Seller will pay or cause to be paid all property taxes up to the date of recordation of the Deed.

9. **Title Insurance.** Seller will provide an ALTA standard coverage, owner’s policy of title insurance, with regional exceptions, in the full amount of the Purchase

Exhibit D: Draft Purchase and Sale Agreement

Price, insuring that title to the Property is vested in Buyer upon Deed Recordation subject only to the exceptions noted in Section 8. Seller will pay for the cost of standard coverage. If Buyer elects to obtain any endorsements and/or an extended coverage policy, Buyer will pay the difference between ALTA standard coverage and the increased premium for the endorsements and/or extended coverage. If Buyer or the Title Company requires a survey, the cost of the survey will be at Buyer's expense and such survey must be completed at least two (2) business days before the Deed Recordation.

10. **Seller's Promise not to Further Encumber.** Seller may not, without the prior written consent of the Buyer, make any leases, contracts, options, or agreements whatsoever affecting the Property that would in any manner impede Seller's ability to perform hereunder and deliver title as agreed herein.

11. **Seller's Representations.** Seller represents and warrants that:

- (a) Subject to the conditions precedent set forth in Section 4, Seller will, before the Deed Recordation, have the power to sell, transfer and convey all right, title and interest in and to the Property;
- (b) To Seller's actual knowledge, there is no action, suit, litigation, arbitration, or other proceeding pending or threatened that in any manner affects the Property;
- (c) Subject to the conditions precedent set forth in Section 4, Seller has full power and authority to execute and deliver this Agreement and to consummate the transactions provided herein. The persons signing this Agreement for Seller have full power and authority to sign for Seller and to bind it to this Agreement;
- (d) Seller has no actual knowledge of any violations of any law, order, ordinance, or regulation affecting the Property;
- (e) Seller has not received notice and has no knowledge of, any pending or threatened condemnation of all or part of the Property;
- (f) This Agreement and the other documents to be executed by Seller hereunder, upon execution and delivery thereof by Seller, will have been duly entered into by Seller, and will constitute legal, valid and binding obligations of Seller, subject to the conditions precedent set forth in Section 4, and subject to applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws or equitable principles affecting or limiting the rights of contracting parties generally. Neither this Agreement nor anything provided to be done under this Agreement violates or will violate any contract, document, understanding, agreement, or instrument to which Seller is a party or by which it is bound;

Exhibit D: Draft Purchase and Sale Agreement

- (g) Except for the Grazing Lease, Seller has no actual knowledge of any unrecorded agreements affecting the Property;
- (h) Seller represents and warrants that it is not a “foreign person” as defined in Section 1445 of the Internal Revenue Code. Seller’s United States Taxpayer Identification Number is 23-7222333;
- (i) Seller represents and warrants that it is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California;
- (j) Seller represents and warrants, to Seller’s actual knowledge that the Property is not subject to any investigation by any governmental authority or any judicial or administrative proceedings alleging the material violation of or liability under any hazardous materials law, or any outstanding written order or agreement with any governmental authority or private party relating to any hazardous materials laws or hazardous materials claims;
- (k) Seller agrees to disclose to Buyer all material findings regarding the condition of the Property that Seller may discover and are not contained in the preliminary title report delivered to Buyer.

12. **Buyer’s Representation.** Buyer represents and warrants that subject to approval by the BLNR, which approval is at its sole discretion, Buyer has all the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

13. **Risk of Loss.** All risk of loss will remain with Seller until Deed Recordation. If the Property is destroyed or damaged after the Effective Date of this Agreement and before Deed Recordation, then Buyer or Seller may, at their option elect to terminate this Agreement with no damages accountable to Buyer.

14. **Notices.** All notices pertaining to this Agreement will be in writing delivered to the parties hereto by facsimile or email transmission, personally by hand, courier service or Express Mail, or by first class mail, postage prepared, at the addresses set forth in Recital A. All notices will be deemed given: (a) if sent by mail, when deposited in the mail, first class postage prepared, addressed to the party to be notified; (b) if delivered by hand, courier service or Express Mail, when delivered; or (c) if transmitted by email or facsimile, when transmitted; provided the sender receives no indication the transmittal was unsuccessful. The parties may, by notice as provided above, designate a different address for notices.

15. **Remedies Upon Default.** If Buyer or Seller defaults in the performance of any of their respective obligations under this Agreement, then Seller or Buyer will, in addition to any and all other remedies provided in this Agreement or by law or equity, have the right of specific performance against the defaulting party.

Exhibit D: Draft Purchase and Sale Agreement

16. **No Broker's Commission.** Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. Each party further represents that it has not and will not pay or receive a broker's commission or finders' fee for this transaction. If any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, then the party on account of whose conduct the claim is asserted will hold the other party harmless from said claim.

17. **Time of the Essence; Dates.** Time is of the essence to this Agreement. If any date specified in this Agreement falls on Saturday, Sunday or a public holiday, then such date will be deemed to be the succeeding day on which the public agencies and major banks are open for business.

18. **Binding on Successors.** Subject to approval by the Board of Land and Natural Resources and the Seller's Board of Directors, which approvals are at each Board's sole discretion, this Agreement will be binding not only upon the parties but also upon their heirs, personal representatives, assigns, and other successors in interest.

19. **Additional Documents.** Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

20. **Additional Documents to be Provided by Seller to Buyer.** Seller agrees to provide to Buyer or Escrow Holder before the Deed Recordation a resolution of the Board of Directors of Seller authorizing the transaction contemplated by this Agreement, the execution, delivery, and performance of this Agreement, any other obligation of Seller contemplated by this Agreement, and authorizing the person who will sign this Agreement to do so on behalf of Seller.

21. **Assignment.** Buyer may not assign its interests under this Agreement without the written consent of Seller.

22. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by all parties. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver and agreeable to both parties.

23. **Counterparts.** This Agreement may be executed in counterparts; each of which will be deemed an original and which together will constitute one and the same agreement.

Exhibit D: Draft Purchase and Sale Agreement

24. **Severability**. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance will nonetheless be of full force and effect.

25. **Governing Law**. This Agreement will be governed by and construed in accordance with the laws of the State of Hawai'i.

26. **Survival of Close of Escrow**. All representations, warranties, covenants, conditions, agreements, and other obligations set forth in this Agreement will survive the Closing and Deed Recordation and will not merge therein unless specifically stated otherwise in this Agreement.

Exhibit D: Draft Purchase and Sale Agreement

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

SELLER:

THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit
corporation

By: _____
Tily Shue
Senior Counsel and Legal Director

Date: _____, 2020

BUYER:

STATE OF HAWAII

By: _____
Name: SUZANNE D. CASE
Chairperson,
Board of Land and Natural Resources

Approved by the Board of Land and Natural
Resources at its meeting held
on _____, 2020.

APPROVED AS TO FORM, LEGALITY,
EXCEPTIONS, AND RESERVATIONS:

Name: JULIE H. CHINA
Deputy Attorney General

Exhibit D: Draft Purchase and Sale Agreement

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }

COUNTY OF _____ }

On _____ before me , _____,
Notary Public, personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that
by his/her/their signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

OPTIONAL

Description of Attached Document

Title or Type of Document: _____

Number of Pages: _____

Document Date: _____

Other: _____

Exhibit D: Draft Purchase and Sale Agreement

Exhibit A

Legal Description of Property

-ITEM I:-

PARCEL 2

Being Portions of Royal Patent 4388, Land Commission Award 8452, Apana 6 to A. Keohokalole and Royal Patent 7453, Land Commission Award 8452, Apana 21 to A. Keohokalole; Situate at Kamehamenui and Kealahou 3 & 4, Makawao, Maui, Hawaii

Beginning at a ½" pipe at the Northwest corner of this parcel of land, along the East side of Kekaulike Highway (F.A.P. 13-A), being also the Southwest corner of Lot 40 of the Kamehameiki-Pulehuiki Homesteads, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PANE", being 17,037.83 feet South and 3,117.76 feet East and running by azimuths measured clockwise from true South:

1. 289° 33' 00" 2528.21 feet along Lots 40 and 44 of the Kamehameiki - Pulehuiki Homesteads, being also along Grant 3874 to Chi Lung and Grant 3873 to Ah Fu to a ½" pipe;

2. 290° 25' 52" 8890.57 feet along Grant 3502 to J. T. Baker to a cave at the bottom of Hapapa Gulch marked by a nail on rock;

Thence along centerline of gulch, along Royal Patent 8140, Land Commission Award Number 5230 to Keaweamahi, for the next five (5) courses, the direct azimuths and distances between points being:

3. 293° 35' 00" 1127.65 feet to a spike;

4. 294° 08' 45" 1258.20 feet to a ½" pipe;

5. 297° 46' 10" 260.02 feet to nail on rock;

6. 277° 07' 50" 161.42 feet to a "+" cut on rock;

7. 295° 52' 20" 1303.98 feet to a ½" pipe;



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

501 SUMNER STREET, SUITE 521
HONOLULU, HAWAII 96817-5031

CIVIL ENGINEERS • SURVEYORS
1871 WILI PA LOOP, SUITE A
WAILUKU, MAUI, HAWAII 96793

100 PAUAAHI STREET, SUITE 207
HILO, HAWAII 96720

8. 299° 27' 30" 3050.18 feet along Royal Patent 8140, Land Commission Award Number 5230 to Keaweamahi;
9. 306° 47' 00" 5640.30 feet along same to a point being an azimuth and distance of 126°47' 890.70 feet from a peak called Kilohana marked by a "K" on a large lava rock;
10. 33° 46' 30" 7959.00 feet along the Hawaii Volcano National Park (CSF 4532), being also along the remainder of R.P. 4388, L.C. Aw. 8452, Ap. 6 to A. Keohokalole and R.P. 7453, L.C. Aw. 8452, Ap. 21 to A. Keohokalole to a 1-1/4" pipe (fnd);
11. 40° 10' 30" 463.07 feet along Government Land being also along former Kahikinui Forest Reserve to a 1-1/4" pipe (fnd);
12. 127° 41' 00" 6365.00 feet along Government Land being also along Kula Forest Reserve;
13. 121° 43' 00" 2830.00 feet along same;
14. 135° 31' 41" 6923.48 feet along same to a fence post;
15. 134° 27' 30" 2731.80 feet along Grant 9325 Apana 3 to Haleakala Ranch Company;
16. 135° 09' 00" 1294.00 feet along Grant 4289 to Antone C. de Silva;
17. 134° 56' 20" 617.84 feet along Grant 3868 to Antone dos Reis;
18. 129° 12' 45" 883.83 feet along same to a 1/2" pipe (fnd);

-2-



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

CIVIL ENGINEERS • SURVEYORS

501 SUMNER STREET, SUITE 521
HONOLULU, HAWAII 96817-5031

1871 WILI PA LOOP, SUITE A
WAILUKU, MAUI, HAWAII 96793

100 PAUAHI STREET, SUITE 213
HILO, HAWAII 96720

19. 129° 35' 30" 1613.80 feet along Homestead Road to a ½" pipe (fnd);

20. 129° 01' 15" 657.53 feet along portion of Lot 1-A of the Kealahou Homesteads (Reg. Map 2239) to a ½" pipe;

Thence along the East side of Kekaulike Highway (F.A.P. 13-A) on a curve to the right with a radius of 1402.50 feet, the chord azimuth and distance being:

21. 228° 27' 17" 109.89 feet;

22. 230° 42' 00" 1045.10 feet along the East side of Kekaulike Highway (F.A.P. 13-A) to a concrete monument (fnd);

Thence along the East side of Kekaulike Highway (F.A.P. 13-A) on a curve to the left with a radius of 507.50 feet, the chord azimuth and distance being:

23. 213° 39' 20" 297.51 feet to a ½" pipe (fnd);

24. 281° 16' 00" 215.56 feet along Maui Electric Co. Ltd. Kula Substation No. 13, being also along the remainder of R.P. 4388, L.C. Aw. 8452, Ap. 6 to A. Keohokalole to a ½" pipe (fnd);

25. 183° 34' 30" 200.00 feet along same to a ½" pipe (fnd);

26. 101° 16' 00" 202.36 feet along same to a ½" pipe (fnd);

27. 183° 34' 30" 435.89 feet along the East side of Kekaulike Highway (F.A.P. 13-A);



28. 273° 34' 30" 40.00 feet along the remainder of R.P. 4388, L.C. Aw. 8452, Ap. 6 to A. Keohokalole;
29. 183° 34' 30" 30.00 feet along same;
30. 93° 34' 30" 40.00 feet along same;
31. 183° 34' 30" 240.93 feet along the East side of Kekaulike Highway (F.A.P. 13-A), to the point of beginning and containing a gross area of 3,446.536 acres, more or less and a net area of 3,433.722 acres, more or less.

Exclusions:

a.	TMK: 2-3-05: 07	9.192 Acres
b.	TMK: 2-3-05: 08	3.622 Acres
		<u>12.814 Acres</u>

Subject, However, to the following Easements:

1. Easement A-1 (28,057 sq. ft.) for access purposes in favor of Parcels 7 and 8 of Tax Map Key 2-3-05.
2. Easement U-1 (18,103 sq. ft.) for utility purposes in favor of Parcels 7 and 8 of Tax Map Key 2-3-05.
3. Easement W-1 (21,687 sq. ft.) for waterline purposes in favor of Parcel 7 of Tax Map Key 2-3-05.
4. Easement W-2 (18,779 sq. ft.) for waterline purposes in favor of Parcel 8 of Tax Map Key 2-3-05.
5. Easement C-1 (156,700 sq. ft.) for view corridor purposes in favor of Parcel 8 of Tax Map Key 2-3-05.
6. Easement 20 (18,990 sq. ft.) for electrical and communication purposes in favor of Maui Electric Company Ltd.
7. Easement 21 (564 sq. ft.) for electrical and communication purposes in favor of Maui Electric Company Ltd.





Description Prepared By:

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

 *Erik S. Kaneshiro* **EXP 04/20**

ERIK S. KANESHIRO
Licensed Professional Land Surveyor
Certificate No. 9826

Honolulu, Hawaii
January 11, 2002
Rev. March 10, 2020
TMK: (2) 2-3-05: 02
X:\19-349\DESC\PARCEL 2.docx



Exhibit D: Draft Purchase and Sale Agreement

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR: SHIZUKA ASAKAWA, Trustee of the Shizuka Asakawa Revocable Trust Agreement dated April 19, 2016, with full powers to sell, mortgage, lease or otherwise deal with the land

GRANTEE: THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation, whose address is 101 Montgomery Street, Suite 900, San Francisco, CA 94104

DATED: _____
RECORDED: _____

-ITEM II:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 4388, Land Commission Award Number 8452, Apana 6 to A. Keohokalole) situate, lying and being at Kamehamenui, Makawao, Island and County of Maui, State of Hawaii, being PARCEL 14, and thus bounded and described as per survey of Erik S. Kaneshiro, Land Surveyor, with Austin, Tsutsumi & Associates, Inc., dated January 11, 2002, to-wit:

Beginning at the northwest corner of this parcel of land, along the east side of Kekaulike Highway (F.A.P. 13-A), the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PANE", being 17,278.28 feet south and 3,102.74 feet east and running by azimuths measured clockwise from true South:

- | | | | | | |
|----|------|-----|-----|-------|---|
| 1. | 273° | 34' | 30" | 40.00 | feet along the remainder of R.P. 4388, L.C. Aw. 8452, Ap. 6 to A. Keohokalole; |
| 2. | 3° | 34' | 30" | 30.00 | feet along same; |
| 3. | 93° | 34' | 30" | 40.00 | feet along same; |
| 4. | 183° | 34' | 30" | 30.00 | feet along the east side of Kekaulike Highway (F.A.P. 13-A), to the point of beginning and containing an area of 1,200 square feet, more or less. |

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR: SHIZUKA ASAKAWA, Trustee of the Shizuka Asakawa Revocable Trust Agreement dated April 19, 2016, with full powers to sell, mortgage, lease or otherwise deal with the land

Exhibit D: Draft Purchase and Sale Agreement

GRANTEE: THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation, whose address is 101 Montgomery Street, Suite 900, San Francisco, CA 94104

DATED: _____
RECORDED: _____

Exhibit B

Map of Property

Exhibit C

Property Info Previously Provided to State

Amended and Restated Grazing Lease and Hunting License Agreement Limited Environmental Site Assessment dated September 14, 2001

Environmental Site Reconnaissance Assessment dated October 29, 2001

Due Diligence Study for the Von Tempsky at Kula, Maui

Property Assessment Document

2010 Kamehamehenui Subdivision Map

Kamehamehenui Survey Map with Encroachments

Environmental Hazard Management Plan, dated July 19, 2019

No Further Action Letter, issued by State of Hawaii Department of Health Hazard Evaluation and Emergency Response (HEER) Office, dated September 20, 2019

Exhibit D
Warranty Deed

First Amendment to Amended and Restated Grazing Lease and Hunting License

This First Amendment to Amended and Restated Grazing Lease and Hunting License (“Amendment”) is made effective as of August 1, 2020, and is by and between The Trust for Public Land, a California nonprofit public benefit corporation, whose address is 101 Montgomery Street, Suite 900, San Francisco, CA 94104 hereinafter called "Lessor", and Brendan Balthazar, whose address is 103 Maha Road, Makawao, HI 96768; ph: (808) 281-1723; email: DiamondBRanchHI@aol.com, hereinafter called "Lessee".

Recitals:

- A. Lessee entered into that certain Grazing Lease and Hunting License Agreement (“Lease”), effective January 1, 2006 with KJZ LLC, a Hawaii limited liability company as “Lessor”.
- B. The Lease was amended by Amended and Restated Grazing Lease and Hunting License (“Restated Lease”), effective as of January 1, 2006.
- C. An Assignment of Lessor’s Interest in Lease was entered into on March 26, 2015 between KJZ LLC and Shizuka Zwaanstra, aka Shizuka Asakawa.
- D. An Assignment of Lease was entered into on July 31, 2020 between Shizuka Asakawa, Trustee of the Shizuka Asakawa Revocable Trust Agreement dated April 19, 2016 and The Trust for Public Land.
- E. Lessor and Lessee now desire to amend the terms of the Restated Lease to revise the provisions relating to rent payment, assignment, and the supply and maintenance of utilities to the Premises under the Restated Lease.
- F. Unless specifically otherwise defined in this Amendment, all capitalized terms shall have the same meanings as ascribed to them in the Restated Lease.

NOW, THEREFORE, in consideration of the foregoing, and of the conditions, terms, covenants and agreements set forth herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree that the Restated Lease is amended as follows:

1. **Rent.** Effective July 1, 2020, Lessee has made rent payment, in advance, for the current calendar quarter, in the amount of Three Thousand Six Hundred Dollars (\$3,600.00). Section 3 of the Amended Lease is hereby amended by deleting it in its entirety and replacing it with the following provision;

“Rent payable by Lessee to Lessor shall be One Thousand Two Hundred Dollars (\$1,200.00) per month, in legal tender of United States of America, and payable in advance, without notice or demand, in quarterly installments of each and every year during the term, representing a total rental amount due every three months of Three Thousand Six Hundred Dollars (\$3,600.00). The first payment due under this Lease shall be on or before October 1, 2020.”

2. **Utility Services.** Notwithstanding anything to the contrary in the Restated Lease, effective the date of this Amendment, Lessee shall contract and pay for any and all utilities and services used and provided to the Premises, including without limitation, water, gas, heat, light, power, septic/sewer charges, telephone service, and shall maintain at Lessee's expense all pipelines, systems and structures except to the extent maintained by the utility provider.
3. **Assignment.** Paragraph 12 of the Restated Lease is hereby deleted in its entirety and replaced with the following paragraph:

"12. Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises, or any portion, or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Lessor the assignment and transfer of this lease, or any portion, may be made in accordance with current industry standards, as determined by the Lessor; provided, further, that prior to the approval of any assignment of lease, the Lessor shall have the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight line depreciated cost of improvements and trade fixtures being transferred to the Assignee."

4. **Approval of Assignment.** Pursuant to Paragraph 12, as amended by this Amendment, and Lessee's request which is herein acknowledged, Lessee's assignment for good and valuable consideration of his entire interest in the Lease to Diamond B Ranch, LLC, whose address is 103 Maha Road, Makawao, HI 96768, and whose sole member is Brendan Balthazar, and Diamond B Ranch, LLC's assumption of all of Lessee's obligations under the Lease, is hereby approved by Lessor.
5. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument when each party has signed one such counterpart. This Amendment may be executed and delivered to the other party by electronic transmission and an electronic signature shall have the same legal effect as an original signature.
6. **Entire Agreement.** The Restated Lease, as amended by this Amendment, constitutes the full and complete agreement and understanding between the parties hereto and shall supersede all prior communications, representations, understandings or agreements, if any, whether oral or written, concerning the subject matter contained in the Restated Lease, as so amended, and no provision of the Restated Lease, as so amended, may be modified, amended, waived or discharged, in whole or in part, except by a written instrument executed by all of the parties hereto.

7. **Force and Effect.** Except as modified by this Amendment, the terms and provisions of the Restated Lease are hereby ratified and confirmed and are and shall remain in full force and effect. Should any inconsistency arise between this Amendment and the Restated Lease as to the specific matters which are the subject of this Amendment, the terms and conditions of this Amendment shall control. This Amendment shall be construed to be a part of the Restated Lease and shall be deemed incorporated in the Restated Lease by this reference.

IN WITNESS WHEREOF, the Parties have executed this Amendment on the dates indicated.

LESSOR:

The Trust for Public Land,
a California nonprofit public
benefit corporation

By: *Stmetily*
Tily Shue, Legal Director

Dated: *as of 8/1/2020*

ASSIGNEE:

Diamond B Ranch, LLC,
a Hawaii limited liability company

By: *Brendan Balthazar*
Brendan Balthazar, Member

Dated: *8/1/20*

LESSEE AND ASSIGNOR:

Brendan Balthazar

By: *Brendan Balthazar*

Dated: *8/1/20*

TAB CM-2131 (REV. 10/01/14)

DIRECTOR OF FINANCE, STATE OF HAWAII
 DEPT OF LAND & NATURAL RESOURCES
 FORESTRY DIVISION - *Maui*
 PO BOX 621
 HONOLULU, HI 96809

DATE **SEP 25 2020**
 DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

SIGN HERE FOR CASH RECEIVED (IF REQUIRED)

DEPOSIT TICKET PLEASE ENTER AMOUNT OF CASH AND CHECKS.
 AT EACH ADDING MACHINE TAPE OR DEPOSIT RECAP.

MAIN BANKING REGION



CURRENCY ▶
 COIN ▶
 CHECK ▶ **3600.00**
 TOTAL FROM BACK ▶
 SUBTOTAL ▶
 LESS CASH ▶
 \$ **3600.00**

UAC # 20-14 (4th Quarter Wontempski Lease)

⑈0035⑈ ⑆5288000⑆ ⑆010000497⑈

DEPARTMENT OF LAND AND NATURAL RESOURCES
 UAC OR ATTACHED WORKSHEET

Maui

DATE: 09/25/20

F	YR	APP	D	SRC/ OBJ	COST CTR	PROJECT	PH	ACT	AMOUNT	NAME/DESCRIPTION
S	2021	347	C	1172	0440	000000	00	455		Seedlings/Dibbles/Trays
S	2021	347	C	1172	0431	000000	00	455		Seedlings/Dibbles/Trays- Kamuela
T	2021	902	C	1724	0440	000000	00	423		Forest Products - Timber - OHA (20%)
S	2021	347	C	1042	0440	000000	00	423		Forest Products - Timber - (80%)
T	2021	902	C	1724	0440	000000	00	448		Forest Products - Non-timber - OHA (20%)
S	2021	347	C	1042	0440	000000	00	448		Forest Products - Non-timber - (80%)
T	2021	902	C	1715	0440	000000	00	536		Cabin Rentals & Camping Permits - OHA (20%)
S	2021	347	C	1308	0440	000000	00	536		Cabin Rentals & Camping Permits - (80%)
T	2021	902	C	1721	0440	000000	00	387		Temporary Permits (SUP) - Public Lands - OHA (20%)
S	2021	347	C	0252	0440	000000	00	387		Temporary Permits (SUP) - Public Lands - (80%)
T	2021	902	C	1720	0440	000000	00	387		Lease - Public Lands - OHA (20%)
S	2021	347	C	0251	0440	000000	00	387	\$3,600.00	Lease - Public Lands - (100%)
S	2021	347	C	1215	0440	000000	00	424		Fees, Kiln
S	2021	347	C	1215	0440	000000	00	387		Fees, Other Services
S	2021	347	C	1021	0440	000000	00	570		Fees, Copies of Public Documents
S	2021	347	C	1090	0440	000000	00	570		Fees, Administrative
S	2021	347	C	1563	0440	000000	00	569		Fines, Violations, Damages
S	2021	347	C	1652	0440	000000	00	387		Donations - Forestry
S	2021	347	C	1652	0440	000000	00	353		Donations - Wildlife
TOTAL									\$3,600.00	

RECEIPTS: UAC 20-14
 (Rev. 12/17)

Branch copy



DIAMOND B RANCH LLC
 103 MAHA ROAD PH. 572-8102
 MAKAWAO, MAUI, HI 96768

BANK OF HAWAII
 P.O. Box 2800, Honolulu, HI 96846
 boh.com

10575

58-102/1213

65

CHECK NUMBER

9/16/2020

COPY

PAY TO THE ORDER OF **STATE OF HAWAII**

\$ ****3,600.00**

Three Thousand Six Hundred and 00/100*****

DOLLARS

STATE OF HAWAII
 DLNR-DOFAW
 Attn: Lance DeSilva
 685 Haleakala Hwy
 Kahului, HI 96732

MEMO

4Th QUARTER VONTEMPSKI LEASE

Brendan Battaglia
 AUTHORIZED SIGNATURE

⑈010575⑈ ⑆121301028⑆ 0065⑈001047⑈

DIAMOND B RANCH

10575

STATE OF HAWAII

9/16/2020

OCTOBER
 NOVEMBER
 DECEMBER

1,200.00
 1,200.00
 1,200.00

Diamond B Ranch LL 4Th QUARTER VONTEMPSKI LEASE

3,600.00

ASSIGNMENT OF LEASE

THIS INDENTURE is made effective as of Aug 31, 2020, by and between **THE TRUST FOR PUBLIC LAND**, a California nonprofit public benefit corporation, whose address is 101 Montgomery Street, Suite 900, San Francisco, California 94104, hereinafter referred to as the "Assignor", and **STATE OF HAWAII**, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter referred to as the "Assignee";

W I T N E S S E T H:

That the Assignor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to the Assignor paid by the Assignee, receipt whereof is hereby acknowledged, and of the covenants and agreements of the Assignee hereinafter contained and on the part of the Assignee to be faithfully kept and performed, does hereby sell, assign, transfer, set over and deliver unto the Assignee all of the Assignor's leasehold estate and interest created by that certain unrecorded Amended and Restated Grazing Lease and Hunting License Agreement dated January 1, 2006 (the "Lease"), as assigned by mesne assignments, by unrecorded Assignment of Lease dated July 31, 2010 to Assignor, and as amended by unrecorded First Amendment to Amended and Restated Grazing Lease and Hunting License Agreement dated August 1, 2020 (the "Lease"), made between The Trust for Public Land as Lessor and Diamond B Ranch, LLC, a Hawaii limited liability company, as assignee Lessee, and Brendan Balthazar, as assignor Lessee.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith unto the Assignee, and its successors in trust and assigns, for and during the remainder of the term of said Lease, subject to any encumbrances hereinabove or hereinafter mentioned.

SUBJECT, HOWEVER, to the observance and performance by the Assignee of all of the covenants and conditions contained in the Lease, which, according to the terms and provisions thereof, are or ought to be observed and performed by the Lessor therein named.

AND the Assignor, in consideration of the premises, does hereby covenant and agree to and with the Assignee as follows: That the Assignor is the lawful owner of the leasehold estate and interest created under the Lease; that the Lease is in full force and effect and not in default by Assignor; that the leasehold estate and interest are free and clear of and from all encumbrances made by Assignor; that the Assignor has good right to sell and assign the leasehold estate and interest; and that the Assignor will WARRANT AND DEFEND the title of Assignor to the leasehold estate and interest created by the Lease unto the Assignee against the lawful claims and demands of all persons claiming by, through or under Assignor.

AND the Assignee, in consideration of the premises, does hereby promise, covenant and agree to and with the Assignor, and to and with the Lessee under the Lease, that the Assignee will faithfully observe and perform all of the covenants and conditions contained in the Lease which are or ought to be observed and performed by the Lessor therein named.

IT IS MUTUALLY AGREED that the terms "Assignor", "Assignee", "Lessor" and "Lessee", as and when used hereinabove or hereinbelow shall mean and include the masculine



or feminine, the singular or plural number, individuals, associations, trustees, corporations or partnerships, and their and each of their respective successors in interest, successors in trust, heirs, personal representatives, executors, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more Assignors or by two or more Assignees, all covenants of such parties shall be and for all purposes deemed to be joint and several.

IN WITNESS WHEREOF, the Assignor and the Assignee have signed these presents effective as of the day and year first above written.

Assignor:

**The Trust for Public Land, a California nonprofit
public benefit corporation**



Tily Shue, Legal Director

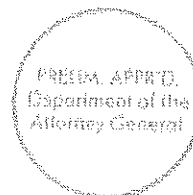
Assignee:

STATE OF HAWAII

By _____
SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

APPROVED AS TO LEGALITY AND
FORM:

Julie H. China
Deputy Attorney General



or feminine, the singular or plural number, individuals, associations, trustees, corporations or partnerships, and their and each of their respective successors in interest, successors in trust, heirs, personal representatives, executors, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more Assignors or by two or more Assignees, all covenants of such parties shall be and for all purposes deemed to be joint and several.

IN WITNESS WHEREOF, the Assignor and the Assignee have signed these presents effective as of the day and year first above written.


Assignor:

The Trust for Public Land, a California nonprofit public benefit corporation


Tily Shue, Legal Director

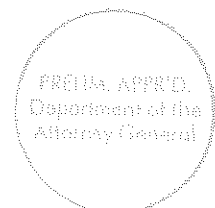
Assignee:

STATE OF HAWAII

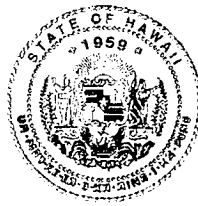
By 
SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

APPROVED AS TO LEGALITY AND
FORM:


Julie H. China
Deputy Attorney General



NC, D



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

August 31, 2020 8:01 AM

Doc No(s) A - 75480344



1 1/1 CGG
B - 33563898

/s/ LESLIE T. KOBATA
REGISTRAR

Conveyance Tax: \$88,470.00

LAND COURT SYSTEM

) REGULAR SYSTEM

Return by Mail (X) Pickup () To:

Department of Land and Natural Resources
Division of Forestry and Wildlife
1151 Punchbowl Street, Room 325
Honolulu, Hawaii 96813

TG: 202033076-5 *RS*

TGE: 21019124950
Jeremy Trueblood

Total Number of Pages: 23

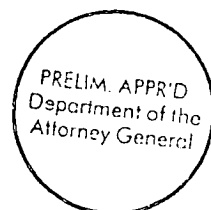
LOD No. S-29229

Tax Map Key Nos. (2) 2-3-005:002 and 014

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT, effective as of the 31st day of August 2020, **THE TRUST FOR PUBLIC LAND**, a California nonprofit public benefit corporation, whose address is 101 Montgomery Street, Suite 900, San Francisco, CA 94104, hereinafter referred to as the "Grantor," for good and valuable consideration paid by the **STATE OF HAWAII**, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter referred to as the "Grantee," the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, the Grantee's successors and assigns, those certain parcel(s) of land situate at Kula, Island of Maui, State of Hawaii, containing an area approximately 3,433.7495 acres, more particularly described in **Exhibit "A"** and delineated on **Exhibit "B"** both attached hereto and made parts hereof, said exhibits being, respectively, a survey description and survey map prepared by Fukumoto Engineering Inc. and dated June 26, 2020 (hereafter, the "Property").



AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in any ways appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances, except as described on **Exhibit "C"**, attached hereto and made a part hereof.

The Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that the Grantor is lawfully seised in fee simple and possessed of the above-described Property that it has a good and lawful right and title to sell and convey the same as aforesaid, that the same is free and clear of all liens and encumbrances, except as noted herein and in **Exhibit "C"** hereto, and that it will and its successors and assigns, shall WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the claims and demands of all persons whomsoever.

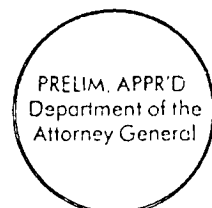
The Grantor shall be responsible for payment of all real property taxes up to the date of execution of this Warranty Deed.

NOTICE OF FEDERAL PARTICIPATION

1. United States Department of Agriculture (USDA) Forest Service

Purpose & authority. The purpose of this acquisition is to effect the Forest Legacy Program in accordance with the provisions of the Cooperative Forestry Assistance Act of 1978, P.L. 95-313 as amended (codified at 16 U.S.C. 2101 *et seq.*) on the herein described land, which purposes include protecting environmentally important forest areas that are threatened by conversion to nonforest uses and for promoting forest land protection and other conservation opportunities. The purposes also include the protection and preservation of important scenic, cultural, fish, wildlife and recreational resources, riparian area, and other ecological values, and to ensure that the Property is available for the sustainable and cost-effective harvesting of forest products in a silviculturally sound manner, all of which meet the objectives of the Forest Legacy Program (FLP).

Transfer & disposal. This deed may be transferred or assigned only (i) to a government agency that (a) is eligible to hold this deed under the FLP, (b) is willing and able to hold this deed for the purpose for which it was created, and (c) expressly agrees to assume the responsibility imposed by the terms of this deed and (ii) with the consent of the State of Hawai'i, by its Board of Land and Natural Resources for the state lead agency, the Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW). If the deed holder ever ceases to exist or is no longer willing and able to hold this deed for the purpose for which it was created or carry out the responsibility imposed on the holder by the terms of this deed, the state lead agency must identify and select an appropriate entity to which this deed must be transferred.



The STATE OF HAWAI'I, by its Board of Land and Natural Resources, the owner of the Deed, pursuant to the grant agreement "Kamehamenui Forest Project" Grant Number 18-DG-11052021-217 awarded by the United States Department of Agriculture (USDA) Forest Service on June 27, 2018, to the grant recipient, STATE OF HAWAI'I, DLNR/DOFAW, acknowledges that the USDA Forest Service Forest Legacy Program funding for this acquisition is authorized by the Cooperative Forestry Assistance Act of 1978, P.L. 95-313, as amended (codified at 16 U.S.C. § 2101 *et seq.*), and that the interest acquired cannot be sold, exchanged, or otherwise disposed. Except, however, the USDA Secretary of Agriculture (Secretary) may exercise discretion to consent to such sale, exchange, or disposition upon the grant recipient's tender of equal valued consideration acceptable to the Secretary and under the requirement that the United States is reimbursed the market value of the interest, proportional to its contribution in the original acquisition, at the time of disposal. The grant agreement is housed in the USDA Forest Service Pacific Southwest Region Office at 1323 Club Drive, Vallejo, California, 94592, or in an archival facility per Agency policy.

The USDA Forest Service's proportionate share is 39%, which was determined by dividing the FLP's contribution to the acquisition by the value of the acquisition, at the time it was acquired, and expressing the result as a percentage.

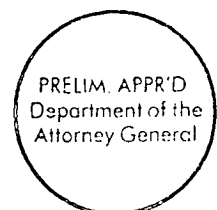
The market value of this fee simple interest or the portion thereof that is disposed shall be the market value of such interest immediately before the disposal as determined by an appraisal that meets the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and is completed by a certified general appraiser approved by the grant recipient and the USDA Forest Service Pacific Southwest Region Office.

The form of the USDA Forest Service's reimbursement under this paragraph (whether it is received in cash or in kind) shall be in the sole and absolute discretion of the Secretary but shall in all events be used for FLP or similar conservation purposes. This fee simple deed shall not be deemed disposed in whole or in part until the USDA Forest Service receives reimbursement as provided in this paragraph.

No inaction or silence by the Secretary shall be construed as approval of a disposal or as an abandonment of this fee simple deed in whole or in part. Any purported disposal executed without the prior written consent of the Secretary will be null and void. The provisions of this paragraph shall survive any partial disposal.

If the deed owner is notified of a proposal to condemn all or any portion of the property subject to this fee simple deed, the grant recipient and the USDA Forest Service must immediately be notified.

Management objectives. The Property will be managed in a manner consistent with and in accordance with the FLP and a Multi-Resource Management Plan to ensure long-term sustainability and protection of the forest resources and other conservation values for which the Property was acquired. The initial plan will designate specific areas targeted for reforestation/afforestation, including a timeline to complete reforestation to achieve 75% cover across the Property within 10 years of acquisition, or as soon as silviculturally possible; subsequent plan updates will provide for maintenance of at least 75% forest cover thereafter.



There will be no surface disturbance of the property other than what is necessary for management activities which are needed for long-term forest health and sustainability. Disturbance must be limited but could include construction of new recreational or forest management roads or trails, construction or replacement of culverts or construction of structures that are necessary to meet the purposes of the acquisition including public access and forest-based recreation. There may be limited extraction of sand or gravel for onsite management activities. Such activities and construction will be outlined in the Multi-Resource Management Plan. Protection of the forest is the primary purpose of this acquisition; any management, structures, disturbance or alteration will be done only if needed for effective protection, management or restoration of the forest.

There will be no conveyance or subdivision of the subject property except that limited portions may be conveyed as part of bona fide boundary dispute resolutions in consultation with the appropriate Court. The holder of the subject property shall not enter into long term contracts, agreement, leases or easements that could impact the long-term title of this property or the purposes for which the property entered the FLP.

Ecosystem service markets. No agreements relating to ecosystem service markets shall be made regarding the Property that is or is likely to become inconsistent with the Purposes or Terms of this Deed, the terms of the FLP grant, State of Hawai'i Forest Action Plan or other documents incorporated by reference. If the State of Hawai'i wishes to enter such an agreement it must notify the USDA Forest Service explaining what the State proposes to do and explain why it believes market participation is compatible. The USDA Forest Service will respond with its denial or approval and include instructions if applicable.

2. U.S. Department of the Interior, Fish and Wildlife Service

The State of Hawai'i, DLNR, acknowledges that the Kamehamenui Forest Acquisition, located in Maui County, State of Hawai'i (the "Property"), was acquired, in part, with funds awarded by the U.S. Department of the Interior, Fish and Wildlife Service (the "USFWS") including grant funds received from the Cooperative Endangered Species Conservation Fund Habitat Conservation Plan (HCP) Land Acquisition Grant Program (CFDA #15.615) established under Section 6 of the Endangered Species Act, 16 U.S.C. § 1535 (the "Program"). The Program is administered by the USFWS, Division of Wildlife and Sport Fish Restoration, and its successors and assigns. The Property is subject to all the terms and conditions of Grant Award F18AP00085 (Award), the purpose of which is to enhance recovery efforts for federally listed endangered species, including Hawaiian petrel (*Pterodroma sandwichensis*) (Hawaiian name - ua'u), Hawaiian goose (*Branta sandvicensis*) (Hawaiian name - nēnē), Hawaiian hoary bat (*Lasiurus semotus*) (Hawaiian name - 'ope'ape'a), and Blackburn's sphinx moth (*Manduca blackburni*). A copy of the Award is kept on file at the offices of the USFWS, 911 NE 11th Avenue, Portland, Oregon 97232 and DLNR, Division of Forestry and Wildlife, 1151 Punchbowl Street, Room 325, Honolulu, Hawaii 96813.

DLNR acknowledges that the Property was acquired in part for the USFWS-approved purpose of protecting the Property in perpetuity to enhance recovery efforts for Hawaiian petrel, nēnē, Hawaiian hoary bat, and Blackburn's sphinx moth. The purpose of this acquisition project

is to complement required mitigation being performed pursuant to the respective HCPs and to contribute to the long-term recovery of the covered species as well as for 10 additional endangered species. The acquisition is anticipated to protect and restore suitable habitat, increasing survival and reproductive success of those listed species. Acquisition and management of the Property is expected to result in an increase in the populations of each species, contributing to their overall recovery.

DLNR will develop a multi-resource management plan for the property which includes management strategies and recovery efforts to benefit federal listed species on the Property. The USFWS will be consulted during the development of the multi-resource management plan to ensure the forest management activities including but not limited to the harvesting of forest products will consider impacts to listed species. The Property possesses significant natural and open space values associated with habitat for fish and wildlife. DLNR's responsibilities and the federal interest shall last in perpetuity and pass to any successors unless provided for otherwise through disposal pursuant to 2 C.F.R. §200.311.

DLNR, as a recipient of Award funds, hereby confirms its obligations and responsibilities with regards to the Property pursuant to the terms and conditions associated with the Award, including the obligation to obtain the consent of the USFWS prior to the conveyance of any interest in the Property or the use of the Property for any purpose inconsistent with the USFWS-approved purpose. In the event the Property is no longer necessary for the purpose of the Award, DLNR will request disposition instructions from the USFWS, which will be provided in accordance with 2 C.F.R. §200.311(c).

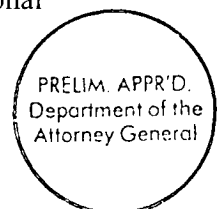
Funding contributions toward the total purchase of the Property are as follows:

Contributing Partner	Amount	% of total
State of Hawaii CIP	\$4,000,000	41%
U.S. Forest Service - Forest Legacy Program/DLNR	\$3,830,000	39%
U.S. Fish and Wildlife Service-HCP /DLNR	\$2,000,000	20%
Total	\$9,830,000	100%

DLNR shall not authorize or tolerate any activities on the Property that are incompatible with its originally authorized purpose, and will endeavor while working with partners, to stop these activities immediately should they occur without DLNR's permission.

DLNR acknowledges that there must be no discrimination during the useful life of the project (43 C.F.R. 17.204(c)(2)).

IT IS MUTUALLY AGREED that the terms "Grantor" and "Grantee," as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations, partnerships, or other entities and their and each of their respective successors in interest, heirs, executors, personal




representatives, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more grantors, or by two or more grantees, all covenants of such parties shall be and for all purposes deemed to be their joint and several covenants.

The parties agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, The Trust for Public Land, aforesaid, the Grantor herein, has caused these presents to be executed this 15th day of August, 2020, and the STATE OF HAWAII, by its Board of Land and Natural Resources, the Grantee herein, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be executed this 25th day of August, 2020, both effective as of the day, month, and year first above written.

THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit corporation

Approved by the Board of Land and Natural Resources at its meeting(s) held on _____.



Tily Shue, Legal Director
GRANTOR

APPROVED AS TO LEGALITY,
FORM, EXCEPTIONS, AND
RESERVATIONS:

STATE OF HAWAII

Deputy Attorney General

By _____
SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

Dated: _____

GRANTEE

representatives, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more grantors, or by two or more grantees, all covenants of such parties shall be and for all purposes deemed to be their joint and several covenants.

The parties agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, The Trust for Public Land, aforesaid, the Grantor herein, has caused these presents to be executed this 1st day of AUGUST, 2020, and the STATE OF HAWAII, by its Board of Land and Natural Resources, the Grantee herein, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be executed this 25th day of August, 2020, both effective as of the day, month, and year first above written.

THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit corporation

Approved by the Board of Land and Natural Resources at its meeting(s) held on May 8, 2020.

Tily Shue, Legal Director
GRANTOR

APPROVED AS TO LEGALITY, FORM, EXCEPTIONS, AND RESERVATIONS:

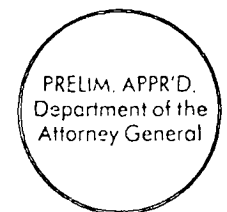
[Signature]
Julie H. Chinn
Deputy Attorney General

STATE OF HAWAII

By [Signature]
SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

Dated: August 24, 2020

GRANTEE



CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of San Francisco }
On July 27, 2020 before me, Margot Harrell
Date Here Insert Name and Title of the Officer
personally appeared Tiny Shue
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer – Title(s): _____ Corporate Officer – Title(s): _____

Partner – Limited General Partner – Limited General

Individual Attorney in Fact Individual Attorney in Fact

Trustee Guardian or Conservator Trustee Guardian or Conservator

Other: _____ Other: _____

Signer is Representing: _____ Signer is Representing: _____

Exhibit A

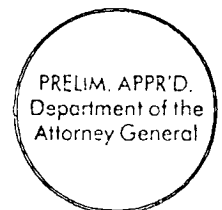
The Land referred to herein is described as follows:

-ITEM I:-

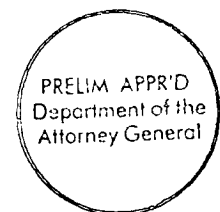
All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 4388, Land Commission Award 8452, Apana 6 to A. Keohokalole and Royal Patent 7453, Land Commission Award 8452, Apana 21 to A. Keohokalole) situate, lying and being at Kamehamenui and Kealahou 3 & 4, Makawao, Island and County of Maui, State of Hawaii, being PARCEL 2, and thus bounded and described, to-wit:

Beginning at a 1/2-inch pipe at the northwest corner of this lot on the easterly side of Kekaulike Highway (Federal Aid Project 13-A) being also the southwest corner of the remainder of Lot 40 of Kamehameiki-Pulehuiki Homesteads, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PANE" being 17,037.83 feet south and 3,117.76 feet east, thence running by azimuths measured clockwise from true South:

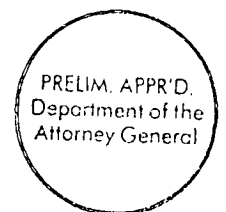
- | | |
|--------------------------|---|
| 1. 289° 33' 2,528.21 | feet along the remainder of Lot 40 and Lot 44 of Kamehameiki-Pulehuiki Homesteads, being also along Grant 3874 to Chi Lung and Grant 3873 to Ah Fu to a 1/2-inch pipe; |
| 2. 290° 25' 52" 8,890.57 | feet along Grant 3502 to J. T. Baker to a cave at the bottom of Hapapa Gulch marked by a PK nail on rock over cave; |
| | Thence along the centerline of Hapapa Gulch, along Royal Patent 8140, Land Commission Award 5230 to Keaweamahi, for the next five courses, the direct azimuths and distances being: |
| 3. 293° 35' 1,127.65 | feet to a spike; |
| 4. 294° 08' 45" 1,258.20 | feet to a 1/2-inch pipe; |
| 5. 297° 46' 10' 260.02 | feet to PK nail; |



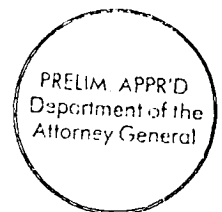
- | | |
|---------------------------|---|
| 6. 277° 07' 50" 161.42 | feet to a "+" cut on rock; |
| 7. 295° 52' 20" 1,303.98 | feet to a 1/2-inch pipe; |
| 8. 299° 27' 30" 3,050.18 | feet along Royal Patent 8140,
Land Commission Award 5230
to Keaweamahi; |
| 9. 306° 47' 5,640.30 | feet along Royal Patent 8140,
Land Commission Award 5230
to Keaweamahi; |
| 10. 33° 46' 30" 7,959.00 | feet along Hawaii Volcano
National Park, Haleakala Crater
Section (C.S.F. 4532, 10729,
and 11116), being also the
remainders of Royal Patent
4388, Land Commission Award
8452, Apana 6 to A.
Keohokalole and Royal Patent
7453, Land Commission Award
8452, Apana 21 to A.
Keohokalole to a 1-1/4-inch
pipe (Concrete Monument No.
17); |
| 11. 40° 10' 30" 463.07 | feet along the Radio
Transmission Site (C.S.F.
16324) and Government Land to
a 1-1/4-inch pipe (Concrete
Monument No. 25); |
| 12. 127° 41' 6,365.00 | feet along University of Hawaii
Haleakala High Altitude
Observatory Site (C.S.F.
13564), Government Land, and
Kula Forest Reserve; |
| 13. 121° 43' 2,830.00 | feet along Kula Forest Reserve; |
| 14. 135° 31' 41" 6,923.48 | feet along same to a fence post; |
| 15. 134° 27' 30" 2,731.80 | feet along Grant 9325, Apana 3
to Haleakala Ranch Company; |



16. 135° 09' 1,294.00 feet along Lot 36 of Waiakoa Homesteads Mauka Section, being also along Grant 4289 to Antone Correia de Silva;
17. 134° 56' 20" 617.84 feet along Lot 19 of Waiakoa Homesteads Mauka Section, being also along Grant 3868 to Antone Dos Reis;
18. 129° 12' 45" 883.83 feet along same to a 1/2-inch pipe;
19. 129° 35' 30" 1,613.80 feet along the Northeasterly side of Homestead Road to a 1/2-inch pipe;
20. 129° 01' 15" 657.53 feet along the remainder of Lot 1-A of Kealahou Homesteads (Registered Map 2239), being also along Grant 8107 to Satoichi Haramura to a 1/2-inch pipe;
21. Thence along the Southeasterly side of Kekaulike Highway (F.A.P. 13-A) on a curve to the right with a radius of 1,402.50 feet, the radial azimuth from the radius point to the beginning of curve being: 136° 12' 34", the radial azimuth from the radius point to the end of curve being: 140° 42', and the chord azimuth and distance being:
- 228° 27' 17" 109.89 feet;
22. 230° 42' 1,045.10 feet along same to a concrete monument;
23. Thence along same on a curve to the left with a radius of 507.50 feet, the radial azimuth from the radius point to the beginning of curve being: 320° 42', the radial azimuth from the radius point to the end of curve being: 286° 36'



	213° 39' 20"	297.51	40", and the chord azimuth and distance being:
			feet to a 1/2-inch pipe;
24.	281° 16'	215.56	feet along Kula Substation No. 13, being also the remainders of Royal Patent 4388, Land Commission Award 8452, Apana 6 to A. Keohokalole and Royal Patent 7453, Land Commission Award 8452, Apana 21 to A. Keohokalole to a 1/2-inch pipe;
25.	183° 34' 30"	200.00	feet along same to a 1/2-inch pipe;
26.	101° 16'	202.36	feet along same to a 1/2-inch pipe;
27.	183° 34' 30"	435.89	feet along the Easterly side of Kekaulike Highway (F.A.P. 13-A);
28.	273° 34' 30"	40.00	feet along the remainders of Royal Patent 4388, Land Commission Award 8452, Apana 6 to A. Keohokalole and Royal Patent 7453, Land Commission Award 8452, Apana 21 to A. Keohokalole;
29.	183° 34' 30"	30.00	feet along same;
30.	93° 34' 30"	40.00	feet along same;
31.	183° 34' 30"	240.93	feet along the Easterly side of Kekaulike Highway (F.A.P. 13-A) to the point of beginning and containing a gross area of 3,446.536 acres and a net area of 3,433.722 acres, more or less, after excluding Exclusion 1 →Tax Map Key (2) 2-3-05:07← with an area of 9.192 Acres and



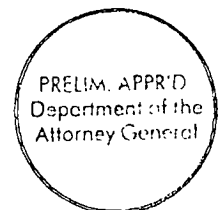
excluding Exclusion 2 → Tax Map Key (2) 2-3-05:08 ← with an area of 3.622 Acres, such exclusions being more particularly described as follows.

EXCLUSION 1

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 4388, Land Commission Award 8452, Apana 6 to A. Keohokalole and Royal Patent 7453, Land Commission Award 8452, Apana 21 to A. Keohokalole) situate, lying and being at Kamehamenui and Kealahou 3 & 4, Makawao, Island and County of Maui, State of Hawaii, being PARCEL 7 of Tax Map Key (2) 2-3-005, and thus bounded and described, to-wit:

Beginning at westerly corner of this parcel, the direct azimuth and distance from the northwest corner of Parcel 2 of Tax Map Key (2) 2-3-05 on the easterly side of Kekaulike Highway (Federal Aid Project 13-A) to the point of beginning being 330°57'07" 2,013.84 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PANE" being 18,798.35 feet south and 4,095.57 feet east, thence running by azimuths measured clockwise from true South:

- | | | | |
|----|----------|--------|--|
| 1. | 209° 20' | 327.39 | feet along the remainders of Royal Patent 4388, Land Commission Award 8452, Apana 6 to A. Keohokalole and Royal Patent 7453, Land Commission Award 8452, Apana 21 to A. Keohokalole; |
| 2. | 293° 14' | 550.15 | feet along same; |
| 3. | 334° 28' | 69.10 | feet along same to a 3/4-inch pipe; |
| 4. | 35° 18' | 44.31 | feet along same to a 3/4-inch pipe; |
| 5. | 67° 20' | 59.75 | feet along same to a 3/4-inch pipe; |
| 6. | 44° 28' | 84.03 | feet along same to a 3/4-inch pipe; |



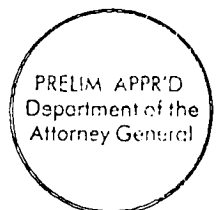
- | | | | |
|-----|--------------|--------|--|
| 7. | 41° 29' | 470.41 | feet along same to a 3/4-inch pipe; |
| 8. | 72° 03' | 144.97 | feet along same to a 3/4-inch pipe; |
| 9. | 53° 58' | 176.04 | feet along same to a 3/4-inch pipe; |
| 10. | 131° 21' | 295.84 | feet along same to a 3/4-inch pipe; |
| 11. | 133° 14' 30" | 46.34 | feet along same; |
| 12. | 233° 46' | 281.20 | feet along Exclusion 2 → Parcel 8 of Tax Map Key (2) 2-3-05 ← to a 3/4-inch pipe; |
| 13. | 223° 35' | 194.30 | feet along same; |
| 14. | 139° 01' | 105.45 | feet along same to the point of beginning and containing an area of 9.192 acres, more or less. |

EXCLUSION 2

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 4388, Land Commission Award 8452, Apana 6 to A. Keohokalole and Royal Patent 7453, Land Commission Award 8452, Apana 21 to A. Keohokalole) situate, lying and being at Kamehamenui and Kealahou 3 & 4, Makawao, Island and County of Maui, State of Hawaii, being PARCEL 8 of Tax Map Key (2) 2-3-005, and thus bounded and described, to-wit:

Beginning at northerly corner of this parcel, the direct azimuth and distance from the northwest corner of Parcel 2 of Tax Map Key (2) 2-3-05 on the easterly side of Kekaulike Highway (Federal Aid Project 13-A) to the point of beginning being 330°57'07" 2,013.84 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PANE" being 18,798.35 feet south and 4,095.57 feet east, thence running by azimuths measured clockwise from true South:

- | | | | |
|----|----------|--------|---------------------------------|
| 1. | 319° 01' | 105.45 | feet along Exclusion 1 → Parcel |
|----|----------|--------|---------------------------------|

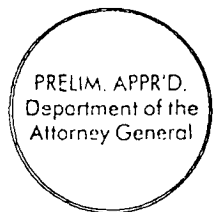


- | | | | |
|----|----------|--------|---|
| | | | 7 of Tax Map Key (2) 2-3-05←,
being also the remainders of
Royal Patent 4388, Land
Commission Award 8452,
Apana 6 to A. Keohokalole and
Royal Patent 7453, Land
Commission Award 8452,
Apana 21 to A. Keohokalole; |
| 2. | 43° 35' | 194.30 | feet along same to a 3/4-inch
pipe; |
| 3. | 53° 46' | 281.20 | feet along same; |
| 4. | 134° 31' | 329.20 | feet along the remainders of
Royal Patent 4388, Land
Commission Award 8452,
Apana 6 to A. Keohokalole and
Royal Patent 7453, Land
Commission Award 8452,
Apana 21 to A. Keohokalole; |
| 5. | 219° 26' | 318.20 | feet along same; |
| 6. | 285° 31' | 336.50 | feet along same to the point of
beginning and containing an
area of 3.622 acres, more or
less. |

-ITEM II:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 4388, Land Commission Award Number 8452, Apana 6 to A. Keohokalole) situate, lying and being at Kamehamenui, Makawao, Island and County of Maui, State of Hawaii, being PARCEL 14, and thus bounded and described as per survey of Erik S. Kaneshiro, Land Surveyor, with Austin, Tsutsumi & Associates, Inc., dated January 11, 2002, to-wit:

Beginning at the northwest corner of this parcel of land, along the east side of Kekaulike Highway (F.A.P. 13-A), the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PANE", being 17,278.28 feet south and 3,102.74 feet east and running by azimuths measured clockwise from true South:



1. 273° 34' 30" 40.00 feet along the remainder of R.P. 4388, L.C. Aw. 8452, Ap. 6 to A. Keohokalole;
2. 3° 34' 30" 30.00 feet along same;
3. 93° 34' 30" 40.00 feet along same;
4. 183° 34' 30" 30.00 feet along the east side of Kekaulike Highway (F.A.P. 13-A), to the point of beginning and containing an area of 1,200 square feet, more or less.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : SHIZUKA ASAKAWA, Trustee of the Shizuka Asakawa Revocable Trust Agreement dated April 19, 2016

GRANTEE : THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation

DATED : July 31, 2020

RECORDED : Document No. A-75170508

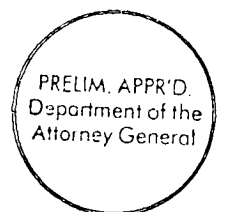


EXHIBIT B

**MAP SHOWING EASEMENTS AFFECTING
PARCEL 2 OF TAX MAP KEY (2) 2-3-05
AT 2176 KEKALUIKE AVENUE
KULA, HAWAII**

BEING PORTIONS OF ROYAL PATENT 4386,
LAND COMMISSION AWARD 8452, APANA 5 TO
LAND COMMISSION AWARD 8452, APANA 21 TO
A. KEOHOKALOHE

KAMEHANEHI AND USALAMUS J & 4
MAKAWAO, MAUI, HAWAII

DATE: 11/11/2011
SCALE: AS SHOWN
PROJECT: 2176 KEKALUIKE AVENUE
DRAWN BY: [Signature]
CHECKED BY: [Signature]
DATE: 11/11/2011
PROJECT: 2176 KEKALUIKE AVENUE
DRAWN BY: [Signature]
CHECKED BY: [Signature]
DATE: 11/11/2011

NOTES

1. THIS MAP SHOWS EASEMENTS AFFECTING PARCEL 2 OF TAX MAP KEY (2) 2-3-05 AT 2176 KEKALUIKE AVENUE, KULA, HAWAII.
2. THE EASEMENTS SHOWN ON THIS MAP WERE OBTAINED FROM THE RECORDS OF THE COUNTY OF MAUI, HAWAII.
3. THE EASEMENTS SHOWN ON THIS MAP WERE OBTAINED FROM THE RECORDS OF THE COUNTY OF MAUI, HAWAII.
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18. THE EASEMENTS SHOWN ON THIS MAP WERE OBTAINED FROM THE RECORDS OF THE COUNTY OF MAUI, HAWAII.
19. THE EASEMENTS SHOWN ON THIS MAP WERE OBTAINED FROM THE RECORDS OF THE COUNTY OF MAUI, HAWAII.
20. THE EASEMENTS SHOWN ON THIS MAP WERE OBTAINED FROM THE RECORDS OF THE COUNTY OF MAUI, HAWAII.

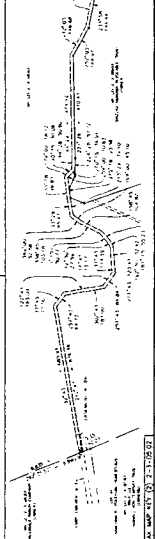
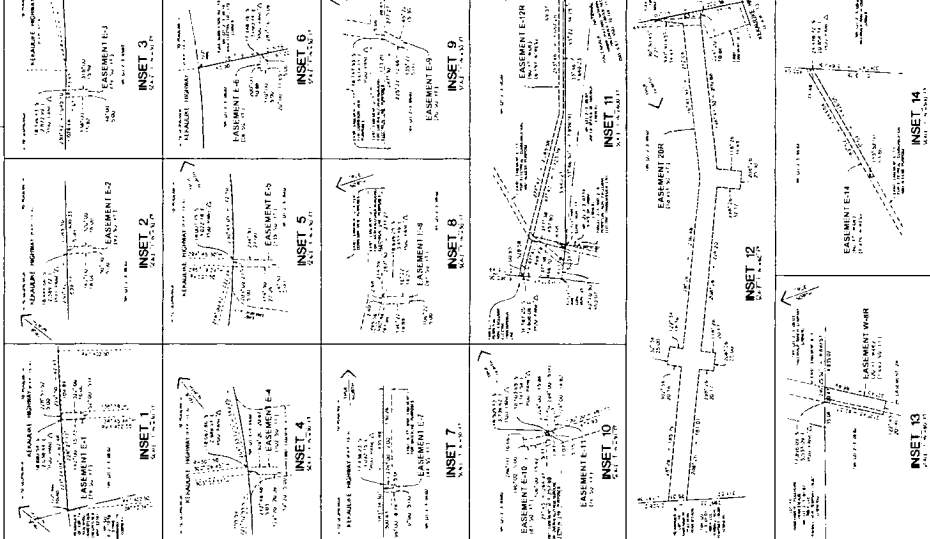
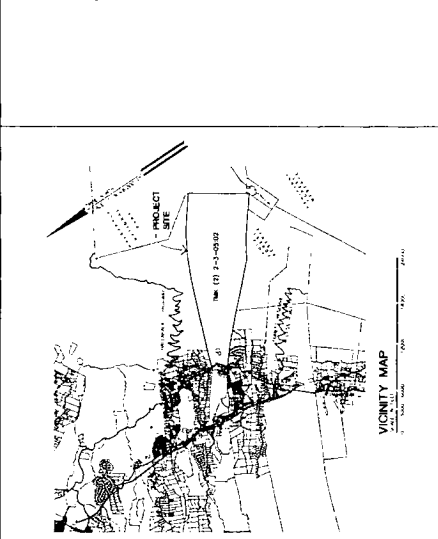
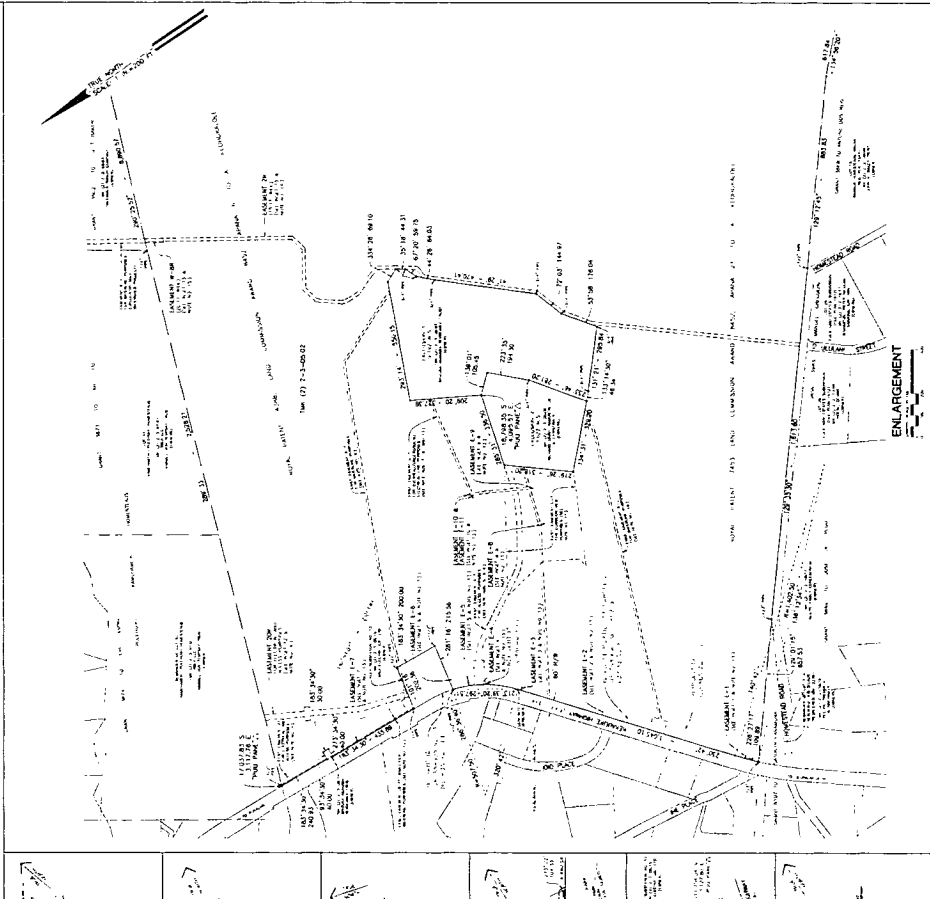
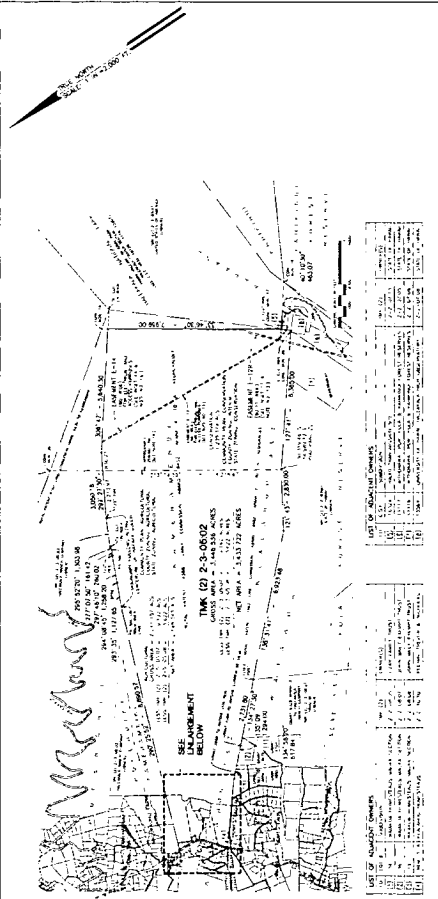
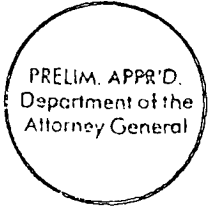


EXHIBIT C

The land described on Exhibit "A" and depicted on Exhibit "B" hereto is subject to the following:

1. Mineral and water rights of any nature.
2. Any and all existing roadways, trails, easements, rights of way, flumes, irrigation ditches and drainageway.
3. -AS TO ITEM I:-

(A) GRANT

TO : MAUI ELECTRIC COMPANY, LIMITED

DATED : March 14, 1978

RECORDED : Liber 12791 Page 735

GRANTING : a right and easement for utility purposes over Easements "20" and "21"

Said above Grant has been amended by the instrument dated July 31, 2020 , recorded as Document No. A-75170497; re: Easement 20 has been replaced with Easement E-20R.

(B) GRANT

TO : MAUI ELECTRIC COMPANY, LIMITED

DATED : March 13, 1978

RECORDED : Liber 13521 Page 90

GRANTING : a right and easement for utility purposes over Easements "20" and "21"

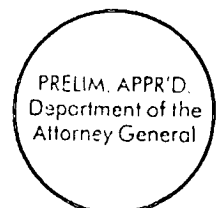
Said above Grant has been amended by the instrument dated July 31, 2020, recorded as Document No. A-75170497; re: Easement 20 has been replaced with Easement E-20R.

(C) GRANT

TO : ROBERT GORDON VON TEMPSKY, JR. and
MARY B. VON TEMPSKY, Trustees of the R.
Gordon Von Tempsky, Jr. Trust established by
Trust Agreement dated April 11, 1979, as amended

DATED : November 26, 2001

RECORDED : Document No. 2001-195576



GRANTING : a nonexclusive easement in favor of Tax Key (2) 2-3-005-007 for access purposes over Easement "A-1", more particularly described therein

(D) GRANT

TO : ROBERT GORDON VON TEMPSKY, JR. and MARY B. VON TEMPSKY, Trustees of the R. Gordon Von Tempsky Jr. Trust established by Trust Agreement dated April 11, 1979, as amended

DATED : November 26, 2001

RECORDED : Document No. 2001-195578

GRANTING : a nonexclusive right and easement in favor of Tax Key (2) 2-3-005-007 for utility purposes over Easement "U-1", more particularly described therein

(E) GRANT

TO : ROBERT GORDON VON TEMPSKY, JR. and MARY B. VON TEMPSKY, Trustees of the R. Gordon Von Tempsky, Jr. Trust established by Trust Agreement dated April 11, 1979, as amended

DATED : November 26, 2001

RECORDED : Document No. 2001-195580

GRANTING : a nonexclusive easement for waterline purposes over Easement "W-1", more particularly described therein

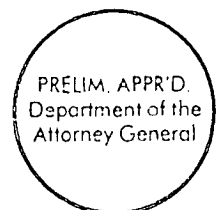
(F) GRANT

TO : ROBERT GORDON VON TEMPSKY, JR. and MARY B. VON TEMPSKY, Trustees of the R. Gordon Von Tempsky, Jr. Trust established by Trust Agreement dated April 11, 1979, as amended

DATED : November 26, 2001

RECORDED : Document No. 2002-021609

GRANTING : a nonexclusive easement for waterline purposes over Easement "W-2", more particularly described therein



(G) The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

DATED : November 26, 2001
RECORDED : Document No. 2002-021610

Easement C-1 for view corridor purposes more particularly described therein.

(H) GRANT

TO : ROBERT GORDON VON TEMPSKY, JR. and
MARY B. VON TEMPSKY, Trustees of the R.
Gordon Von Tempsky, Jr. Trust established by
Trust Agreement dated April 11, 1979, as amended

DATED : November 26, 2001
RECORDED : Document No. 2002-021611
GRANTING : a nonexclusive easement for access purposes over
Easement "A-1", more particularly described
therein

(I) GRANT

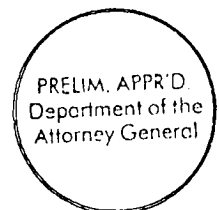
TO : ROBERT GORDON VON TEMPSKY, JR. and
MARY B. VON TEMPSKY, Trustees of the R.
Gordon Von Tempsky, Jr. Trust established by
Trust Agreement dated April 11, 1979, as amended

DATED : November 26, 2001
RECORDED : Document No. 2002-021612
GRANTING : a nonexclusive right and easement for utility
purposes over Easement "U-1", more particularly
described therein

(J) GRANT

TO : MAUI ELECTRIC COMPANY, LIMITED, and
HAWAIIAN TELCOM, INC.

DATED : May 13, 2014
RECORDED : Document No. A-52910750
GRANTING : rights and easements for electrical, communication
and access purposes



Said above Grant has been amended by the instrument dated July 31, 2020, recorded as Document No. A-75170498; re: Easement E-12 has been replaced with Easement E-12R.

(K) GRANT

TO : STATE OF HAWAII, DEPARTMENT OF AGRICULTURE

DATED : October 23, 2015

RECORDED : Document No. A-58000819

GRANTING : an easement for waterline purposes over Easement "2", being more particularly described therein, as shown on map attached thereto

-Note:- Although Easement "W-8" is referenced in the body of the above said document, coversheet and Exhibit A and B attached to the document are showing Easement "2".

(L) GRANT

TO : STATE OF HAWAII, DEPARTMENT OF AGRICULTURE

DATED : October 23, 2015

RECORDED : Document No. A-58000820

GRANTING : an easement over Easement "W-8" for waterline purposes, being more particularly described therein, as shown on map attached thereto

-Note:- Although Easement "2" is referenced in the body of the above said document, coversheet and Exhibit A and B attached to the document are showing Easement "W-8".

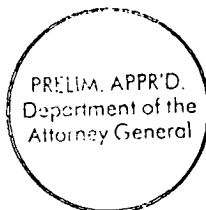
(M) GRANT

TO : MAUI ELECTRIC COMPANY, LIMITED, and HAWAIIAN TELCOM, INC.

DATED : July 31, 2020

RECORDED : Document No. A-75170496

GRANTING : a right and easement for electrical, communication and access purposes over and across Easement E-14, more particularly described therein



4. GRANT

TO : VON TEMPSKY FP, a Hawaii limited partnership,
and KULA RIDGE MAUKA LLC, a Hawaii
limited liability company

DATED : January 9, 2009, September 2, 2009 and September
3, 2009

RECORDED : Document No. 2009-162580

GRANTING : an easement for the transmission of water purposes,
being more particularly described therein

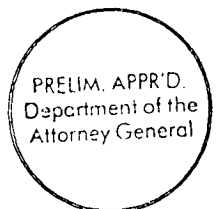
5. Unrecorded AMENDED AND RESTATED GRAZING LEASE AND HUNTING LICENSE AGREEMENT, dated effective as of January 1, 2006, made by and between KJZ LLC, a Hawaii limited liability company, "Lessor" and BRENDAN BALTHAZAR, "Lessee", its term continue for a term of ten (10) years commencing on January 1, 2006, and expiring on December 31, 2020, with option to extend the term of this lease for one (1) additional ten (10) year period.

Unrecorded FIRST AMENDMENT TO AMENDED AND RESTATED GRAZING LEASE AND HUNTING LICENSE date effective as of August 1, 2020, by and between THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation, "Lessor", and BRENDAN BALTHAZAR, "Lessee"; Assignment of Lessee's entire interest to DIAMOND B RANCH, LLC, a Hawaii limited liability company, it's assumption of all Lessee's obligations under the Lease, and approval be Lessor.

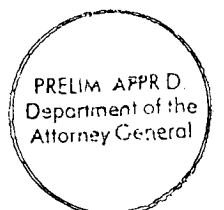
Unrecorded Estoppel Certificate dated August 1, 2020, made by BRENDAN BALTHAZAR, "Lessee".

Lessor's interest is by mesne assignments, assigned to THE STATE OF HAWAII, by unrecorded Assignment of Lease, dated effective as of AUG 31 2020.

6. Encroachments and matters referenced on the survey map prepared by Erik S. Kaneshiro, Land Surveyor, dated January 11, 2002, last revised March 10, 2020, attached to the AFFIDAVIT recorded as Document No. A-74870813.
7. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.



8. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.





United States Department of the Interior



FISH AND WILDLIFE SERVICE
911 NE 11th Avenue
Portland, Oregon 97232-4181

In Reply Refer to:
FWS/R1/WSFR

July 13, 2018

David Smith, Administrator
Department of Land and Natural Resources
Division of Forestry and Wildlife,
1151 Punchbowl Street, Room 325
Honolulu, Hawaii 96813

DUNS: 824671200

Subject: Notice of Grant Award for **FBMS# F18AP00085**

Dear Mr. Smith:

Your organization's application for Federal financial assistance titled "***Kamehamenui Forest HCP Land Acquisition***" submitted to the U.S. Fish and Wildlife Service (Service)'s CFDA Program 15.615 is approved. This award is made under the authority of: Endangered Species Act of 1973 16 U.S.C. 1531 et seq. For a complete list of this program's authorizing legislation, go to <https://www.cfda.gov/> and search by the CFDA Program number. This award is made based on Service approval of your organization's proposal, hereby incorporated by reference into this award.

The performance period of this award is ***July 1, 2018*** through ***June 30, 2021***. Only allowable costs resulting from obligations incurred during the performance period and any authorized pre-award costs may be charged to this award. All obligations incurred under the award must be liquidated no later than 90 calendar days after the end of the performance period, unless the Service approves a final financial reporting period extension (see Reporting Requirements section below). If you need more time to complete project activities, you must submit a written request to the Service at r1fa_grants@fws.gov before the end of the stated performance period (see Project/Program Plan and Budget Revisions section below).

Payments:

Your organization has completed enrollment in U.S. Treasury's Automated Standard Application for Payment (ASAP) system. When requesting payment in ASAP, your Payment Requestor will be required to enter an Account ID. The number assigned to this award is the partial Account ID in ASAP. When entering the Account ID in ASAP, the Payment Requestor should enter the award number identified in the subject line on letter followed by a percent sign (%). Refer to the ASAP.gov Help menu for detailed instructions on requesting payments in ASAP.

Use the information below to identify your award funds at: www.asap.gov.

ASAP Account ID	FY/Funding Title	Federal Share	% of Federal Share	State Share	% of State Share	Total Award
F18AP00085-0001-0150	2017/ES Section 6 HCP LA	\$2,000,000	55%	\$1,667,000	45%	\$3,667,000
Totals:		\$2,000,000	55%	\$1,667,000	45%	\$3,667,000

Terms of Acceptance:

Acceptance of a financial assistance award (i.e., grant or cooperative agreement) from the Service carries with it the responsibility to be aware of and comply with the terms and conditions applicable to the award. Acceptance is defined as the start of work, drawing down funds, or accepting the award via electronic means. Awards are based on the application submitted to and approved by the Service. Awards are subject to the terms and conditions incorporated into the notice of award either by direct citation or by reference to the following: Federal regulations; program legislation or regulation; and special award terms and conditions. The Federal regulations applicable to Service recipients and their subrecipients and contractors are listed by recipient type in the **Service Financial Assistance Award Terms and Conditions** posted on the Internet at <http://www.fws.gov/grants/>. If you do not have access to the Internet and require a full text copy of the award terms and conditions, contact our office.

If Recipient decides to not accept this award, Recipient must notify the Service in writing within 30 calendar days of that decision.

Special Conditions and Provisions:

Cost accounting is required at the grant level.

Reporting Requirements:

Report Title	Report Period:	Due Date
Interim Federal Financial Report (SF-425)	June 30, 2019	September 28, 2019
Interim Performance Report	June 30, 2019	September 28, 2019
Interim Federal Financial Report (SF-425)	June 30, 2020	September 28, 2020
Interim Performance Report	June 30, 2020	September 28, 2020
Final Federal Financial Report (SF-425)	June 30, 2021	September 28, 2021
Final Performance Report	June 30, 2021	September 28, 2021

All Reports should be sent to r1fa_grants@fws.gov.

Recipients must use the Standard Form (SF) 425, *Federal Financial Report* form for all financial reporting. This form is available at http://www.whitehouse.gov/omb/grants_forms.

Performance reports must contain: 1) a comparison of actual accomplishments with the goals and objectives of the award as detailed in the approved scope of work; 2) a description of reasons why established goals were not met, if appropriate; and 3) any other pertinent information relevant to the project results. Please include the Service award number provided in the subject line of this letter on all reports.

Financial and performance reporting due dates may be extended by the Service upon receipt of a written request addressed to the Service at rlfa_grants@fws.gov identifying the type of report to be extended, the requested revised due date, and a justification for the extension. The Service may approve an additional extension if justified by a catastrophe that significantly impairs the recipient's operations. Requests for reporting due date extensions must be received by the Service no later than one day before the original reporting due date.

Significant Developments Reports (see 2 CFR 200.328(d)):

Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, notify the Service Project Officer in writing as soon as the following types of conditions become known:

- Problems, delays, or adverse conditions that will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of any corrective action(s) taken or contemplated, and any assistance needed to resolve the situation.

Favorable developments that enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

Other Deliverables:

Fee Simple Acquisitions

The deed of purchase will identify the Federal interest in the title of real property or a Notice of Federal Participation will be recorded to ensure that the property will be managed in perpetuity consistent with the goals and objectives of the grant. A Notice of Federal Participation also will be recorded for any properties used as match.

A draft management plan for the property being acquired and for any property being used for match must be submitted to and approved by the Service prior to the closing of the grant. Grantees should work closely with Service Field Office staff to develop management plans.

A copy of the Recorded Deed / Notice of Federal Participation, Title Insurance Policy or Title Vesting Certificate, Signed Settlement Statement, Statement of Just Compensation (if the purchase price is lower than appraised value), and three maps including the location of the property in the State, in the county, and a plat map or equivalent, for each property purchased, will be included as part of the final accomplishment report. Once finalized, a copy of the management plan should be sent to the Service.

In the event that the terms for perpetual conservation are violated, the property will be subject to

transfer, replacement, or repayment to the Service pursuant to 2 CFR 200.311.

Conservation Easement Acquisitions

The conservation easement will state that the property will be managed in perpetuity consistent with the goals and objectives of the grant or a Notice of Federal Participation shall be recorded. A Notice of Federal Participation will be recorded for any properties used as match.

The conservation easement will be submitted to and approved by the Service prior to its recording. A draft management plan for the property being protected with the conservation easement and for any property being used for match must be submitted to and approved by the Service prior to the closing of the grant. Grantees should work closely with Service Field Office staff to develop management plans.

A copy of the Recorded Easement and Notice of Federal Participation, Signed Settlement Statement, Statement of Just Compensation (if the purchase price is lower than appraised value), Baseline Inventory, final Property Management Plan, and three maps including the location of the property in the State, in the county, and a plat map or equivalent, for each property protected with an easement, will be included as part of the final accomplishment report.

In the event the conservation easement is no longer necessary for the purposes of the grant, the grantee will request disposition instructions from the Service pursuant to 2 CFR 200.311.

All Acquisitions

Prior to a property or conservation easement being purchased, the Service must be informed of any changes to the property that would affect its conservation value (e.g., logging activities that occurred after the submission of a grant proposal or at any time during the grant period). For properties protected with Section 6 funds, monitoring must occur at reasonable intervals, which will vary depending on the risks to the conservation values of any particular property, to ensure that it is serving its intended purpose and being appropriately managed.

As per Director's Memo 030301 dated March 29, 2007, State agencies using Section 6 funds to protect land must maintain a land inventory record system. For a copy of this memo please contact David Leonard.

Once a property is acquired or protected, the Service encourages grantees to upload relevant information into the Conservation Registry (<http://usfws-rl.conservationregistry.org/>). The Conservation Registry is a free online database that tracks and maps conservation, restoration, and wildlife projects across the U.S. Please note that populating the Conservation Registry does not fulfill the land inventory requirement.

Mineral Rights

If mineral rights are reserved, the extraction of minerals must be consistent with the purpose of the acquired land and must be extracted in a way that will not damage the habitat or value of the surface lands. This ensures that the quantity and quality of the habitat needed to conserve species will be maintained.

Revenue / Program Income

Revenue generated during the grant period from the sale of timber on acquired or match lands shall be treated as program income. Program income is subject to the Federal assistance regulations at 2 CFR 200.307. Timber revenues realized after the grant period are required to be fully used by the State grantee or sub-grantee for management of the property as approved in the management plan and may not be diverted to other purposes.

Appraisals

Prior to accessing funds for the purchase of property, market value must be determined by appraisals performed in accordance with the *Uniform Appraisal Standards for Federal Land Acquisitions* (Yellow Book). The Federal share of the acquisition will not be greater than the agreed upon match proportion of the current market value, as determined by an appraisal and review appraisal completed to Yellow Book standards. If land is to be used as match, Federal funds may not be used to acquire the subject property until documentation of the match property has been approved by the Service. Documentation shall consist of identification and approval of the property and a Yellow Book, self-contained appraisal with a review appraisal. The following conditions must be completed to document Yellow Book compliance:

1. A State-certified general appraiser must conduct an appraisal that meets Federal land acquisition standards. Specifically the appraisal must be Yellow Book compliant <http://1.usa.gov/1HmvzGu>. This must occur for the property or properties you plan to purchase or use as match.
2. Following the appraisal, a review appraisal is required. The review appraisal can be prepared by qualified agency staff or provided to your agency by contract or agreement with another state agency. A State-certified or licensed review appraiser must conduct the review appraisal.

The appraisal and review appraisal documents must be submitted to David Leonard for approval before Federal funds can be used to purchase the land.

Conflict of Interest Disclosures:

Recipients are responsible for notifying the Service Project Officer in writing of any actual or potential conflicts of interest that may arise during the life of this award. Conflicts of interest include any relationship or matter which might place the Recipient, the Recipient's employees, or the Recipient's subrecipients in a position of conflict, real or apparent, between their responsibilities under this award and any other outside interests. Conflicts of interest may also include, but are not limited to, direct or indirect financial interests, close personal relationships, positions of trust in outside organizations, consideration of future employment arrangements with a different organization, or decision-making affecting the award that would cause a reasonable person with knowledge of the relevant facts to question the impartiality of the Recipient, the Recipient's employees, or the Recipient's subrecipients in the matter. Upon receipt of such a notice, the Service Project Officer in consultation with their Ethics Counselor will determine if a conflict of interest exists and, if so, if there are any possible actions to be taken by the Recipient, the Recipient's employee(s), or the Recipient's subrecipient(s) that could

reduce or resolve the conflict. Failure to resolve conflicts of interest in a manner that satisfies the Service may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including termination of this award.

Other Mandatory Disclosures:

Recipients and their subrecipients must disclose, in a timely manner, in writing to the Service or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this award. Non-Federal entities that have received a Federal award including the term and condition outlined in 2 CFR 200, Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters are required to report certain civil, criminal, or administrative proceedings to SAM. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338, Remedies for noncompliance, including suspension or debarment (See 2 CFR 200.113, 2 CFR Part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313).

Indirect Costs:

Indirect costs under this award are approved on the condition that the Recipient will submit an indirect cost rate proposal to their cognizant agency immediately after the award is made and no later than 90 calendar days past the award performance period start date. The Recipient is not authorized to charge indirect costs under this award until the Recipient has received, and provided a copy to our office at rlfa_grants@fws.gov, an approved Negotiated Indirect Cost Rate Agreement (NICRA) from the Federal government. In the event the Recipient fails to establish an approved rate before the end of the award performance period, the Service may either: 1) deobligate the Federal amount budgeted for indirect costs and, if not otherwise prohibited by legislation or regulation, allow the Recipient to use costs otherwise allocable as indirect costs to satisfy cost-sharing or matching requirements; or 2) allow the Recipient to transfer the amount otherwise allocable as indirect costs to direct costs. Service approval of such budget changes will depend on the particular award circumstance. Indirect costs otherwise allocable to this award may not be shifted to another Federal award unless specifically authorized by legislation. The Recipient must comply with the approved NICRA Agreement.

System for Award Management (SAM) Registration:

Under the terms and conditions of this award, your organization must maintain an active SAM registration at <https://www.sam.gov/portal/public/SAM/> until the final financial report is submitted or final payment is received, whichever is later. If your organization's SAM registration expires during the required period, the Service will suspend payment under this and all other Service awards to your organization until you update your organization's SAM registration.

Project Plan and Budget Amendments:

Recipients are required to report deviations from budget or project scope or objective, and request prior approvals for budget and program plan revisions in accordance with 2 CFR 200.308 unless otherwise specifically waived in this award.

Grant Period Extensions:

If additional time is needed to complete the approved project, you must send an SF-424 and written notice to the Service at rlfa_grants@fws.gov. This notice must be received prior to the authorized performance period end date, and must include supporting reasons and revised end date. Extensions for time cannot be authorized for the sole purpose of spending an unused balance of funds.

Project Contacts:

Service Project Officer for this award is:	Recipient Project Officer for this award is:
David Leonard (503) 231-2372 david_leonard@fws.gov	Irene Sprecher (808) 587-4167 irene.m.sprecher@hawaii.gov

Please contact David Leonard with any questions. Please include the Service award number provided in the subject line of this letter in all written communications.

Thank you for your interest and efforts in supporting conservation of fish and wildlife and their habitats.

Sincerely,



Digitally signed by
KATHERINE HOLLAR
Date: 2018.07.13
12:08:03 -07'00'

Kathy Holler, Chief
Wildlife and Sport Fish Restoration Program

Enclosure

Application for Federal Assistance SF-424

* 1. Type of Submission:

- Preapplication
 Application
 Changed/Corrected Application

* 2. Type of Application:

- New
 Continuation
 Revision

* If Revision, select appropriate letter(s):

* Other (Specify):

* 3. Date Received:

3/17/18

4. Applicant Identifier:

State of Hawaii, DLNR DOFAW

5a. Federal Entity Identifier:

5b. Federal Award Identifier:

F18AP00085

State Use Only:

6. Date Received by State:

7. State Application Identifier:

8. APPLICANT INFORMATION:

* a. Legal Name:

Department of Land and Natural Resources

* b. Employer/Taxpayer Identification Number (EIN/TIN):

99-0266119

* c. Organizational DUNS:

8246712000000

d. Address:

* Street1:

1151 Punchbowl Street, Room 325

Street2:

* City:

Honolulu

County/Parish:

City and County of Honolulu

* State:

HI: Hawaii

Province:

* Country:

USA: UNITED STATES

* Zip / Postal Code:

96813-0000

e. Organizational Unit:

Department Name:

Land and Natural Resources

Division Name:

Forestry and Wildlife

f. Name and contact information of person to be contacted on matters involving this application:

Prefix:

Ms.

* First Name:

M.

Middle Name:

Irene

* Last Name:

Sprecher

Suffix:

Title:

Forest Program Manager

Organizational Affiliation:

Employee

* Telephone Number:

808-587-4167

Fax Number:

808-587-0160

* Email:

Irene.M.Sprecher@hawaii.gov

Application for Federal Assistance SF-424

*** 9. Type of Applicant 1: Select Applicant Type:**

A: State Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

* Other (specify):

*** 10. Name of Federal Agency:**

U.S. Fish and Wildlife Service

11. Catalog of Federal Domestic Assistance Number:

15.615

CFDA Title:

Cooperative Endangered Species Conservation Fund

*** 12. Funding Opportunity Number:**

F17AS00096

* Title:

Cooperative Endangered Species Conservation Fund

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Add Attachment

Delete Attachment

View Attachment

*** 15. Descriptive Title of Applicant's Project:**

Kamehamenui Forest HCP Land Acquisition Proposal

Attach supporting documents as specified in agency instructions.

Add Attachments

Delete Attachments

View Attachments

Application for Federal Assistance SF-424

16. Congressional Districts Of:

* a. Applicant

* b. Program/Project

Attach an additional list of Program/Project Congressional Districts if needed.

17. Proposed Project:

* a. Start Date: 7/1/2018

* b. End Date: 6/30/2021

18. Estimated Funding (\$):

* a. Federal	<input type="text" value="2,000,000.00"/>
* b. Applicant	<input type="text" value="1,667,000.00"/>
* c. State	<input type="text" value="0.00"/>
* d. Local	<input type="text" value="0.00"/>
* e. Other	<input type="text" value="0.00"/>
* f. Program Income	<input type="text" value="0.00"/>
* g. TOTAL	<input type="text" value="3,667,000.00"/>

*** 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

- a. This application was made available to the State under the Executive Order 12372 Process for review on
- b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- c. Program is not covered by E.O. 12372.

*** 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)**

- Yes No

If "Yes", provide explanation and attach

21. *By signing this application, I certify (1) to the statements contained in the list of certifications and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)**

** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.


Authorized Representative:

Prefix: * First Name:
Middle Name:
* Last Name:
Suffix:

* Title:

* Telephone Number: Fax Number:

* Email:

* Signature of Authorized Representative: 

* Date Signed:

HCP Land Acquisition Grant Proposal – Kamehamehenui Forest, Maui County, Island of Maui, Hawai‘i



Figure 1. Federally listed Endangered Hawaiian goose, nēnē. Photo credit: DLNR

Project Title: Kamehamehenui Forest

HCP Name: Kamehamehenui Forest Habitat Conservation Plan Land Acquisition

Submitted By: Hawai‘i Department of Land and Natural Resources, Division of Forestry and
Wildlife (**DOFAW**)
The Trust for Public Land (**TPL**)

U.S. Fish and Wildlife Service (USFWS) Contact: Jodi Charrier
300 Ala Moana Blvd. Suite 3-122
Honolulu, HI 96850
808-792-9423
Jodi_Charrier@fws.org

DOFAW Contact: Irene Sprecher
1151 Punchbowl Street, Room 325
Honolulu, HI 96813
808-587-0166
Irene.M.Sprecher@hawaii.gov

TPL Contact: Stephen Rafferty
1003 Bishop Street, Suite 740
Honolulu, HI 96813
808-524-8564
Stephen.Rafferty@tpl.org

PROJECT NARRATIVE

NEED

The Hawaiian Island archipelago is both remote (2,300 miles from the nearest continent) and heavily dependent on fossil fuels imported at great expense. To meet its goal of energy self-sufficiency by 2045, Hawai‘i has increasingly looked toward wind energy. On the island of Maui, three wind energy complexes provide 72 MW of power, but have also resulted in incidental take of federally listed endangered species, including Hawaiian petrel (*Pterodroma sandwichensis*) (Hawaiian name - ua‘u), Hawaiian goose (*Branta sandvicensis*) (Hawaiian name - nēnē), Hawaiian hoary bat (*Lasiurus semotus*) (Hawaiian name - ‘ope‘ape‘a), and Blackburn’s sphinx moth (*Manduca blackburni*). This Habitat Conservation Plan (HCP) Land Acquisition Proposal seeks \$2,000,000 in federal funds for the acquisition of the Kamehamehamehenui Forest (KF) by Hawaii’s DLNR, Division of Forestry and Wildlife (DOFAW) to complement ongoing mitigation for this permitted take.

Incidental take of the above species is authorized under state and federal permits, and their associated Habitat Conservation Plans required under the state and federal endangered species laws.¹ Mitigation efforts to date for authorized and expected take of these species has presented a number of challenges to the agencies and applicants. The purpose of this proposed land acquisition project is to complement required mitigation being performed pursuant to the respective HCPs and to contribute to the long term recovery of the covered species as well as for 10 additional endangered species, for which Alpine Unit 1 and Subalpine Unit 1 Critical Habitat has been designated. (US Fish and Wildlife Service 2016)

DOFAW has identified the KF property as a priority statewide land acquisition based on (1) the imminent threat of sale, habitat degradation and loss, and development (property is listed for sale); (2) the very high likelihood of suitable habitat and a significant number of breeding pairs of the Hawaiian petrel; (3) the presence of nēnē and their preferred habitat as well as appropriate areas for the development of predator-proof breeding enclosures; (4) a Blackburn’s sphinx moth management unit within two miles of the property and suitable habitat on the property; (5) the likely presence of Hawaiian hoary bat on the property and suitable roosting and feeding habitat, as well as its suitability for applied research and habitat restoration efforts that will expand habitat and complement ongoing mitigation designed to provide net recovery benefits for the Hawaiian hoary bat; (6) sufficient distance from the impact zones of the Auwahi, Kaheawa I, and Kaheawa II wind farms; (7) protecting and enhancing Critical Habitat and native mesic forest ecosystems for numerous listed species through management and restoration; and (8) a strong

¹ Under HRS §195D, fatalities such as those from wind turbine strikes are referred to as incidental take and can be permitted with an Incidental Take License (ITL) approved by the Hawai‘i Board of Land and Natural Resources (BLNR). “Take,” as defined by section 195D, means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered or threatened species of aquatic life or wildlife.” The ESA allows for incidental take through a Section 10 Incidental Take Permit (ITP) issued with a USFWS-approved HCP. The Auwahi, Kaheawa I, and Kaheawa II HCPs were approved in 2012, 2006, and 2012, respectively.

coalition of partners interested in and actively working on conservation projects in the immediate area.

Without this acquisition, the KF property (which is listed for sale) would likely be sold to a private party that would ultimately develop the agriculturally zoned lands in the lower two-thirds of the property to the detriment of the covered species. Keeping KF undeveloped will ensure continued corridors for the covered species from Haleakalā National Park to the ocean, which is especially important for the HAPE. Hawaiian petrels are highly sensitivity to artificial light that can cause disorientation, increasing the number of ground strikes and predation when birds are grounded.

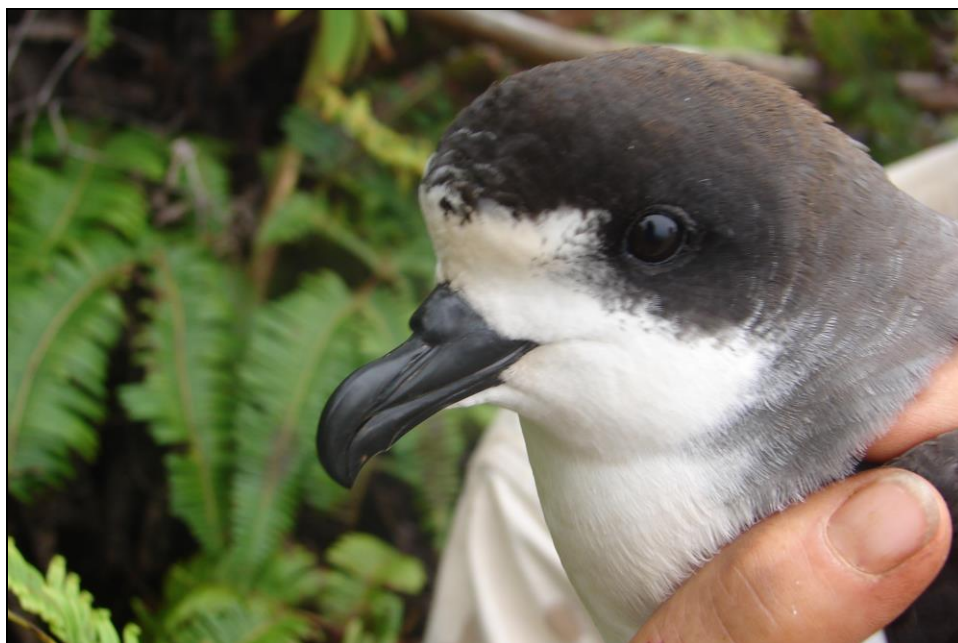


Figure 2. Federally listed Endangered Hawaiian petrel, ua‘u. Photo credit: David Quisenberry

Hawaiian petrel (ua ‘u)

Kamehamenui Forest is adjacent to a large breeding population of HAPE that spans the subalpine habitat across the leeward slopes of Haleakalā. The subject property is contiguous with Haleakalā National Park and the state Haleakalā Wildlife Sanctuary, both of which support hundreds of active nesting burrows. Kamehamenui Forest likely supports numerous breeding pairs of HAPE, but it has never been surveyed and is currently not being managed for this species. Incorporation of the KF into the regional landscape of managed HAPE populations and habitats would significantly contribute to the conservation of this species.

Management of HAPE at the KF would also provide an important contribution to mitigation efforts being carried out by approved HCPs. The Haleakalā Wildlife Sanctuary is currently a mitigation site for the Daniel K. Inouye Solar Telescope (DKIST) HCP, and the Auwahi wind facility is implementing predator control in portions of the leeward HAPE population on the south slope of Haleakalā. However, the results of population monitoring to assess the effectiveness of those management efforts have been unclear, as have been the results of

monitoring within Haleakalā Wildlife Sanctuary. Expanding HAPE management into the KF may enhance our understanding the population dynamics of this species.

Hawaiian goose (nēnē)

The Hawaiian goose is generally referred to by its Hawaiian name, “nēnē.” It is listed as endangered under the ESA (RPN 9) and by the state. It is the only remaining endemic goose in the Hawaiian Islands, nesting from sea level to high elevations across a variety of habitats including shrubland and grassland (USFWS 2004). The draft Hawaiian Goose Recovery Plan (revised 2004) and the state’s Comprehensive Wildlife Conservation Strategy recommend identifying and protecting nēnē habitat, restoring and enhancing habitat, and controlling predators.

Incidental take of nēnē by the Maui wind facilities has been higher than expected. Current permits allow a maximum total take of 60 Kaheawa I, 30 at Kaheawa II, and 5 at Auwahi. Kaheawa II is currently amending its HCP to increase nēnē take. Mitigation for the nēnē that is currently authorized under incidental take permits is being conducted on Haleakalā Ranch and in Haleakalā National Park. The mitigation on Haleakalā Ranch includes the construction of a predator proof pen and translocation of birds from Kaua‘i to enhance reproductive success. In addition, Kaheawa II wind farm project has provided funds to DOFAW to conduct predator control at several breeding sites on Maui. Opportunities to provide for additional mitigation and/or conduct recovery actions for nēnē in new areas are limited on Maui. Kamehamenui Forest is well suited to both protect existing suitable habitat and thus complement required mitigation for additional take of nēnē authorized on Maui. The site has high elevation areas comprised of native subalpine shrublands, and has accessible locations for placement of large predator-proof pens.

Hawaiian hoary bat (‘ope‘ope‘a)

The Hawaiian hoary bat, Hawaii’s official state land mammal and *only* native terrestrial mammal, is listed endangered under the ESA (RPN 9) and by the state. Under incidental take permits currently held by the three wind energy facilities on Maui, a take of 50 bats at Kaheawa I, 11 at Kaheawa II, and 21 at Auwahi is permitted over the life of the ITPs. Auwahi and Kaheawa II are currently amending their HCPs for an increase in bat take. Amendments to HCPs to authorize these higher levels of take are expected to include provisions for research to improve understanding of bat life history and ecology, and habitat restoration efforts to increase suitable habitat for foraging, roosting, and breeding.

Hawaiian hoary bats roost in native and non-native vegetation from 3 to 29 feet above ground level. They typically feed along a line of trees, forest edge, or road, and a typical feeding range stretches around 300 yards. Hawaiian hoary bats feed on a variety of native and non-native night-flying insects, including moths, beetles, crickets, mosquitoes and termites (Whitaker and Tomich 1983). Prey is located using echolocation and water courses and edges (e.g., coastlines and forest/pasture boundaries) appear to be important foraging areas. They begin foraging either just before or after sunset depending on the time of year (USFWS 1998; Mitchell et al. 2005).

The KF is particularly well suited to complementing the research and mitigation efforts required under the current and approved HCPs. The proposed parcels are located within a larger area on the west slope of Haleakalā that is the subject of a research project being planned by the wind energy complexes to meet research requirements specified in their HCPs. The research project seeks to use radio telemetry to document habitat use and food availability, and to use that information to understand the key factors that define habitat suitability for bats. Because of its central location within that study area, it is likely that some of the bats being tracked as part of the study will travel across or occupy portions of the KF parcels. Acquisition of the parcels by DOFAW will ensure that that access to appropriate areas to facilitate that research will be provided to complement the data being gathered by the study. In addition, the results from the study regarding habitat suitability for the bat are expected to be directly applicable to habitat restoration efforts at KF and will enable DOFAW to employ the specific recommendations from the research to enhance habitat suitability.



Figure 3. Hawaiian hoary bat; photo credit: U.S. Geological Survey

Blackburn's sphinx moth

The Blackburn's sphinx moth is one of Hawaii's largest native insects. It is listed endangered federally (RPN 2) and by the state. While this species once occurred on all seven of the main Hawaiian Islands, it is now found only on Hawai'i, Maui, and Kaho'olawe. It was believed extinct until 1984, when a single population was rediscovered on East Maui (USFWS 2003b). Additional populations on the two other islands were subsequently rediscovered. Populations likely vary from year-to-year and from season-to-season in association with climatic and environmental conditions that affect the quality and quantity of available habitat and food.

Adults can be found year-round, but are most active, from January through April, and from September through November. Larvae take 65 days to develop to adulthood, but pupae may remain in torpor in the soil for up to a year. Larvae sightings have only been documented between the months of October and May (USFWS 2005c). The lifespan for this species is unknown, but is presumed to be short.

The Blackburn's sphinx moth is most commonly found in dry to mesic forests throughout its current range. Larvae of the Blackburn's sphinx moth feed on plants in the nightshade family (Solanaceae). The native host plants are trees within the genus *Nothocestrum* ('aiea; *N. latifolium* and *N. breviflorum*; Riotte 1986), on which the larvae consume leaves, stems, flowers, and buds. However, many of the host plants recorded for this species are not native to the Hawaiian Islands, including *Nicotiana glauca* (tree tobacco), which is found in and around the Kula area, including the adjacent Haleakalā Ranch. Three plant species—maiapilo, 'ilie'e (*Plumbago zeylanica*, and koali 'awa (*Ipomea indica*; native morning glory)—are thought to be food plants of adults.

Of the seven islands, the Blackburn's sphinx moth historically was most common on Maui where the largest and most persistent population of this species currently occurs. The largest remaining stand of 'aiea trees in Hawai'i is located on Maui in the Kanaio Natural Area Reserve (located in leeward Haleakalā (Mitchell et al. 2005). Critical Habitat for the species is in the vicinity of the Kaheawa II project. Although the Auwahi parcel of nearby 'Ulupalakua Ranch and Haleakalā Ranch, which is shares the Northern boundary of the KF property, were originally considered for inclusion in the Critical Habitat Unit; those ranches were ultimately excluded from the Critical Habitat Unit because the landowners were already managing the ranches to benefit present and nearby species (USFWS 2005c, p. 38).



Figure 4. Federally listed endangered Blackburn sphinx moth caterpillar. Photo credit: DOFAW

Table 1. Covered Species Data

Common Name	Scientific Name	Federal Status	State Status
Hawaiian petrel	<i>Pterodroma sandwichensis</i>	Endangered	Endangered
Hawaiian goose (nēnē)	<i>Branta sandvicensis</i>	Endangered	Endangered
Hawaiian hoary bat	<i>Lasurius cineris semotus</i>	Endangered	Endangered
Blackburn’s Sphinx Moth	<i>Manduca blackburni</i>	Endangered	Endangered

Table 2. Species Use of Property

Common Name	Species Use of Property
Hawaiian petrel	Species very likely present on property and likely nesting on property.
Hawaiian goose	Species present on property and likely nesting on the property.
Hawaiian hoary bat	Species very likely present on property.
Blackburn’s sphinx Moth	Species likely present on property. Next to the KF property, Haleakalā Ranch was originally planned by USFWS to be designated critical habitat, but was excluded because of landowner’s voluntary conservation efforts.

OBJECTIVE

The objective of this HCP Land Acquisition Proposal is to acquire the KF parcels and implement resource management objectives to complement the mitigation of the Hawaiian petrel, nēnē, Hawaiian hoary bat, and Blackburn’s sphinx moth required under the Auwahi, Kaheawa, and Kaheawa II HCPs.

EXPECTED BENEFITS

The benefits of this acquisition will be to enhance recovery efforts for Hawaiian petrel, nēnē, Hawaiian hoary bat, and Blackburn’s sphinx moth by protecting and restoring suitable habitat, managing threats, and increasing survival and reproductive success of those listed species. The acquisition and management of the proposed parcels is expected to result in an increase in the populations of each species, enhancing mitigation required under the Auwahi, Kaheawa, and Kaheawa II HCPs, and contributing the overall recovery of those species. In addition, the KF parcels include Critical Habitat for two listed bird species and eight listed plants. DOFAW intends to also include management strategies and recovery efforts to benefit those additional federal listed species on the KF property.

Federally Listed Species Covered by HCPs.

(a) **Hawaiian petrel**

The total observed take of HAPE at the three wind energy complexes is 8, with an 80 percent confidence level of total take at or below 18. (Kahawea I 20 year ITP term starting June 2006 with total take of 38; Kahawea II 20 year ITP term started March 2011 for up to 29 adults and 14 young; and Auwahi 25 year term starting 12-2012 for 64 adults and 23 young).

- **Currently Suitable Habitat.** The upper KF is similar to the adjoining Haleakalā National Park and Haleakalā Wildlife Sanctuary, and likely has HAPE already nesting on the property.
- **Enables Predator Control Efforts.** Predator control efforts for managing the HAPE have proven successful elsewhere. Bringing the KF property under the ownership and management of DOFAW will enable the state to begin managing the property through fencing, ungulate control, and control of other predators such as rats, mongoose, and cats. Increasing managed suitable habitat will be a substantial aid to the recovery of the HAPE.
- **Contiguous to Protected Lands.** Maintains and improves native forest and watershed habitat as well as transitory corridors contiguous with the Kula Forest Reserve, Haleakalā National Park, and other protected lands, totaling 108,000 acres. This benefit applies to the HAPE and all covered species below.
- **Prevents Development.** Eliminates development and habitat conversion threats, which are a substantial danger with respect to the lower two-thirds of the property that are zoned for agriculture. This benefit applies to all covered species below as well. Preventing development, however, is of particular benefit to the HAPE as it reduces the potential for more artificial light that can cause confusion, fatigue, groundings, and increased injuries and fatalities for the birds through ground strikes and by predators on the ground. It furthermore preserves corridors between the ocean where the petrels feed and the high elevations where they nest by connecting protected areas and other open and dark lands.

(b) Hawaiian goose (nēnē)

The total observed take of nēnē at the wind energy complexes is 26, with an 80 percent confidence level that the total take is at or below 53. As discussed below, the KF property contains suitable habitat to support the nēnē across multiple habitats, and furthermore has optimal annual rainfall (under 90 inches). Rainfall in the KF project area approximates 30-60 inches annually.

- **Currently Suitable Habitat:** The upper elevation, native subalpine forest community of the KF property (of approximately 1092 acres) already contains suitable habitat for nēnē. With the addition of feral animal control within this area, habitat for nene will be further enhanced.
- **Pasture and Grassy Areas:** The existing pasture and grassed areas on KF likely provide habitat for the nēnē; they are present in similar habitats on adjacent properties. With reforestation on the KF, there will be large grassy areas preserved for the nēnē as well as to support fire threat mitigation objectives on the property.
- **Currently Suitable Native Feeding Sources on Property:** Although a formal biological survey has not been conducted, at least eight native plant species identified in Appendix B of the Draft Recovery Plan as used for feeding by nēnē and recommended for managers restoring nēnē habitat are very likely on the KF property, based on their verified presence at the adjacent Haleakalā Ranch (*Carex wahuensis*, *Fimbristylis cymosa*, *Leptecophylla tameiameia*, *Vaccinium reticulatum*, *Syrinchium acre*, *Deschamsia rubigenda*, *Osteomeles anthyllidifolia*, *Coprosma ernodeoides*, *Coprosma*

montana). Two of those favored species (*Coprosma ernodeoides* and *Leptecophylla tameiameia*) have been confirmed on the KF property by aerial survey.

- **Six of Seven Recommended Native Nesting Sources Are Likely on the Property:** Six of seven native plant species identified in Appendix C of the Draft Recovery Plan as those nēnē are known to nest under are likely on the property (*Leptecophylla tameiameia*, *Vaccinium reticulatum*, *Metrosideros polymorpha*, *Coprosma ernodeoides*, *Dodonaea viscosa*, *Sadleria cytheoides*). *Coprosma ernodeoides*, *Dodonaea viscosa*, and *Leptecophylla tameiameia*, as well as small numbers of *Metrosideros polymorpha* have been confirmed on the KF property by aerial survey.
- **Outplanting of Food and Nesting Sources:** DOFAW will outplant additional food and nesting sources as reflected in Appendices B and C of the Draft Revised Recovery Plan.

(c) **Hawaiian Hoary Bat**

The total observed take of Hawaiian hoary bats at the three wind farms is 26, with an 80 percent confidence level that total take does not exceed 80. Acquisition of the KF property will provide numerous benefits to the Hawaiian hoary bat that will complement the three subject HCPs:

- **The KF Property Is Most Likely Occupied by Hawaiian Hoary Bats.** As shown on the accompanying map, there have been bat detections above, below, and on both sides of the KF property in similar terrains, indicating a high likelihood of presence on the property.
- **Interconnectivity for Transit of Populations.** The KF property has borders contiguous with Haleakalā National Park, the Kula Forest Reserve, and nearby open ranches. By preventing development, transit corridors are preserved.
- **Appropriate Distance from Wind Farms.** The KF property is over five miles from the nearest impact area, thus exceeding recommendations of distance to avoid close proximity (Pers. com. A. Siddiqi 3/2016).
- **Substantial Suitable Habitat without Management.** Habitat throughout the KF property is suitable for feeding with about one-quarter of the property having quality roosting habitat.
- **Additional Habitat to be Created.** Reforestation of the native forest in the lower two-thirds of the KF property will not only create suitable roosting areas but the addition of firebreak corridors will create new feeding opportunities as treeline corridors are favored feeding areas.
- **Feeding Corridors.** Maintains existing corridors and will add corridors through firebreaks in reforested areas to provide robust feeding opportunities.

(d) **Blackburn's Sphinx Moth**

The project area is located approximately three miles northeast of Pu'u o Kali Management Unit, provided for in the Blackburn's Sphinx Moth Recovery Plan. The KF property is furthermore well within the pre-western contact range of the Blackburn's sphinx moth.

- **In Between Management Units.** KF property is located approximately three miles from and in between two Blackburn’s sphinx moth management units.
- **Adjacent to Excluded Critical Habitat.** Haleakalā Ranch, next to the KF property, was originally considered for critical habitat designation, but was excluded because of the landowner’s ongoing conservation efforts.

Table 3. Summary of Benefits to Covered Federally Listed Species

Covered Listed Species	Expected Benefit	Benefit	Justification
Hawaiian petrel	Protect 1,000+ acres of suitable nesting habitat that abuts the Haleakalā Wildlife Sanctuary / DKIST Mitigation Area	Major	Will allow for management on the KF property, including for feral ungulates and predators.
Hawaiian petrel	Prevent development on agriculturally zoned property that will ensure improper artificial light is not present.	Major	Will prevent development that would add artificial light known to cause fatalities to HAPE.
Hawaiian petrel	Prevent development on agriculturally zoned property between nesting areas and the sea.	Major	Preserve corridors between upland nesting areas and the ocean to enable travel for feeding.
Hawaiian petrel	Property will be owned by state to ensure no development or usage that will impede species recovery.	Major	Prevents loss of habitat and property will be stewarded to increase quantity and quality of habitat.
Hawaiian goose (nēnē)	Permanently secures about 300 acres of separate grassy areas through firebreak corridors.	Major	Provides suitable habitat for nesting and feeding in an area that can be managed for predators.
Hawaiian goose (nēnē)	Permanently secures suitable nesting resources identified in the recovery plan.	Major	Six of seven native plant species identified in the Draft Recovery Plan as those which nēnē nest under are on the property (two verified present).
Hawaiian goose (nēnē)	Permanently secures feeding resources identified in the	Major	At least eight native plant species known to be food items for nēnē recommended

	recovery plan.		by the Draft Recovery Plan for nēnē management are very likely on the property (four verified present).
Hawaiian goose (nēnē)	Permanently secures area with suitable rainfall for nēnē	Significant	Rainfall near lower project area is 30-60 inches per year; nēnē prefer habitat with less than 90 inches.
Hawaiian goose (nēnē)	Maintain firebreak corridors will be managed to outplant species preferred by nēnē for food and nesting	Major	Ensures a usable food supply and will attract nēnē so, if necessary, food supply can be supplemented.
Hawaiian goose (nēnē)	Property will be owned by state to ensure no development that will impede species development.	Major	Prevents loss of habitat and property will be stewarded to increase quantity and quality of habitat.
Hawaiian hoary bat	Protection of presently suitable roosting and feeding habitat	Major	Permanently preserves suitable roosting habitat near known areas of bat activity without need for management.
Hawaiian hoary bat	Protection of occupied habitat between nearby locations with known bat detections.	Major	Bat detections surrounding the KF property indicate a high likelihood of presence on the property.
Hawaiian hoary bat	Lower portions of the property will be reforested using ongoing research to create optimal habitat.	Major	Creates new habitat based on up-to-date research that can also serve as a laboratory for future bat research.
Hawaiian hoary bat	Permanently protects from development over 3,000 acres.	Major	Ensures no bat strikes on project parcel and no reduction of habitat.
Hawaiian hoary bat	Permanently secures access for management on project property.	Major	Secures access to project property, Kula Forest Reserve, and borders of Haleakalā Wildlife Sanctuary and Haleakalā National Park for management and control of predators and invasive species.

Blackburn's sphinx moth	Links protected areas including Blackburn's sphinx moth management units	Major	Ensures a substantial area between management units will remain undeveloped.
Blackburn's sphinx moth	Permanently protects from development over 3,000 acres.	Significant	Ensures no reduction of habitat though development.
Blackburn's sphinx moth	Provides suitable habitat for restoration activities.	Major	Secures in perpetuity a linked area for outplanting of favored native species and other restoration measures.

ECOSYSTEM BENEFITS

- **Substantial Suitable Habitat.** Secures habitat on TMK (2)2-3-006-002 (approximately 1,092 acres of native subalpine forest) suitable for HAPE, which will be managed for ungulate and predator control. Secures habitat on TMKs (2)2-3-006-002 and 2-3-005-014 suitable for nēnē foraging and nesting without management (approximately 3,276 acres). Secures habitat on TMKs (2)2-3-006-002 and 2-3-005-014 (approximately 2,184 acres of mixed forest and gulches) suitable for roosting and feeding of the Hawaiian hoary bat without management.

- **Contains Biotic and Abiotic Components.** The KF contains tall trees favored for roosting and gulch corridors favorable for feeding of the Hawaiian hoary bat; and native subalpine community favored by nēnē for nesting and foraging as well as for nesting by the Hawaiian petrel.

- **Bridges Areas with Confirmed Presence and Core Populations.** Populations of the Hawaiian hoary bat, Hawaiian petrel and nēnē have all been detected along the border of KF and likely already utilize habitat on KF. The core population of the Hawaiian petrel occurs to the upper elevation boundary of KF. Nēnē have been documented on the North, East, and West borders of KF and established nēnē populations are managed on in the adjacent Haleakalā National Park.

- **Opportunity to Create Additional Optimal Habitat.** Habitat is currently threatened and degraded by feral ungulates. Fencing and ungulate control conducted by DOFAW following acquisition will facilitate and native species restoration and will increase availability of suitable habitat. Reforestation will be designed to benefit these species based on best available science.

- **Corridors.** Maintains existing feeding and dark corridors for the Hawaiian hoary bat and Hawaiian petrel, respectively. The project also adds corridors for the Hawaiian hoary bat through reforestation efforts.

- **Contiguous with Conservation Areas.** Builds on to existing conservation areas including the native forest communities founds at Haleakalā National Park (33,265 acres), the Kula Forest Reserve (4,931 acres), the Haleakalā Wildlife Sanctuary / DKIST Mitigation Area (321 acres), and the Auwahi mitigation area (880 acres).

Table 5. Ecosystem Benefits

Common Name	Value of the Project Area	Justification
Hawaiian petrel	All	See pp. 6, 8, 10
Hawaiian goose	All	See pp. 6-7, 9-10
Hawaiian hoary bat	All	See pp. 7, 9-10
Blackburn’s sphinx moth	All	See pp. 8, 10

FOSTERING HCP PARTNERSHIPS AND ESTIMATED COSTS

Table 6. Costs and Funding Partners

Stakeholder/Partner Name	Role	Contribution (cash or in-kind)
U.S.D.A. Forest Legacy Program (Federal)	Funder	\$4,000,000 (applied and in process of being ranked for FY 2018 funding).
Hawai‘i Legacy Land Conservation Program	Funder	\$1,500,000 (applying)
Maui County Open Space Fund	Funder	\$1,000,000 (applying)
NFWF Acres for America	Funder	\$500,000 (applying)
USFWS HCP Funding		\$2,000,000
Total Project Cost		\$9,000,000

NONFEDERAL MATCH ALLOCABLE TO HCP FUNDING

Nonfederal match (totaling 33%): of \$3,000,000 total nonfederal match, \$1,333,000 is allocable to the Forest Legacy funding, leaving \$1,667,000, or a 45 percent match, allocable to the HCP funding.

BUDGET JUSTIFICATION

This grant request totaling \$2,000,000.00 will be completely applied towards the acquisition of the Kamehamenui Forest project, which is expected to cost over \$9 million. The total requested is a portion of a larger pool of funding sources needed for this purchase by the State of Hawai‘i. Acquisition of this parcel will benefit the endangered Hawaiian hoary bat, nēnē, Hawaiian petrel, and the Blackburn Sphinx moth, and will complement current and proposed future mitigation efforts towards these species on the island of Maui.

Table 7. Other Contributing Partners

Partner	Contribution (If Property Acquired)
Leeward Haleakalā Watershed Partnership	In the first year from acquisition, provide approximately 40 person-hours for biological surveys and management. Long term partnership for management of the parcels to include approximately 2 person-days per quarter contributing to watershed management, fence maintenance, feral animal and invasive species control,

	and native plant restoration.
Haleakalā Ranch Company	In the first year from acquisition, provide approximately 40 person-hours for invasive species control. Maintain long term partnership to assist with management needs.
Maui Nui Seabird Recovery Project	Long term partnership for management of the parcels, to include approximately 2-4 person-days per quarter for surveys, management, and monitoring for HAPE to provide a recovery site for that species.
Maui Forest Bird Recovery Project	In the first year of acquisition, provide approximately 20 person-hours for baseline forest bird and habitat surveys. Long term partnership to assist with forest bird restoration, surveys, and management.
Maui Invasive Species Committee	Approximately 20 person-hours for baseline surveys for MISC-target invasive species, such as pampas grass, heath, and mullen. Long term partnership for control of emergent targets.
Maui Nui Plant Extinction Prevention Program	Long term partnership for management of the parcels, to include approximately 2 person-days per quarter for surveys, management, and monitoring for PEPP-designated and other listed plants to provide recovery site for those species.
Snail Extinction Prevention Program	Approximately 20 person-hours for baseline surveys, long term partnership for restoration of native snail fauna.

APPROACH:

1. Acquisition by TPL and DOFAW. TPL will purchase the property from the Shizuka Asakawa Trust by the end of 2018 and convey it to DOFAW to own and manage. To ensure that closing will occur before the end of 2018, DOFAW and TPL will: (1) secure necessary funding, (2) negotiate the purchase agreement with the Asakawa Trust, (3) finalize the appraisal performed in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions, (4) conduct all required due diligence, (5) continue work with key partners and cooperators to maintain and expand public support, and (6) obtain approval for the purchase from the Hawai‘i Board of Land and Natural Resources, giving DOFAW final authorization to purchase the HWA.

2. Fencing and Biological / Acoustic Surveys. Following acquisition, DOFAW, working with Leeward Haleakalā Restoration Alliance and East Maui Watershed Partnership and contractors, will fence portions of the property, followed by ungulate control. Biological surveys will be conducted by the Maui Plant Extinction Prevention Program to assess threatened and endangered species populations, including those in the HCP. Management of the lower elevation KF property for sustainable forestry will create additional bat habitat and grassy area corridors for nēnē.

3. Reforestation on lower two-thirds of property. Following acquisition, incorporating research results on optimum bat habitat, *e.g.*, corridor size and length, tree species preference (if any), and any other significant data, the lower two-thirds of the KF property will be reforested to conform to those research results. As reforestation will take place over a period of time, the methodology can be adjusted with newer data, including data collected within the area being forested. This will essentially create a laboratory in the project area owned and controlled by the state, thus removing any concerns regarding private landowner motivations that could be antithetical to research/mitigation goals.

PROJECT LOCATION

The approximately 3,276 acre KF project is located on the leeward side of Haleakalā, Maui, and is designated Tax Map Key (TMKs) numbers (2) 2-3-005:002 and (2) 2-3-005:007. The property will be added to the state Forest Reserve System. Management of the natural resources in the area will include (1) conservation of the native subalpine habitat (including fencing, ungulate removal, and restoration of endangered species and native community; and management for covered species); (2) native forest restoration below the subalpine habitat to connect existing habitat for Hawaii's native forest birds and hoary bat – this area may also include plant enclosures for restoration of rare plants; (3) establishment of native forest at lower elevations for future sustainable production opportunities for both koa and sandalwood nearer to the existing road infrastructure (*i.e.*, possible selective harvest of forest product resource in the future).

OTHER ECOSYSTEM AND PUBLIC BENEFITS

Habitat for Threatened and Endangered Species. The KF property has 1,175 acres of federal designated Critical Habitat for eight plant species, and 763 acres of critical habitat for two species of forest birds: the Maui parrotbill (*Pseudonestor xanthrophys*) and crested honeycreeper (*Palmeria dolei*).

Secures Important Watersheds and Recharge Areas. The KF property is essential for recharging the Makawao aquifer of Central Maui, which has been identified as a source of water for the anticipated 46 percent increase in demand for water from Wailuku and the northwest slopes of Haleakalā by 2030.

Access for Management. This acquisition will provide secondary access to the Kula Forest Reserve, as well as to the border of Haleakalā National Park and the Haleakalā Wildlife Sanctuary / DKIST Mitigation Area for management.

SINGLE AUDIT REPORTING STATEMENT

DOFAW is required to submit a single audit reporting statement. The most current fiscal year has not yet been uploaded to the website, with the most recent statement uploaded under EIN 99-0252020 for the fiscal year ending 6/30/2015.

REQUIRED INDIRECT COST STATEMENT

We are: A U.S. state or local government entity receiving more than \$35 million in direct Federal funding each year with an indirect cost rate of [13.21%]. We submit our indirect cost rate proposals to our cognizant agency. A copy of our most recently approved rate agreement/certification is attached. The Division of Forestry and Wildlife will not charge indirect costs on this acquisition project.

REFERENCES

Amlin, A. and A. Siddiqi. 2015. Endangered Species Recovery Committee Hawaiian Hoary Bat Guidance Document.

Endangered Species Act, as amended (16 U.S.C. § 1531 et seq.)

Hawai‘i Revised Statutes, § 195D, Conservation of Aquatic Life, Wildlife and Land Plants.

Hawai‘i Administrative Rule 13-124. Indigenous Wildlife, Endangered and Threatened Wildlife, and Introduced Wild Birds.

Mitchell, C., C. Ogura, D.W. Meadows, A. Kane, L. Strommer, S. Fretz, D. Leonard, and A. McClung. October 2005. Hawaii’s Comprehensive Wildlife Conservation Strategy. Department of Land and Natural Resources. Honolulu, Hawai‘i.

SWCA Environmental Consultants. 2006. Kaheawa Pastures Wind Energy Generation Facility Habitat Conservation Plan. Prepared for Kaheawa Wind Power, LLC, Maui, Hawai‘i.

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USFWS (United States Fish and Wildlife Service). 2004. Draft Revised Recovery Plan for the Hawaiian Goose or Nēnē.

USFWS (United States Fish and Wildlife Service). 2005. Blackburn’s Sphinx Moth Recovery Plan.

USFWS (United States Fish and Wildlife Service). 2016. Endangered and Threatened Wildlife and Plants; Designation and Nondesignation of Critical Habitat on Molokai, Lanai, Maui, and Kahoolawe for 135 Species.

Kamehamenui Acquisition – Division of Forestry and Wildlife Response to questions from Rep. Luke

- Please send us a copy of all the management objectives for the Kamehamenui parcel

Response: General management objectives include forest and watershed restoration, endangered species protection and recovery, and development of trails and recreational opportunities. Management objectives will be further refined during the management planning process.

- Other than reforestation at least 75% of the parcel what are the other requirements of the federal grants used to purchase the parcel?
 - Please indicate if the USDA or USDOJ grants have different/separate requirements

Response: The deed for the acquisition (attached and summarized in blue below) notes the requirements due to federal participation from the USDA and DOI (NOTICE OF FEDERAL PARTICIPATION).

“NOTICE OF FEDERAL PARTICIPATION

1. United States Department of Agriculture (USDA) Forest Service

Purpose & authority. The purpose of this acquisition is to effect the Forest Legacy Program in accordance with the provisions of the Cooperative Forestry Assistance Act of 1978, P.L. 95-313 as amended (codified at 16 U.S.C. 2101 *et seq.*) on the herein described land, which purposes include protecting environmentally important forest areas that are threatened by conversion to nonforest uses and for promoting forest land protection and other conservation opportunities. The purposes also include the protection and preservation of important scenic, cultural, fish, wildlife and recreational resources, riparian area, and other ecological values, and to ensure that the Property is available for the sustainable and cost-effective harvesting of forest products in a silviculturally sound manner, all of which meet the objectives of the Forest Legacy Program (FLP).

Transfer & disposal. This deed may be transferred or assigned only (i) to a government agency that (a) is eligible to hold this deed under the FLP, (b) is willing and able to hold this deed for the purpose for which it was created, and (c) expressly agrees to assume the responsibility imposed by the terms of this deed and (ii) with the consent of the State of Hawai‘i, by its Board of Land and Natural Resources for the state lead agency, the Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW). If the deed holder ever ceases to exist or is no longer willing and able to hold this deed for the purpose for which it was created or carry out the responsibility imposed on the holder by the terms of this deed, the state lead agency must identify and select an appropriate entity to which this deed must be transferred.

The STATE OF HAWAI‘I, by its Board of Land and Natural Resources, the owner of the Deed, pursuant to the grant agreement “Kamehamenui Forest Project” Grant Number 18-DG-11052021-217 awarded by the United States Department of Agriculture (USDA) Forest Service on June 27, 2018, to the grant recipient, STATE OF HAWAI‘I, DLNR/DOFAW, acknowledges that the USDA Forest Service Forest Legacy Program funding for this acquisition is authorized

by the Cooperative Forestry Assistance Act of 1978, P.L. 95-313, as amended (codified at 16 U.S.C. § 2101 *et seq.*), and that the interest acquired cannot be sold, exchanged, or otherwise disposed. Except, however, the USDA Secretary of Agriculture (Secretary) may exercise discretion to consent to such sale, exchange, or disposition upon the grant recipient's tender of equal valued consideration acceptable to the Secretary and under the requirement that the United States is reimbursed the market value of the interest, proportional to its contribution in the original acquisition, at the time of disposal. The grant agreement is housed in the USDA Forest Service Pacific Southwest Region Office at 1323 Club Drive, Vallejo, California, 94592, or in an archival facility per Agency policy.

The USDA Forest Service's proportionate share is 39%, which was determined by dividing the FLP's contribution to the acquisition by the value of the acquisition, at the time it was acquired, and expressing the result as a percentage.

The market value of this fee simple interest or the portion thereof that is disposed shall be the market value of such interest immediately before the disposal as determined by an appraisal that meets the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and is completed by a certified general appraiser approved by the grant recipient and the USDA Forest Service Pacific Southwest Region Office.

The form of the USDA Forest Service's reimbursement under this paragraph (whether it is received in cash or in kind) shall be in the sole and absolute discretion of the Secretary but shall in all events be used for FLP or similar conservation purposes. This fee simple deed shall not be deemed disposed in whole or in part until the USDA Forest Service receives reimbursement as provided in this paragraph.

No inaction or silence by the Secretary shall be construed as approval of a disposal or as an abandonment of this fee simple deed in whole or in part. Any purported disposal executed without the prior written consent of the Secretary will be null and void. The provisions of this paragraph shall survive any partial disposal.

If the deed owner is notified of a proposal to condemn all or any portion of the property subject to this fee simple deed, the grant recipient and the USDA Forest Service must immediately be notified.

Management objectives. The Property will be managed in a manner consistent with and in accordance with the FLP and a Multi-Resource Management Plan to ensure long-term sustainability and protection of the forest resources and other conservation values for which the Property was acquired. The initial plan will designate specific areas targeted for reforestation/afforestation, including a timeline to complete reforestation to achieve 75% cover across the Property within 10 years of acquisition, or as soon as silviculturally possible; subsequent plan updates will provide for maintenance of at least 75% forest cover thereafter.

There will be no surface disturbance of the property other than what is necessary for management activities which are needed for long-term forest health and sustainability. Disturbance must be limited but could include construction of new recreational or forest management roads or trails, construction or replacement of culverts or construction of structures that are necessary to meet the purposes of the acquisition including public access and forest-

based recreation. There may be limited extraction of sand or gravel for onsite management activities. Such activities and construction will be outlined in the Multi-Resource Management Plan. Protection of the forest is the primary purpose of this acquisition; any management, structures, disturbance or alteration will be done only if needed for effective protection, management or restoration of the forest.

There will be no conveyance or subdivision of the subject property except that limited portions may be conveyed as part of bona fide boundary dispute resolutions in consultation with the appropriate Court. The holder of the subject property shall not enter into long term contracts, agreement, leases or easements that could impact the long-term title of this property or the purposes for which the property entered the FLP.

Ecosystem service markets. No agreements relating to ecosystem service markets shall be made regarding the Property that is or is likely to become inconsistent with the Purposes or Terms of this Deed, the terms of the FLP grant, State of Hawai‘i Forest Action Plan or other documents incorporated by reference. If the State of Hawai‘i wishes to enter such an agreement it must notify the USDA Forest Service explaining what the State proposes to do and explain why it believes market participation is compatible. The USDA Forest Service will respond with its denial or approval and include instructions if applicable.

2. U.S. Department of the Interior, Fish and Wildlife Service

The State of Hawai‘i, DLNR, acknowledges that the Kamehamenui Forest Acquisition, located in Maui County, State of Hawai‘i (the “Property”), was acquired, in part, with funds awarded by the U.S. Department of the Interior, Fish and Wildlife Service (the “USFWS”) including grant funds received from the Cooperative Endangered Species Conservation Fund Habitat Conservation Plan (HCP) Land Acquisition Grant Program (CFDA #15.615) established under Section 6 of the Endangered Species Act, 16 U.S.C. § 1535 (the “Program”). The Program is administered by the USFWS, Division of Wildlife and Sport Fish Restoration, and its successors and assigns. The Property is subject to all the terms and conditions of Grant Award F18AP00085 (Award), the purpose of which is to enhance recovery efforts for federally listed endangered species, including Hawaiian petrel (*Pterodroma sandwichensis*) (Hawaiian name - ua‘u), Hawaiian goose (*Branta sandvicensis*)(Hawaiian name - nēnē), Hawaiian hoary bat (*Lasiurus semotus*) (Hawaiian name - ‘ope‘ape‘a), and Blackburn’s sphinx moth (*Manduca blackburni*). A copy of the Award is kept on file at the offices of the USFWS, 911 NE 11th Avenue, Portland, Oregon 97232 and DLNR, Division of Forestry and Wildlife, 1151 Punchbowl Street, Room 325, Honolulu, Hawaii 96813.

DLNR acknowledges that the Property was acquired in part for the USFWS-approved purpose of protecting the Property in perpetuity to enhance recovery efforts for Hawaiian petrel, nēnē, Hawaiian hoary bat, and Blackburn’s sphinx moth. The purpose of this acquisition project is to complement required mitigation being performed pursuant to the respective HCPs and to contribute to the long-term recovery of the covered species as well as for 10 additional endangered species. The acquisition is anticipated to protect and restore suitable habitat, increasing survival and reproductive success of those listed species. Acquisition and

management of the Property is expected to result in an increase in the populations of each species, contributing to their overall recovery.

DLNR will develop a multi-resource management plan for the property which includes management strategies and recovery efforts to benefit federal listed species on the Property. The USFWS will be consulted during the development of the multi-resource management plan to ensure the forest management activities including but not limited to the harvesting of forest products will consider impacts to listed species. The Property possesses significant natural and open space values associated with habitat for fish and wildlife. DLNR's responsibilities and the federal interest shall last in perpetuity and pass to any successors unless provided for otherwise through disposal pursuant to 2 C.F.R. §200.311.

DLNR, as a recipient of Award funds, hereby confirms its obligations and responsibilities with regards to the Property pursuant to the terms and conditions associated with the Award, including the obligation to obtain the consent of the USFWS prior to the conveyance of any interest in the Property or the use of the Property for any purpose inconsistent with the USFWS-approved purpose. In the event the Property is no longer necessary for the purpose of the Award, DLNR will request disposition instructions from the USFWS, which will be provided in accordance with 2 C.F.R. §200.311(c).

Funding contributions toward the total purchase of the Property are as follows:

Contributing Partner	Amount	% of total
State of Hawaii CIP	\$4,000,000	41%
U.S. Forest Service - Forest Legacy Program/DLNR	\$3,830,000	39%
U.S. Fish and Wildlife Service-HCP /DLNR	\$2,000,000	20%
Total	\$9,830,000	100%

DLNR shall not authorize or tolerate any activities on the Property that are incompatible with its originally authorized purpose, and will endeavor while working with partners, to stop these activities immediately should they occur without DLNR's permission."

- Where there any requirements associated with the funds received from the Trust for Public Lands?

Response: The acquisition did not include any funding from Trust for Public Land. There are no requirements from Trust for Public Land.

- Would you please send us an electronic copy of the grant agreement and any associated amendments or changes if such documents exist.

Response: Grant agreements for the USDOl and USDA grants for the acquisition are attached. The only modifications to the awards are time extensions. Both grants end 6/30/2022.

- What is the timeline and major milestones for the community-based management plan?

Response: We are preparing to issue a solicitation for services to qualified planning consultants for the preparation of a community-based management plan for the 3,434-acre Kamehamehenui lands. The plan will be developed through broad consultation with community members and constituents and will include master planning for forest and watershed restoration, endangered species protection, and development of trails and access. We expect to scope development of a network of trails for hiking that will include both short loop trails and remote upcountry trails for expert hikers. The community-based planning approach will enable us to seek public input on additional recreational opportunities that may be compatible with the community's vision, such as camping, backpacking, mountain bikes, archery, and bird hunting. We expect to begin the planning in late 2021 and to complete the plan by June 30, 2022.



We agree with the legislators who put this into law in 2003 – ag should be managed by the department of ag. But there still over 100K acres of ag land that is not under the Dept of Agriculture.

We support the transfer because it will benefit the leaseholder, as well as our community's efforts to reach our state's goals. This stability is best for the whole state, not just that rancher's operation. It means that land is being actively managed.

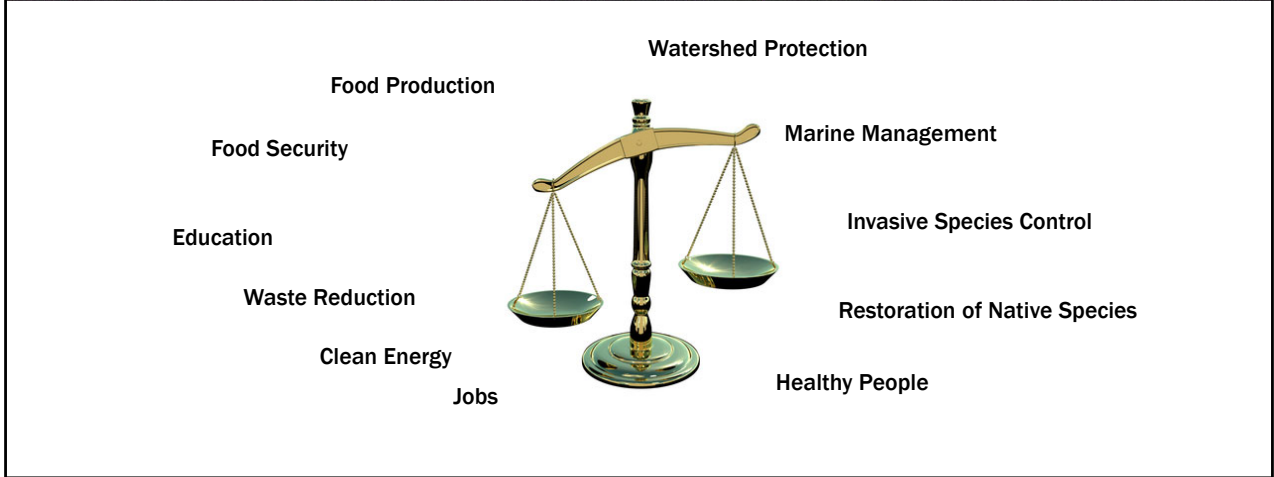
Brendan Balthazar was not able to make it today to testify, he's working cattle, but wants to echo these same sentiments. He specifically wanted to relay that while his Kula lease was discussed for reforestation by DLNR in previous meetings, he does have a DLNR lease in Kaupo with the same message – transfer this lease to DOA under Act 90.

MULTIPLE GOALS



Intent of Act 90: ensure the long-term productive use of public lands leased or available to be leased by the DLNR for agricultural purposes by allowing these lands to be transferred to and managed by the department of agriculture.

There are multiple goals for the state - leaseholders are not here to claim entitlement to a lease, but to make sure they have the means to utilize the land in a way that meets our state's goals. They are putting work into the land every day.



These goals overlap, and we should capture those synergies to move us most efficiently towards these goals.

We can't choose one goal and march towards it while ignoring the others. I don't think it could be defined as success if we reforest the land, but lose our food security.

The reason Act 90 said there would be benefit for the community if ag land is transferred to DOA is because they are the appropriate agency to manage for agriculture.

APPROPRIATE MANAGEMENT

History of DLNR taking land from agricultural production to put into forestry, with no successful reforestation



DLNR Mission

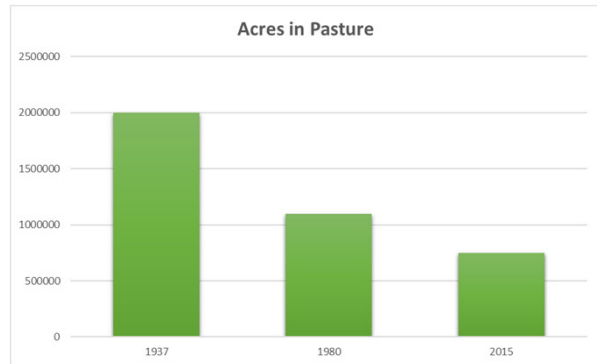
Enhance, protect, conserve and manage Hawaii's unique and limited natural, cultural and historic resources held in public trust for current and future generations of the people of Hawaii nei, and its visitors, in partnership with others from the public and private sectors



HDOA Mission

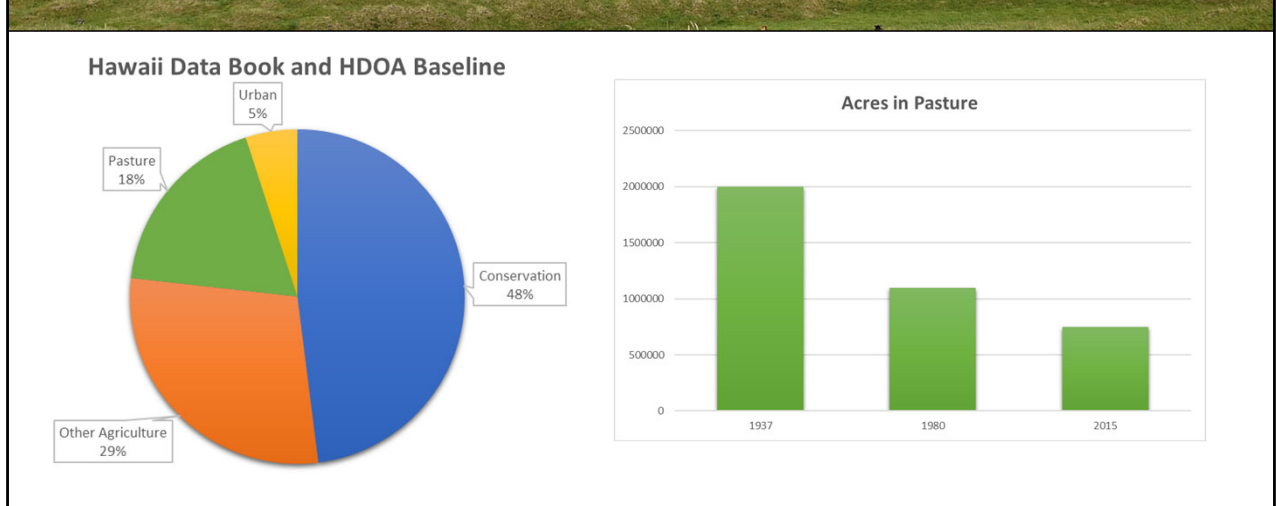
To further expand the role of Hawaii's agricultural industry to benefit the well-being of our island society by diversifying the economy, protecting resources important for agricultural production, and gaining greater self-sufficiency in food and renewable energy production.

Both missions are important to Hawaii, and both should be pursued. However, in the case of lands with active agricultural production, we advocate for agriculture to be prioritized. In this way, we can make progress toward multiple goals, while not harming food production.



According to the DOA Baseline studies, the number of acres in pasture in the state is declining. This takes us in the opposite direction of food sustainability and increasing local food production.

CONSERVATION AND PASTURE

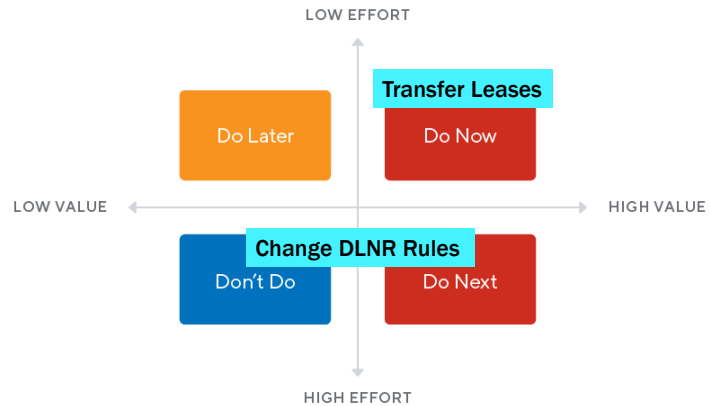


48% of Hawaii's land in conservation according to the Hawaii Data Book.

Conservation is important, but it's a huge task. Almost half of Hawaii's land is in conservation, and those lands need management.

Why are we considering converting lands in active agriculture for reforestation, when there is still so much work to do on the land that is already zoned as conservation? Why not let the pasture lands continue to produce? Bremer, et al published an article in the Land Journal earlier this year on Maintaining the Many Societal Benefits of Rangelands, specifically in Hawaii. In order to get those benefits of carbon sequestration, soil health, open landscapes, we need to preserve ranchers ability to produce.

PRIORITIZATION



There are limited resources, we want to get as much done as possible.

Transferring the land now gives high value to the lessee and to Hawaii's food security, and it requires low effort. That falls under Do Now.

Changing the rules to give DLNR the ability to give the same lease terms as DOA – that's high effort, and it'll also take time, making leaseholders continue to wait. Perhaps there's some value for some leases if DLNR gets this, but there's no value in it for pasture leases, because if not transferred, they are still under a dept that does not prioritize agriculture. That puts this scenario somewhere between "Do Next" or "Don't Do" In either case, Transferring leases is what we should Do Now.

EFFICIENCY



$$\text{Efficiency} = \frac{\text{Useful work performed}}{\text{Total energy expended}}$$

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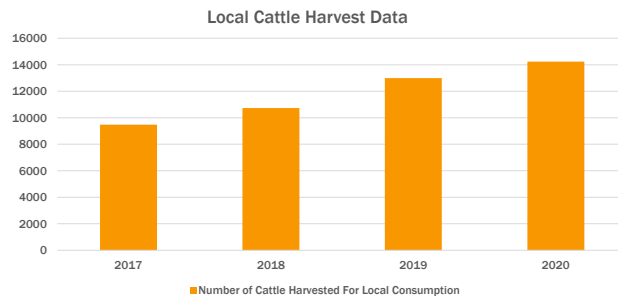
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EFFECTIVENESS

Confidence in leases and appropriate management

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More ranchers can keep cattle in Hawaii for local consumption



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Over the years, ranchers have been aiming to keep more cattle here for local consumption. With the increase in capacity planned for both the Oahu and Paauilo processing facilities, we can expect ranchers to be able to fill more of the demand for local beef in the coming years. But they need to be confident in their leases to convert their operations to more grass finished beef. While the ranchers produce, they are also removing invasive species, improving roads, creating water systems, maintaining fences, improving soil health.

This is both efficient and effective in reaching our state's goals.

We are not against what DLNR is doing, we are just asking that they allow leases with agriculture to be transferred to the DOA where the lessee can be assured that ag production will be prioritized. Keeping these lands producing beef gives us a better chance at having access to food, esp high quality protein, if our supply chains are disrupted. We want to see this continued upward trend of local cattle harvest, but this move requires long term planning, and that's difficult if the lessee is under DLNR instead of DOA.

STABILITY

Under DOA

Confidence that agriculture is a priority.

Under DLNR

A rancher needs to weigh whether it's prudent to invest in land improvements or not.



Need to know that ag on the land can continue, regardless of the personalities that come and go in leadership positions. There should be an order of operations when prioritizing, a clear map to follow that is objective, not subjective. Yes, Act 90 states that both boards need to agree. But we can't allow there to be stagnation just to keep status quo – there needs to be a reason for the disagreement, one based on objective reasons, not politics.

We are proponents for adaptation, but lessees shouldn't fear that they won't be able to produce because of a certain administration or make up of a board.

We heard in previous working group meetings that DLNR and HDOA work well together. I would hope they can work well together to organize conservation efforts on agricultural lands that are under the Dept of Agriculture. When it comes to the proposal of giving DLNR the same lease making abilities as DOA – that still doesn't change the fact that DLNR does not prioritize agriculture. They may get the ability to provide appropriate leases, but they're not compelled to. So why leave an agricultural lease under a dept that does not want to support ranching? Why spend more time trying to make a workaround and making these leaseholders wait, when they can be transferred now and be confident they'll be able to continue producing beef? Maintaining these lands in pasture does not diminish the forest that is already there, in fact, it could enhance it with a leaseholder on the ground for the long haul. We understand that DLNR wants to hold the line on the decline of forests – but

these rangelands are already in active production. If we take them out of production, it's difficult to get it back, again moving us in the opposed direction of food security.

We've seen the instability of the supply chain. If these ranches continue what they are doing, they have the ability to feed our community even if ships stop coming. We will still have forests, the 48% of land in conservation. But let's not chip away at our active ag lands in order to add to that percentage on paper. Take care of that 48%, and allow these ag leases to transfer to DOA as was intended under Act 90.