

State of Hawai‘i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai‘i 96813

January 12, 2018

Chairperson and Members
Board of Land and Natural Resources
State of Hawai‘i
Honolulu, Hawai‘i

Land Board Members:

SUBJECT: APPROVE TWO DISPOSITIONS OF LAND THAT WAS ACQUIRED WITH A GRANT FROM THE LAND CONSERVATION FUND BY THE NATIONAL TROPICAL BOTANICAL GARDEN AT HĀNA, MAUI, TAX MAP KEY NUMBER (2) 1-3-002:001, INCLUDING WAIVER OF REVENUE SHARING PROVISIONS:

- (1) DECOITE AGRICULTURAL LEASE WITH A. DECOITE RANCH LLC, AND
- (2) LEASE AGREEMENT WITH MA KA HANA KA ‘IKE

SUMMARY

The Division recommends that the Board approve two proposed dispositions of land that was acquired with a grant from the Land Conservation Fund by the National Tropical Botanical Garden at Hāna, Maui, Tax Map Key Number (2) 1-3-002:001. One proposed disposition is a five-year lease of ninety-four acres to A. DeCoite Ranch LLC for agricultural use (livestock grazing) that supports on-site conservation efforts. The other proposed disposition is a six-year lease, with provisions for extensions, of approximately nine acres to Ma Ka Hana Ka ‘Ike, a nonprofit corporation, for agricultural use (farming) that supports public access, community-based food security and educational programs, and on-site and statewide conservation efforts. Based on its analysis of the grant file, coupled with the results of a recent site visit at the property, the Division finds that the each of the two proposed dispositions would not conflict with the protection of resource values as identified in the grantee’s Legacy Land grant application and as documented by the grantee’s pre-closing due diligence, and would not conflict with contractual and statutory requirements, including deed restrictions, that the property be managed consistently with the purposes for which it was awarded a Legacy Land Conservation Program grant and Chapter 173A, Hawai‘i Revised Statutes.

BACKGROUND

On June 30, 2007, the Board and the National Tropical Botanical Garden (NTBG) entered into a Legacy Land Conservation Program (LLCP) Grant Agreement (Exhibit I, Contract No. 57148). In performing the terms of the Grant Agreement, NTBG used this \$1.5 million grant from the Land Conservation Fund to acquire 169.87 acres, more or less, of land at Honomā‘ele, Hāna, Island of Maui for the protection of resource values stated in sections A, D, and F of NTBG’s grant application (*see* Exhibit I, Exhibit A, National Tropical Botanical Garden Project Application). The Grant Agreement

states that “Property acquired with LLCP funding from the Land Conservation Fund shall be held and managed in a manner designated to protect the Property’s resource values” (Exhibit I, Attachment 1, Scope of Performance, at Project Description).

As part of its due diligence for closing the grant-funded land acquisition transaction, NTBG submitted a LLCP Resource Value Documentation Form (Exhibit II, dated August 22, 2008) that includes five color photographs of the property (two aerial views and three ground views, dates unknown) and that incorporates by reference an appraisal that NTBG previously supplied to the LLCP. The Appraisal Report (AR) includes four aerial photographs (color) taken in 2002 and 2006 and eight ground photographs (color) taken on August 10, 2007 (*see* Exhibit III). In sum, and as indicated by their captions, the photos show general overviews and boundaries, and specific features of the property, including:

- the view plane of Pi‘ilanihale Heiau;
- coastal views, particularly native hāla forest along the coastline (northern boundary);
- a gazebo;
- a macadamia nut orchard (occupies “[t]he westerly one-third,” AR page II-7);
- NTBG’s Kahanu Garden (adjacent);
- Honomā‘ele Gulch (the center of the gulch is a property boundary);
- entry gate and views along ‘Ula‘ino Road (southern boundary); and
- grassed access road.

In accordance with the terms of the Grant Agreement (*see* Exhibit 1 at Performance, paragraph 3), the deed that NTBG holds for the property contains the following language, the last two sentences of which mirror the requirements of Sections 173A-9 and 173A-10, Hawai‘i Revised Statutes (HRS), regarding disposition and revenue sharing, respectively (*see* Exhibit IV, recorded October 10, 2008):

The property shall be managed consistently with the purposes for which it was awarded a Legacy Land Conservation Program grant and Chapter 173A, Hawai‘i Revised Statutes. The National Tropical Botanical Garden shall not dispose of, encumber its title or other interests in, or convert the use of this property without the written approval of BLNR or its successor agencies. If the property is sold, leased, rented, or otherwise disposed of by the National Tropical Botanical Garden, that portion of the net proceeds (sale price less actual expenses of sale) of such sale, rental, or proceeds equal to the proportion that the state grant bears to the original cost of the property shall be paid to the State of Hawaii.

After closing the conservation transaction, NTBG submitted an initial LLCP Grant Recipient Self-Report Form, dated May 9, 2011 (Exhibit V). NTBG’s most recent LLCP Grant Recipient Self-Report Form, dated January 26, 2015 (Exhibit VI), indicated that NTBG:

- (1) in 2012, “signed a 3-year lease with a local rancher . . . to run cattle on portions of the property” (approximately 50 acres) to reclaim major portions of an abandoned and overgrown macadamia nut orchard, and
- (2) at the end of 2014, entered into a lease with an educational non-profit organization based in Hāna, Maui “to manage and expand Mahele Farm,” a volunteer farm using about ten acres of the property to feed about 80 families.

Subsequent communication between the LLCP and NTBG clarified that NTBG did not execute a lease with the local rancher, and led to a mutual decision to request Board approval of two new leases—one with the rancher, and one with the nonprofit farm manager—and to cancel the existing lease reported by NTBG in 2015. To support this request (this submittal), the Department of the Attorney General reviewed the lease documents (Exhibits VII, VIII, IX, and X), and the LLCP conducted a site visit on November 29, 2017 “for the purpose of inspecting the condition of the property and resources.” *See* Section 13-140-33, Hawai‘i Administrative Rules (HAR), and Exhibit XI, Site Visit Report.

The results of the LLCP’s site visit (*see* Exhibit XI) indicate that the condition of the property and its resources retains its value as a resource to the State and remains satisfactory for achieving program purposes, and that NTBG and its lessee (Ma Ka Hana Ka ‘Ike) continue to hold and manage the property acquired with LLCP funding from the Land Conservation Fund in a manner designated to protect the property’s resource values.

DISCUSSION

Board Approval

Section 173A-9, Hawaii Revised Statutes (HRS), requires that “[a]ny land acquired by any nonprofit land conservation organization under this chapter may be sold, leased, or otherwise disposed of with the prior written approval of the board.” The tests for approval that the Board may consider include:

- (1) Whether the property is/would be held and managed in a manner designed to protect the Property’s resource values. *See* Exhibit I, Grant Agreement.
- (2) Whether the property is/would be managed consistently with the purposes for which the National Tropical Botanical Garden was awarded a Legacy Land Conservation Program (LLCP) Grant and Chapter 173A, HRS. *See* Exhibit I, Grant Agreement.
- (3) Whether the lessee is eligible to receive an LLCP award. *See* HAR § 13-140-34(c)(1)(A) or (c)(2)(A).
- (4) Whether the lessee will be capable of managing the land in accordance with the purposes for which the board awarded a LLCP grant. *See* HAR § 13-140-34(c)(1)(B) or (c)(2)(B).
- (5) Whether the net proceeds of the sale will allow the State to recover its appropriate portion of the funds that were originally contributed pursuant to section 173A-10, HRS. HAR § 13-140-34(c)(1)(C).
- (6) Best interests of the State under Chapter 173A, HRS. *See* HAR § 13-140-34(c)(3).

The Division believes that the proposed leases (Exhibits VII and VIII) do not conflict with (1) holding and managing the property in a manner designed to protect the Property’s resource values, and (2) managing the property for the purposes for which NTBG was awarded an LLCP grant, and are consistent with Chapter 173A, Hawai‘i Revised Statutes, because (a) the cattle lease provides brush control, infrastructure, and maintenance benefits that contribute to resource protection and to achievement of the LLCP grant purposes, and (b) the farm lease provides public access, infrastructure, and maintenance benefits that contribute to resource protection and to achievement of the LLCP grant purposes. The Division also believes that the leases are in the best interests of the State under Chapter 173A, HRS, as determined using criteria listed under Section 13-140-39, HAR, particularly:

- (3) Linkage of protected acreage of similar resources;
- (4) Opportunities for appropriate public access and enjoyment;
- (10) Status and adequacy of management planning;
- (11) Community support for acquisition;
- (13) Connection to regional planning and protection efforts; and
- (14) Capacity for long-term management.

Although A. DeCoite Ranch LLC, the proposed ranch lessee, may not be eligible to receive an LLC award, the Division concludes that the Ranch appears to be capable of managing the land in accordance with the purposes for which the Board awarded a LLC grant, based on its track record with NTBG and the condition of the existing infrastructure. Ma Ka Hana Ka 'Ike (MKHKI), the existing and proposed lessee, is a domestic nonprofit corporation whose registered purpose is "Teaching & Mentoring of Building Skills and Life Skills to Hana, Maui, Youth." A nonprofit land conservation organization, to be eligible to receive an LLC award, must be "an organization that protects "resource value" as defined herein or "land having value as a resource to the State" as defined under section 173A-2, HRS, as part of its activities or mission and has been determined and designated to be a nonprofit organization by the Internal Revenue Service." HAR § 13-140-2. Because MKHKI activities at Kahanu protect resource value on land having value as a resource to the State, the Division concludes that MKHKI is eligible to receive a LLC grant and is capable of managing the land in accordance with the purposes for which the Board awarded a LLC grant.

A narrow interpretation of the lease documents suggest that the proposed dispositions are for value or consideration, however the proceeds from each the disposition will not allow the State to recover its appropriate portion of the funds that were originally contributed pursuant to section 173A-10, HRS, which is "that portion of the rental or proceeds equal to the proportion that the grant by the State bears to the original cost of the land." In this case, the proportion that the grant by the State bears to the original cost of the land is approximately 21.7% (\$1,500,000/\$6,900,000, *see* Exhibit XI, Project Accounting Form), and the State would receive \$0.44 per year as its portion of the \$1.00 token annual rent for each of the two proposed leases, combined. The Division prefers a broader interpretation which suggests that the token lease rent of \$1.00 per year is not a transaction for value or consideration. The Division believes that it would cost the Department far more than \$0.44 per year to process a payment of \$0.44 per year from NTBG, and that the payment process would impose an unnecessary and counter-productive burden on both NTBG and the Department.

For program purposes, the Division's main concerns are that the land acquired continues to hold its value as a resource to the state, as represented in the grantee's application; the lessee has notice of program objectives and requirements; the lease terms and conditions do not conflict with program objectives and requirements; and the lessor retains overall responsibility for the achievement of program objectives and compliance with program requirements.

Chapter 343, Hawai'i Revised Statutes, Environmental Review

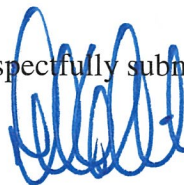
The Board's approval of the NTBG lease agreements would not trigger environmental review requirements under subsection 343-5(a), Hawai'i Revised Statutes (HRS). A narrow shoreline corridor along the makai boundary of the property occupies the State Conservation Land Use District (CLUD), Limited Subzone, and includes a "shoreline area" as defined by Section 205A-41, HRS. However, the uses enabled under the NTBG lease agreements would not occur within the CLUD, the shoreline area, or a "historic site as designated in the National Register or Hawaii Register."

RECOMMENDATIONS

That the Board:

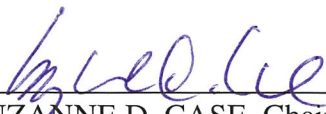
- (1) Approve, in writing, (a) a lease of land acquired by the National Tropical Botanical Garden (Lessor) with a grant from the Land Conservation Fund to A. DeCoite Ranch LLC (Lessee), under the terms and conditions stated in the DeCoite Agricultural Lease, attached to this submittal as Exhibit VII, and (b) a waiver of revenue sharing provisions for the token annual lease rental, provided that the Lessor submits a copy of the fully-executed lease to the Legacy Land Conservation Program.
- (2) Approve, in writing, (a) a lease of land acquired by the National Tropical Botanical Garden (Lessor) with a grant from the Land Conservation Fund to Ma Ka Hana Ka Ike (Lessee), under the terms and conditions stated in the Lease Agreement, attached to this submittal as Exhibit VIII, and (b) a waiver of revenue sharing provisions for the token annual lease rental, provided that the Lessor submits a copy of the fully-executed lease to the Legacy Land Conservation Program, along with documentation of the cancellation of the existing Lease Agreement between the Lessor and the Lessee that is attached to this submittal as Exhibit IX.
- (3) Authorize the Chairperson to draft and sign the Board's written approval for each lease of land and waiver of revenue sharing provision, as approved in Recommendations (1) and (2) above.

Respectfully submitted,



DAVID G. SMITH, Administrator

APPROVED FOR SUBMITTAL:



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

ATTACHMENTS:

- | | |
|--------------|--|
| Exhibit I: | Legacy Land Conservation Program Grant Agreement, Contract No. 57148 |
| Exhibit II: | Resource Value Documentation Form, Legacy Land Conservation Program |
| Exhibit III: | Addendum 5 from Appraisal Report |
| Exhibit IV: | Warranty Deed |
| Exhibit V: | Grant Recipient Self-Report Form, May 9, 2011, Legacy Land Conservation Program |
| Exhibit VI: | Grant Recipient Self-Report Form, January 26, 2015, Legacy Land Conservation Program |

- Exhibit VII: Proposed DeCoite Agricultural Lease (without Exhibit B, Contract No. 57148)
- Exhibit VIII: Proposed Lease Agreement between National Tropical Botanical Garden and Ma Ka Hana Ka 'Ike (without Exhibit B, Contract No. 57148)
- Exhibit IX: Proposed Cancellation of Lease between National Tropical Botanical Garden and Ma Ka Hana Ka 'Ike
- Exhibit X: Existing Lease Agreement between National Tropical Botanical Garden and Ma Ka Hana Ka 'Ike
- Exhibit XI: Site Visit Report, Legacy Land Conservation Program, LLCP 07-02, Kahanu
- Exhibit XII: Project Accounting Form, Legacy Land Conservation Program, with letter confirming a contribution of matching funds

**EXHIBIT I - APPROVE TWO DISPOSITIONS OF LAND THAT WAS ACQUIRED
WITH A GRANT FROM THE LAND CONSERVATION FUND**

**STATE OF HAWAII
LEGACY LAND CONSERVATION PROGRAM
GRANT AGREEMENT**

This Agreement, entered into on June 30, 2007, by and between the BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII ("STATE"), by its Chairperson, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, and the National Tropical Botanical Garden ("AWARDEE"), a nonprofit corporation under the laws of the State of Hawaii, whose business address and federal and state taxpayer identification numbers are as follows: 3530 Papalina Rd, Kalaheo, HI 96741

Fed # 52-0057064
HI # 10-4019424-01

EXHIBITS

Exhibit A Project Application

Exhibit B Checklist for Legacy Land Conservation Program Projects

Exhibits A and B are hereby made a part of this Agreement.

RECITALS

WHEREAS, Chapter 173A, Hawaii Revised Statutes ("HRS"), establishes standards for disbursing public funds to state agencies, counties, and nonprofit land conservation organizations to fulfill public purposes;

WHEREAS, the AWARDEE has requested funding from the STATE for the project described in Exhibit A and Attachment 1 of this Agreement;

WHEREAS, the STATE finds that the AWARDEE's performance as described in Attachment 1 of this Agreement will fulfill the public purpose set forth therein;

WHEREAS, the STATE desires to contract with the AWARDEE to fulfill the specified public purpose, and the AWARDEE is agreeable to performing under this Agreement;

WHEREAS, money is available to fund this Agreement pursuant to: Chapter 173A, HRS, LNR 101 (S-07-317-514) in the following maximum amount: One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000);

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the STATE and the AWARDEE agree as follows:

A. SCOPE OF PERFORMANCE

The AWARDEE shall perform, in a proper and satisfactory manner as determined by the STATE, the project described in the "Scope of Performance" set forth in Attachment 1, which is hereby made a part of this Agreement.

B. TIME OF PERFORMANCE

The performance required of the AWARDEE under this Agreement shall be completed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.

C. COMPENSATION

The AWARDEE shall be compensated for performance of the project under this Agreement according to the "Compensation and Payment Schedule," set forth in Attachment 3, which is hereby made a part of this Agreement.

D. STANDARDS OF CONDUCT DECLARATION

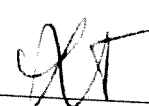
The "Standards of Conduct Declaration" by AWARDEE, set forth in Attachment 4, is hereby made a part of this Agreement.

E. OTHER TERMS AND CONDITIONS

The "General Conditions for Legacy Land Conservation Program Grant Agreements," set forth in Attachment 5, is hereby made a part of this Agreement.


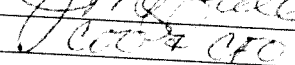
IN WITNESS WHEREOF, the STATE and the AWARDEE have executed this Agreement effective as of the date first above written.

STATE

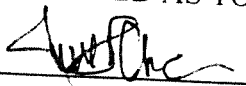


Chairperson
Board of Land and Natural Resources

AWARDEE

By 
Its  *
(Title)

APPROVED AS TO FORM:



Deputy Attorney General

*Evidence of authority of the AWARDEE's representative to sign this Agreement for the AWARDEE must be attached.

AWARDEE'S ACKNOWLEDGMENT

STATE OF HAWAII

COUNTY OF

Kauai

SS.

On this 1st day of May, 2008, before me

personally appeared TANET MAY FIELD, to me personally known, who

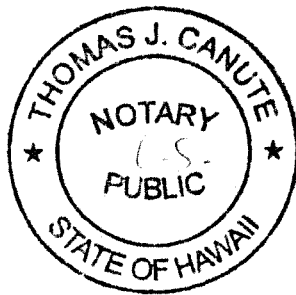
being by me duly sworn, did say that he/she is the COO & CFO of

NATIONAL TROPICAL BOTANICAL GARDEN, the AWARDEE named in the foregoing

instrument, and that he/she is authorized to sign said instrument on behalf of the AWARDEE,

and acknowledges that he/she executes said instrument as the free act and deed of the

AWARDEE.



[Signature]
Notary Public, State of Hawaii

My commission expires: 12-11-2010

SCOPE OF PERFORMANCE

Project Description

The AWARDEE shall use funds from the Legacy Land Conservation Program ("LLCP") for land acquisition of: 169.87 acres, more or less, at Honomā'ele, Hana, Island of Maui ("Property") for the protection of resource values stated in Sections "A," "D," and "F" of the Project Application attached hereto as Exhibit A. Property acquired with LLCP funding from the Land Conservation Fund shall be held and managed in a manner designed to protect the Property's resource values.

Performance

The AWARDEE is required to do the following:

1. Submit a request for payment containing all documentation required in Attachment 3 ("Compensation and Payment Schedule") to the satisfaction of the STATE.
2. Complete acquisition of the Property and record a document of conveyance of the Property to AWARDEE.
3. The document of conveyance to AWARDEE shall include the following paragraphs:

"The property has been acquired with funds from a state grant from the Legacy Land Conservation Program. Title of the property conveyed by this deed shall vest in the National Tropical Botanical Garden, subject to disposition instructions from the State of Hawaii, Board of Land and Natural Resources ("BLNR") or its successor agencies. The property shall be managed consistently with the purposes for which it was awarded a Legacy Land Conservation Program grant and Chapter 173A, Hawaii Revised Statutes. The National Tropical Botanical Garden shall not dispose of, encumber its title or other interests in, or convert the use of this property without the written approval of BLNR or its successor agencies."

"If the property is sold, leased, rented, or otherwise disposed of by the National Tropical Botanical Garden, that portion of the net proceeds (sale price less actual expenses of sale) of such sale, rental, or proceeds equal to the proportion that the state grant bears to the original cost of the property shall be paid to the State of Hawaii."
4. Cooperate with the STATE in all efforts to document the condition and status of the resource values for which the grant funds were provided.

5. Any substantive changes to the Project Application must be agreed to by the AWARDEE and the Chairperson of the Board of Land and Natural Resources in writing.

6. If AWARDEE is a county or a nonprofit land conservation organization, no LLCP funds shall be released by the STATE unless twenty-five percent (25%) of total project costs are matched by direct moneys, a combination of public and private funds, land value donation, in-kind contributions, or a combination of these sources

TIME SCHEDULE

This Agreement shall be in effect beginning June 30, 2007. AWARDDEE shall complete acquisition of the Property and record the conveyance no later than June 6, 2009. If any of the performances required in the Scope of Performance are not completed within the time stated, AWARDDEE may be required to return all funds previously received by it pursuant to this Agreement. The Chairperson of the Board of Land and Natural Resources may extend the time for performance of any requirement.

COMPENSATION AND PAYMENT SCHEDULE

In full consideration of the services to be performed under this Agreement, from Chapter 173A, Hawaii Revised Statutes, and LNR 101 (S-07-317-514), the STATE and the AWARDDEE agree to the following:

- a) AWARDDEE's request for payment, in the form of an invoice, shall be delivered personally or sent by United States first class mail, postage prepaid to:

Legacy Land Conservation Program
Division of Forestry and Wildlife
Department of Land and Natural Resources
1151 Punchbowl Street, Room 325
Honolulu, Hawaii 96813

The request for payment must be received by the LLCP by June 6, 2009. A maximum payment of ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000) shall be made upon:

- i. AWARDDEE's completion of the Checklist for Legacy Land Conservation Program Projects attached hereto as Exhibit B;
- ii. AWARDDEE's compliance with all LLCP policies and practices;
- iii. the STATE's receipt of an original invoice and copies of all bills, invoices, receipts, and a contract of sale; and
- iv. the STATE's receipt of AWARDDEE's tax clearances from the Hawaii State Department of Taxation and the Internal Revenue Service.

- b) Within thirty (30) days of acquiring the Property, but no later than July 6, 2009, AWARDDEE shall submit to the STATE a copy of the recorded conveyance document transferring ownership of the 169.87 acres, more or less, at Honomā'e, Hana, Island of Maui to AWARDDEE.

- c) The total amount awarded under this Agreement will be dependent upon the project being completed with no substantive changes to the Project Application. The amount of the award shall not be increased, but the STATE may reduce the award if the project changes in any way that the STATE deems substantial. For example, a reduction in acreage, purchase price, or fair market value may be deemed substantial and sufficient justification for a reduction in the award.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of the National Tropical Botanical Garden , AWARDEE, the undersigned does declare as follows:

1. AWARDEE ☐ is ☒ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. AWARDEE has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Agreement within the preceding two years and who participated while so employed in the matter with which the Agreement is directly concerned. (Section 84-15(b), HRS).
3. AWARDEE has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Agreement, if the legislator or employee has been involved in the development or award of the Agreement. (Section 84-14(d), HRS).
4. AWARDEE has not been represented on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Agreement. (Sections 84-18(b) and (c), HRS).

AWARDEE understands that the Agreement to which this document is attached is voidable on behalf of the STATE if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of

Ethics, including the provisions which are the source for the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

AWARDEE:

By *J. Mayfield*
(Signature)

Print Name *Janet L. Mayfield*

Print Title *CCO + CFO*

Name of AWARDEE _____

National Tropical Botanical Garden

Date *May 1, 2008*

**GENERAL CONDITIONS FOR LEGACY LAND
CONSERVATION PROGRAM GRANT AGREEMENTS**

1. Awardee's Qualifying Standards.
 - a. The AWARDDEE is a state agency, county, or a nonprofit land conservation organization.
 - b. If the AWARDDEE is a non-profit land conservation organization, AWARDDEE has been determined by the Internal Revenue Service to be a non-profit organization, and AWARDDEE has a governing board whose members have no material conflict of interest and serve without compensation.
2. Recordkeeping Requirements. The AWARDDEE shall in accordance with generally accepted accounting practices, maintain fiscal records and supporting documents and related files, papers, receipts, reports, and other evidence that sufficiently and properly reflect all direct and indirect expenditures and management and fiscal practices related to the AWARDDEE's performance under this Agreement. The AWARDDEE shall retain all records related to the AWARDDEE's performance under this Agreement for at least three (3) years after the date of submission of the AWARDDEE's Final Project Report.
3. Audit of AWARDDEE. The AWARDDEE shall allow the STATE full access to records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and assuring the proper expenditure of the grant. This right of access shall last as long as the records and other related documents are retained.
4. Nondiscrimination. No person performing work under this Agreement, including any employee or agent of the AWARDDEE, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Inspection of Property. The AWARDDEE shall permit the STATE and its agents and representatives, at all reasonable times, the right to enter and examine the Property to ensure compliance with chapter 173A, Hawaii Revised Statutes, and the terms of this Agreement.
6. Conflicts of Interest. The AWARDDEE represents that neither the AWARDDEE, nor any employee or agent of the AWARDDEE, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the AWARDDEE's performance under this Agreement.

7. Compliance with Laws. The AWARDDEE shall comply with chapter 173A, Hawaii Revised Statutes, chapter 343, Hawaii Revised Statutes, and all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the AWARDDEE's performance under this Agreement.
8. Indemnification and Defense. The AWARDDEE shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, and cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or in resulting from the acts or omissions of the AWARDDEE or AWARDDEE's employees, officers, or agents under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.
9. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the AWARDDEE in connection with this Agreement, the AWARDDEE shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
10. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of this Agreement, the AWARDDEE is an "independent contractor," with the authority and responsibility to control and direct the performance required under this Agreement; however, the STATE shall have a general right of inspection to determine whether, in the STATE's opinion, the AWARDDEE is in compliance with this Agreement.
 - b. The AWARDDEE and the AWARDDEE's employees and agents are not by reason of this Agreement, agents or employees of the STATE for any purpose, and the AWARDDEE, and the AWARDDEE's employees and agents shall not be entitled to claim or receive from the STATE any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The AWARDDEE shall be responsible for the accuracy, completeness, and adequacy of AWARDDEE's performance under this Agreement. Furthermore, the AWARDDEE intentionally, voluntarily, and knowingly assumes the sole and entire liability to the AWARDDEE's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the AWARDDEE, or the AWARDDEE's employees or agents, in the course of their employment.
 - d. The AWARDDEE shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and

owing by the AWARDDEE by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, (iii) general excise taxes, (iv) real property taxes, and (v) conveyance taxes. The AWARDDEE also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.

- e. The AWARDDEE shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The AWARDDEE shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the AWARDDEE have been paid and submit the same to the STATE prior to commencing any performance under this Agreement.
- f. The AWARDDEE is responsible for securing all employee-related insurance coverage for the AWARDDEE and the AWARDDEE's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- 11. Payment Procedures: Tax Clearance. All payments under this Agreement shall be made only upon submission by AWARDDEE of (i) original invoices specifying the amount due and certifying that it has completed performance in accordance with the Agreement, and (ii) tax clearances from the Hawaii State Department of Taxation and the Internal Revenue Service. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes.

12. Publicity.

- a. The AWARDEE shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, in any of the AWARDEE's brochures, advertisements, or other publicity of the AWARDEE without written permission from the Public Information Office of the State of Hawaii, Department of Land and Natural Resources. All media contacts with the AWARDEE about the subject matter of this Agreement shall be referred to the State of Hawaii, Department of Land and Natural Resources, Legacy Land Conservation Program.
- b. The AWARDEE consents to the STATE's use of AWARDEE and the Property's name, photograph, image, or likeness in brochures, advertisements, or other publicity relating to the Legacy Land Conservation Program. The STATE shall have complete ownership of all material which is developed, prepared, assembled, or conceived for brochures, advertisements, or other publicity relating to the Legacy Land Conservation Program.

13. Confidentiality of Material.

- a. All material given to or made available to the AWARDEE by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the AWARDEE and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the AWARDEE to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

14. Suspension and Termination of Agreement.

- a. The STATE reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the AWARDEE. Upon receipt of said notice, the AWARDEE shall immediately comply with said notice and suspend all performance under this Agreement at the time stated.
- b. If, for any cause, the AWARDEE breaches this Agreement by failing to satisfactorily fulfill in a timely or proper manner the AWARDEE's obligations under this Agreement or by failing to perform any of the promises, terms, or conditions of this Agreement, and having been given reasonable notice of and opportunity to cure such default, fails to take satisfactory corrective action within the time specified by the STATE, the STATE shall have the right to terminate this Agreement by giving written

notice to the AWARDEE of such termination at least seven (7) calendar days before the effective date of such termination. Furthermore, the STATE may terminate this Agreement without statement of cause at any time by giving written notice to the AWARDEE of such termination at least thirty (30) calendar days before the effective date of such termination.

- c. Upon termination of the Agreement, the AWARDEE, within thirty (30) calendar days of the effective date of such termination, shall compile and submit in an orderly manner to the STATE an accounting of the work performed up to the date of termination. In such event, the AWARDEE shall be paid for the actual cost of the services rendered, if any, but in no event more than the total compensation payable to the AWARDEE under this Agreement.
 - d. If this Agreement is terminated for cause, the AWARDEE shall not be relieved of liability to the STATE for damages sustained because of any breach by the AWARDEE of this Agreement. In such event, the STATE may retain any amounts which may be due and owing to the AWARDEE until such time as the exact amount of damages due to the STATE from the AWARDEE has been determined. The STATE may also set off any damages so determined against the amounts retained.
15. Disputes. No dispute arising under this Agreement may be sued upon by the AWARDEE until after the AWARDEE's written request to the Chairperson of the Board of Land and Natural Resources ("CHAIRPERSON") to informally resolve the dispute is rejected, or until ninety (90) calendar days after the CHAIRPERSON's receipt of the AWARDEE's written request whichever comes first. While the CHAIRPERSON considers the AWARDEE's written request, the AWARDEE agrees to proceed diligently with the performance necessary to complete the Project unless otherwise instructed in writing by the CHAIRPERSON.
16. State Remedies. The AWARDEE understands that in the event that it no longer meets all of the standards set forth in paragraph 1 of these General Conditions, or in the event that AWARDEE fails to comply with any of the other requirements, provisions, or conditions set forth in this Agreement, that the STATE may refuse to make further payments to AWARDEE or may seek reimbursement for payments made to AWARDEE under this Agreement. In addition to the remedies set forth above, the STATE shall be entitled to pursue any other remedy available at law or in equity.
17. Modifications of Agreement. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement permitted by this Agreement shall be made by written amendment to this Agreement, signed by the AWARDEE and the STATE.

18. Notices. Any written notice required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the CHAIRPERSON at the CHAIRPERSON's office in Honolulu, Hawaii or to the AWARDEE at the AWARDEE's address as indicated in the Agreement. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The AWARDEE is responsible for notifying the CHAIRPERSON in writing of any change of address.
19. Waiver. Prior to the disbursement of funds, the CHAIRPERSON, in his or her discretion, may waive certain conditions set forth in this Agreement. No waiver shall be effective unless in writing executed by the CHAIRPERSON. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE's right to enforce the same in accordance with this Agreement. The fact that the STATE specifically refers to one section of the Hawaii Revised Statutes, and does not include other statutory sections in this Agreement shall not constitute a waiver or relinquishment of the STATE's rights or the AWARDEE's obligations under the statutes.
20. Severability. In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.
21. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
22. Survival. AWARDEE's obligations and the STATE's remedies shall survive the funding of the grant and the acquisition of this Property by AWARDEE.
23. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the AWARDEE relative to this Agreement. This Agreement supercedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the AWARDEE other than as set forth or as referred to herein.

Exhibit A

National Tropical Botanical Garden
Project Application

Legacy Land Conservation Program
2006-2007 (Fiscal Year 2007)

EXHIBIT I - APPROVE TWO DISPOSITIONS OF LAND THAT WAS ACQUIRED WITH A GRANT FROM THE LAND CONSERVATION FUND



**REQUEST FOR LAND
CONSERVATION
FUNDING (Act 156 SLH
2005)**

For agency use	
Date of Received:	____/____/____
Application No.:	_____
Application Status:	_____
Total Request:	\$ _____
Reply Date:	_____

GRANT APPLICATION FORM

Forms and Required Preliminary Documentation must be postmarked or hand delivered by the October 16, 2006, 4:30 p.m. HST to (refer to Application Instructions for more information):

Department of Land and Natural Resources
Legacy Land Conservation Program
1151 Punchbowl Street, Room 325 Tel: (808) 586-0921
Honolulu, Hawaii 96813
www.hawaii.gov/dlnr/dofaw/lcpr

SECTION A. APPLICANT INFORMATION

Agency or Organization Name	National Tropical Botanical Garden
Mailing Address (PO Box or Street, City, State, Zip)	3530 Papalina Road Kalaheo, HI 96741
Contact Person and Title	Donna Howard, Development Director
Phone Numbers (best contact, work, cellular)	(808) 332-7324 ext 230
Email	dhoward@ntbg.org
Does agency/organization have a project and organization website? Please include URL:	www.ntbg.org

SECTION B. TYPE OF ACQUISITION

1. We are requesting funding for the acquisition of:

Fee simple interest in private land	X
Permanent conservation easement	

2. We intend for the property interest to be held by:

State of Hawaii	
County of:	
Other (indicate entity): National Tropical Botanical Garden	X

3. We propose that the property be acquired for the following preservation purpose(s)
(check all that apply):

Watershed protection		Parks	
Coastal areas, beaches and ocean access		Natural areas	X
Habitat protection	X	Agricultural production	
Cultural and historical sites	X	Open spaces and scenic resources	X
Recreational and public hunting areas			

SECTION D. DESCRIPTION OF LAND (SUMMARY)

1. Location of property (please be as specific as possible; for example, "Moloaa, makai, located on the northshore of Kauai"):

Honomaele, Hana, East Maui

2. Tax Map Key(s) (for example, "(4) 5-6-007:008"):

130020010000

3. Size of property (indicate acreage or square footage):

169.87 acres

4. What types of easement(s) are located on the property? (for example, vehicular, pedestrian for beach access, utility, etc.):

Pedestrian, vehicular, utility

5. Will the public have access to property or easement? ☒ Yes ☐ No

6. Please provide the following land use information:

State Land Use Designation	Agricultural, Conservation
County Zoning	Agricultural, Conservation
County General /Community Plan Designation	Agricultural, Conservation
Flood Zone Designation	Zone C, Zone V29

7. Is property located in a Special Management Area? ☒ Yes ☐ No

8. What types of structures, if any, are on the property? (for example, house, storage sheds, etc.):

Gazebo

9. If there are historic structures or sites on the property, please indicate all types.

Cultural or archaeological sites, such as heiau, lo'i, burial caves, dunes, or remnant walls:	
Registered historic buildings or structures:	
Other type:	

10. Briefly describe the flora and fauna are found on the property (such as species of endemic and indigenous; Polynesian introduced; invasive; etc.):

Endemic flora and fauna of east Maui including native Hala forests, coastal plant communities, and an introduced macadamia nut orchard
--

11. What are the most exceptional natural resources (such as streams, estuaries, dunes, or caves) on the property?

Lower forest areas, sodden shoreline

12. What types of surveys, if any, have been conducted regarding the property? (for example, Environmental Assessment (EA), archaeological survey, etc.):

--

13. What kinds of land uses/activities border the property? (for example urban/residential; fallow agricultural lands; native forest; coastal preserves; commercial activities, etc.):

Native forest, botanical garden, coastline, macadamia nut orchard, coastal preserves
--

14. If there are suspected or potential hazards associated on/related to this property, please check all the following that apply:

There are no known hazards.	X
The property is a designated brownfield (former industrial use)	
There has been illegal dumping /hazardous materials.	
The property is prone to flooding or is a natural drainage basin.	
The property is prone to falling rocks or mudslides.	
The property lays fallow/overgrown and ground is not level (rocky)	
Other suspected or potential hazards:	

SECTION E. FUNDING REQUEST

1. What is the total estimated value of the property or conservation easement?

\$ 2,619,700

2. How was the estimated value determined?

Appraisal Report (please indicate date of report)	
Current County Tax Assessed Value	X
Other:	

3. Is the property currently listed for sale or has it been listed for sale within the past two years?

☐ Yes (asking price:)

\$

☒ No

4. What is the total estimated cost for acquisition? (Please use the table provided below):

Estimated Acquisition Cost Worksheet				
Expense Item	Estimated Cost	% of Costs to be Paid by:		
		Land Owner	Applicant	Other
Appraisal report	10,000		100%	
Title report	5,000		100%	
Property survey	10,000		100%	
Subdivision				
Environmental investigation	5,000		100%	
Other: Contingency	15,000		100%	
Other:				
Other:				
Other:				
Total Estimated Acquisition Costs	\$ 45,000			
Estimated Value of Property	\$ 2,619,700			
TOTAL ANTICIPATED COST OF ACQUISITION	\$ 2,664,700			

5. Anticipated matching funds (Please use table below):

Estimated Matching Funds Worksheet			
Type	\$ Amount	Source of Funds or Basis of Valuation	Status (Secured/Pending/etc.)
Private funds			
Public/other funds			
Public/other funds			
Public/other funds			
Public/other funds			
Land value donation	\$1,119,700	Kahanu Kinney Sweet LLC	Pending
In-kind contributions			
TOTAL MATCHING FUNDS	\$1,119,700		
*AMOUNT BEING REQUESTED FROM THE LEGACY LAND PROGRAM	\$1,500,000		
TOTAL ANTICIPATED PROJECT FUNDING	\$2,619,700		

6. What is the estimated timeframe for acquisition and your milestones? (note that funding will expire two-years from date of award agreement):

The estimated timeframe for the acquisition of the Kahanu Kinney Sweet Parcel is approximately 9 months from the date of the award agreement.

The initial and most difficult milestones, the negotiation for the parcel, the development of a master plan for the property, and the development of a fund raising plan have been completed as of the submission of this application. Other important milestones, including the securing of the required matching funds, attaining the proper property assessments, and the transfer of the deed have been developed and are all scheduled to be completed within a 9 month period, commencing within 5 business days from the date of the award agreement if granted.

SECTION F. PROJECT DESCRIPTION

Please type your answers on a separate sheet and attach it to the application form (no more than two pages total). Make sure to number your answers so they correlate with the numbered questions below.

1. Briefly describe the significance/importance of the property and/or easement (such as public use, natural areas, slope and elevation, soil type, flora and fauna, etc.).
2. Identify any conditions that threaten the significance/importance of the subject site. This may include how the property or easement relates to neighboring lands (for example, whether project will expand upon an existing conservation area, or provide open space in developed area, etc).
3. Briefly describe the proposed use of the acquired property or easement including any short and long term goals, resource management plan, the source of operation and maintenance funding and who (if not the applicant) will manage the property/easement.

SECTION G. CERTIFICATION

I/We hereby certify that the statements and information contained in this Legacy Land Program Grant Application, including all attachments, are true and accurate to the best of my/our knowledge and understand that if any statements are shown to be false or misrepresented, this application may be rejected.

(1) Charles "Chipper" Wichman
Printed Name

Director/CEO
Title

(An authorized person must sign here, such as the applicant's executive director, county commission chairperson, or state agency director.)


Signature

10/16/06
Date



NATIONAL TROPICAL BOTANICAL GARDEN

Chartered by Congress to Create a National Resource in Conservation, Research, and Education

Section F: Project Description

1. The Kahanu Kinney Sweet Parcel, situated adjacent to the Kahanu Garden of the National Tropical Botanical Garden (NTBG) located in Hāna, Maui is very significant from cultural, historical, and environmental perspectives. One of Hawaii's most sacred sites, Pi'ilanihale Heiau resides on the grounds of the Kahanu Garden, in site distance from the Kahanu Kinney Sweet Parcel. Pi'ilanihale Heiau is Hawaii's largest intact ancient place of worship, built for Hawaiian Royalty King Pi'ilani, the King who united the once divided island of Maui. According to archeological estimates, the Pi'ilanihale Heiau dates back to the 13th century. This awe-inspiring three-acre cultural site is registered as a National Historic Landmark.

The Kahanu Kinney Sweet Parcel is environmentally significant as well. The Kahanu Kinney Sweet Parcel has the intrinsic potential to accommodate the development of additional native plant communities within its precinct. With the parcel neighboring the Pacific Ocean, the area maintains ideal conditions to sustain a coastal plant community made up of plants native to the coastal environment of East Maui.

The struggling native Hala (*Pandanus tectorius*) forests located on the Hāna side of the Kahanu Kinney Sweet Parcel are both culturally and environmentally significant. Hala is commonly found in the lower forest areas and along sodden shorelines. With the Kahanu Kinney Sweet Parcel's location including both the lower forest area and the sodden shorelines elements, the parcel is ideal for native forest preservation and restoration efforts. Hala provided many uses for ancient Hawaiians, which included providing materials for housing, textile, clothing, food, medicine, ornament, fishing, and religious uses.

2. The Kahanu Kinney Sweet Parcels close proximity to the Pi'ilanihale Heiau poses a major threat to the undisturbed nature of the Heiau and its immediate natural surrounds. With the continuous development of the Hawaiian Islands creeping into natural areas such as Hāna, protection of these undeveloped treasures and the view planes surrounding these natural wonders are of the utmost importance and should be protected in perpetuity.

The initial offering of this parcel by landowner Mr. Jim Nabors illustrated one of our greatest concerns, the possible development of pristine Hawaiian lands. At the time of the initial offering, the NTBG lacked the financial resources to purchase the property at market value. During this period, the NTBG

worked feverishly with The Trust for Public Land and The Conservation Fund to structure a deal that Mr. Nabors would find satisfactory. Unfortunately, the offer did not meet the seller's criterion and the NTBG was not able to purchase the parcel. When all efforts to protect the property from being purchased by developers appeared to have been unsuccessful, the Kinney and Sweet Families raised the funds to purchase the parcel, with the intent to both protect the parcel from development and to sell the parcel to the NTBG for its protection from development in perpetuity. Since the purchase of the parcel by the Kinney and Sweet Families in 2002, an adjacent parcel to the Kahanu Garden has entered into environmentally degrading development process; our greatest concern realized.

3. As part of the Kahanu Garden Master Plan, the Kahanu Kinney Sweet Parcel would primarily be used to expand the Kahanu Garden's botanical collection. The National Tropical Botanical Garden has developed short term objectives, which includes gaining greater access to the Kahanu Kinney Sweet Parcel by constructing a new loop road and footpaths where appropriate. A scenic footbridge has also been proposed to connect the current Visitor Center area to the Kahanu Kinney Sweet Parcel. This appropriately engineered footbridge will allow access to the Kahanu Kinney Sweet Parcel by Kahanu Garden staff by foot or via small maintenance vehicles. Maintaining the natural integrity of the parcel remains one of the National Tropical Botanical Garden's pressing concerns. Current access construction plans include the use of innovative environmental-friendly paving methods with minimal impact on the natural environment. The National Tropical Botanical Garden short term objectives also include the cultivation of the pre-existing mature macadamia orchard located on the property with proceeds used to offset costs to operate and maintain the Kahanu Kinney Sweet Parcel.

Once appropriate access points have been developed on the Kahanu Kinney Sweet Parcel, the National Tropical Botanical Garden's long term goals will commence. Currently, there are three long term environmentally-appropriate projects proposed for this site including the establishment of a coastal plant community adjacent to the shoreline, the creation of a native forest preserve/restoration, and the expansion of the Kahanu Garden's breadfruit collection area. These improvements will certainly enhance the natural beauty of the area, maintaining Hāna's natural splendor in perpetuity.

The Kahanu Garden staff, led by Kahanu Garden Director Kamaui Aiona will manage the resources and maintain the Kahanu Kinney Sweet Parcel. The current operations and maintenance costs will be absorbed by the National Tropical Botanical Garden. Funding to operate and maintain the Kahanu Kinney Sweet Parcel will be raised by the National Tropical Botanical Garden's Development Department led by Director of Development Donna Howard.

October 13, 2006

Department of Land and Natural Resources (DLNR)
Legacy Land Conservation Program
1151 Punchbowl Street, Room 325
Honolulu, HI 95813

Dear DLNR Administration and Staff:

This letter certifies that Douglas McBryde Kinney and Cyrus B. Sweet III, Managing Directors of Kahanu Kinney Sweet LLC and major shareholders in the Honomaele Parcel (Tax Map Key 13002001000) acknowledge the Hawai'i Legacy Land Conservation Program project and application currently undertaken by the National Tropical Botanical Garden. The Kahanu Kinney Sweet LLC grants the National Tropical Botanical Garden permission to take part in the Hawai'i Legacy Land Conservation Program in hopes of protecting the pristine nature of the Honomaele Parcel in perpetuity. The acknowledgment and permission provided in the letter is limited to the Hawai'i Legacy Land Conservation Program project and does not extend beyond this project.

Sincerely,

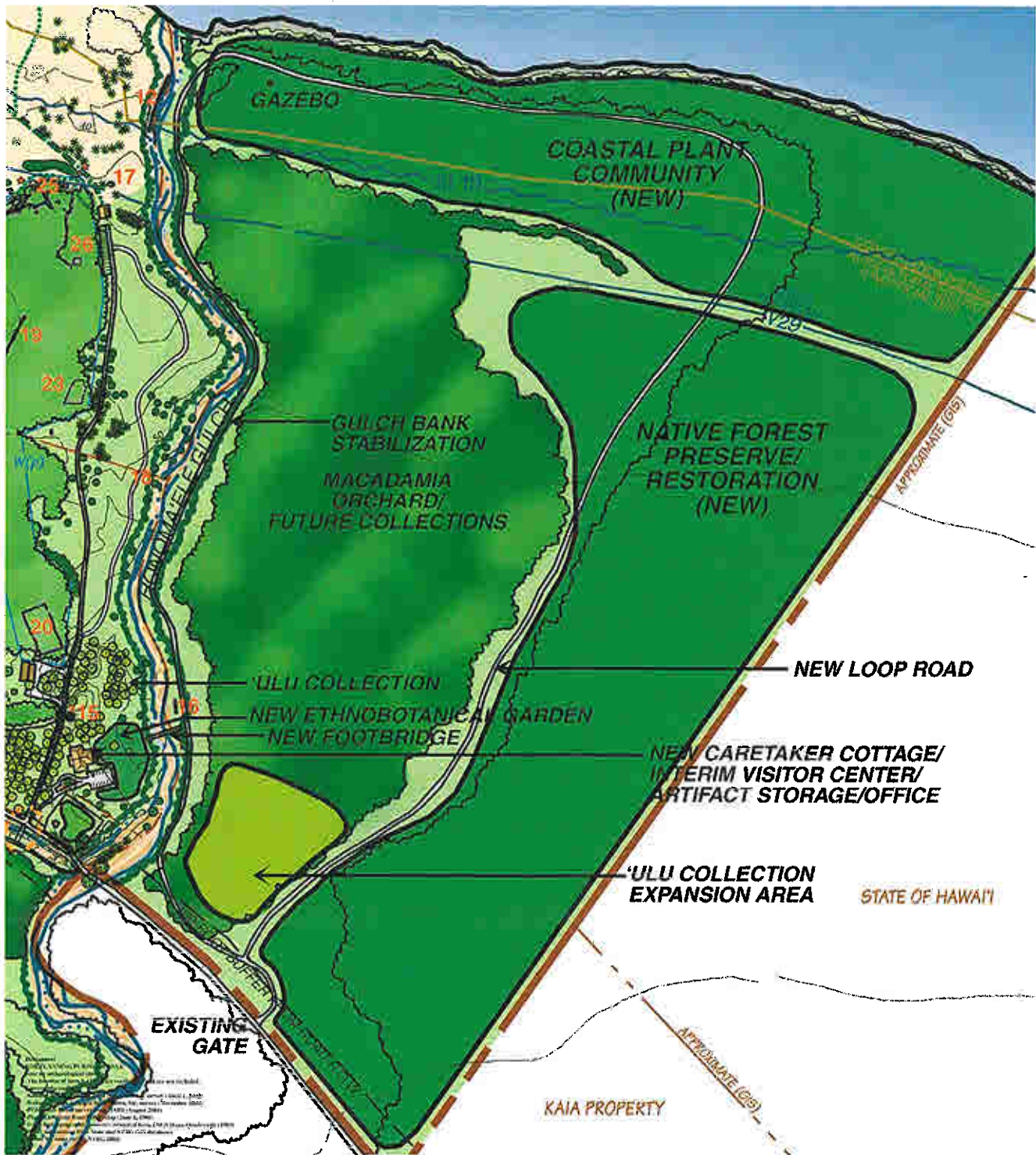
Douglas McBryde Kinney


Cyrus B. Sweet III,









LEGEND

	PROPERTY BOUNDARY		ACCESS ZONES
	STREAM/GULCH		ZONE 1
	ROADS		ZONE 2
	WATER LINES		ZONE 3
	ARCHAEOLOGICAL SITES		
	PATHS		
	INTERPRETIVE SIGNS/ PLAQUES		
	PRACTITIONER SITES		

Figure 30

KINNEY PARCEL
MASTER PLAN - 1/3/05

Kahanu Garden

NATIONAL TROPICAL BOTANICAL GARDEN

KAHANA, MAUI

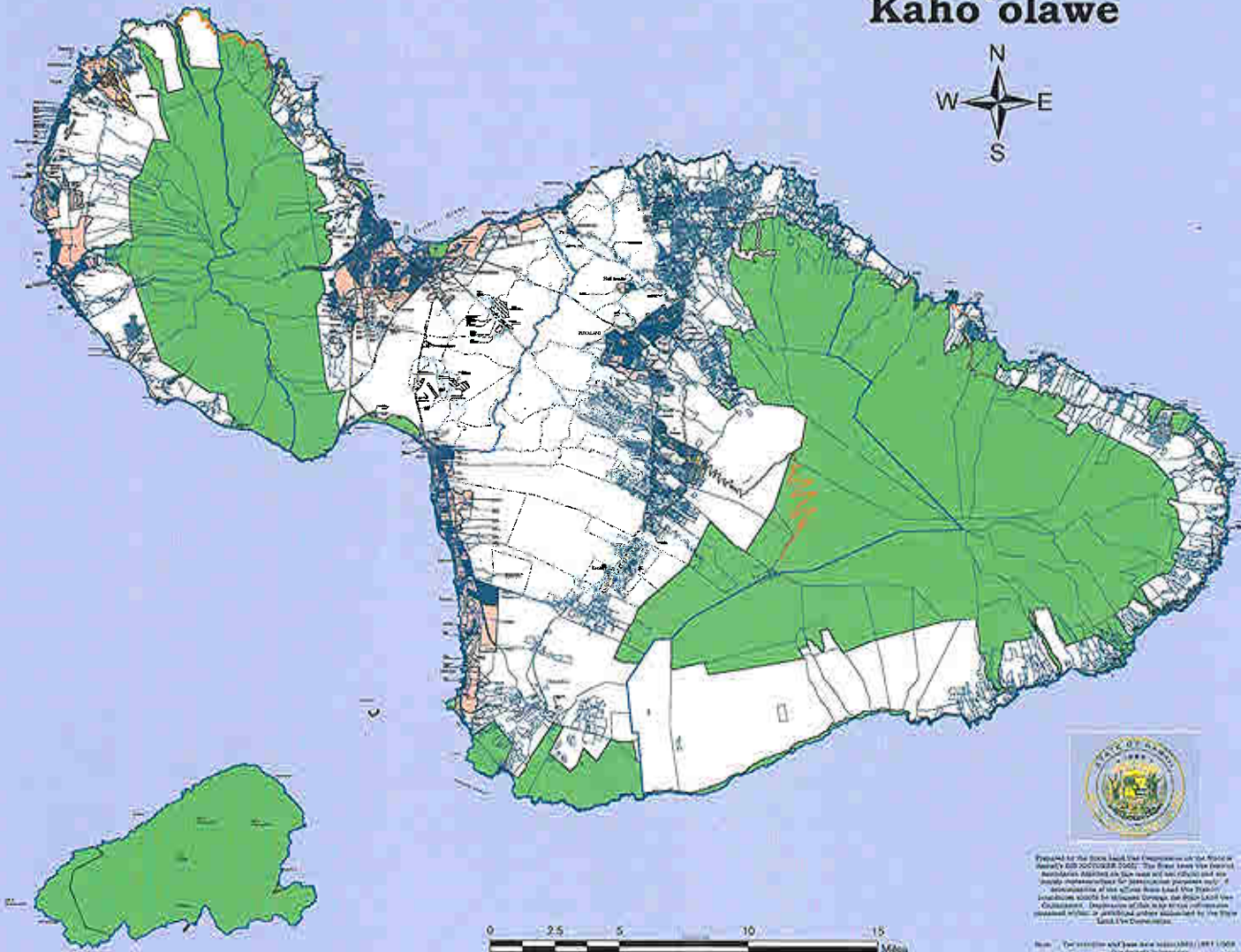


LINEAL SCALE (FEET)



STATE OF HAWAI'I LAND USE DISTRICT BOUNDARIES - Island of Maui & Kaho'olawe

- Legend**
- URBAN
 - AGRICULTURAL
 - RURAL
 - CONSERVATION
 - Special Permits
 - Major Roads
 - Tax Map Key / 2009



Prepared for the State Land Use Commission by the State of Hawaii's GEOGRAPHIC INFORMATION SYSTEMS DIVISION (GISD) in cooperation with the State Land Use Commission. The map shows the land use district boundaries as they exist on the ground and are not necessarily the same as the boundaries shown on the map. The map is for informational purposes only. It is not a legal document. The State Land Use Commission is not responsible for any errors or omissions. The map is not to be used for any purpose other than that for which it was prepared. The map is not to be used for any purpose other than that for which it was prepared.

Scale: 1 inch = 5 miles. Date: 10/1/2009. Drawn by: GISD.



U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR
Audit Division
707 North Calvert Street
Baltimore 2, Maryland

IN REPLY REFER TO
Form 2954
210:EO

JAN 8 1965

Pacific Tropical Botanical Garden
c/o Oscar L. Chapman
932 Pennsylvania Building
Washington, D. C. 20004

PURPOSE
Educational
FORM 990A REQUIRED
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
ACCOUNTING PERIOD END- ING
December 31st

Gentlemen:

Based upon the evidence submitted, it is held that you are exempt from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code, as it is shown that you are organized and operated exclusively for the purpose shown above. Any questions concerning taxes levied under other subtitles of the Code should be submitted to us.

You are not required to file Federal income tax returns so long as you retain an exempt status, unless you are subject to the tax on unrelated business income imposed by section 511 of the Code and are required to file Form 990-T for the purpose of reporting unrelated business taxable income. Any changes in your character, purposes or method of operation should be reported immediately to this office for consideration of their effect upon your exempt status. You should also report any change in your name or address. Your liability for filing the annual information return, Form 990A, is set forth above. That return, if required, must be filed after the close of your annual accounting period indicated above.

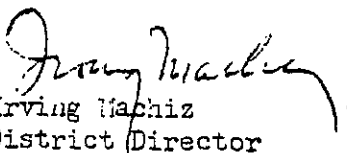
Contributions made to you are deductible by donors as provided in section 170 of the Code. Bequests, legacies, devises, transfers or gifts to or for your use are deductible for Federal estate and gift tax purposes under the provisions of section 2055, 2106 and 2522 of the Code.

You are not liable for the taxes imposed under the Federal Insurance Contributions Act (social security taxes) unless you file a waiver of exemption certificate as provided in such Act. You are not liable for the tax imposed under the Federal Unemployment Tax Act. Inquiries about the waiver of exemption certificate for social security taxes should be addressed to this office.

This is a determination letter.

Since you have not actively operated, this determination is based on the understanding that your actual operations will conform to those proposed in your application for exempt status.

Very truly yours,


Irving Machiz
District Director



Internal Revenue Service
Washington, DC 20224

Date:

In reply refer to:

October 15, 1971

► Pacific Tropical Botanical Garden
1699 K Street N.W.
Washington, D.C. 20006

Attn: Michael J. Shea Esq.

Gentlemen:

Based on the information you recently submitted, we have classified your organization as one that is not a private foundation as defined in section 509(a) of the Internal Revenue Code because you are an organization described in the following Code Section:

☒ Sec. 509(a)(1)

☐ Sec. 509(a)(2)

☐ Sec. 509(a)(3)

☐ Sec. 509(a)(4)

This classification is based on the assumption that your operations will continue as stated in your notification. All changes in your purposes, character, or method of operation must be reported to your District Director so he can consider their effect on your status.

Sincerely yours,

J. J. Decker
Chief, Rulings Section
Exempt Organizations Branch

Internal Revenue Service

Department of the Treasury

**P. O. Box 2508
Cincinnati, OH 45201**

Date: June 6, 2000

National Tropical Botanical Garden
% Joseph L. Krahulik
P. O. Box 340
Lawai, HI 96765-0340

Person to Contact:
Sheena Wallace 31-04021
Customer Service Representative
Toll Free Telephone Number:
8:00 a.m. to 9:30 p.m. EST
877-829-5500
Fax Number:
513-263-3756
Federal Identification Number:
52-6057064

Dear Sir or Madam:

This letter is in response to your request for a copy of your organization's determination letter. This letter will take the place of the copy you requested.

Our records indicate that a determination letter issued in January 1965 granted your organization exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. That letter is still in effect.

Based on information subsequently submitted, we classified your organization as one that is not a private foundation within the meaning of section 509(a) of the Code because it is an organization described in section 509(a)(1) and 170(b)(1)(A)(vi).

This classification was based on the assumption that your organization's operations would continue as stated in the application. If your organization's sources of support, or its character, method of operations, or purposes have changed, please let us know so we can consider the effect of the change on the exempt status and foundation status of your organization.

Your organization is required to file Form 990, Return of Organization Exempt from Income Tax, only if its gross receipts each year are normally more than \$25,000. If a return is required, it must be filed by the 15th day of the fifth month after the end of the organization's annual accounting period. The law imposes a penalty of \$20 a day, up to a maximum of \$10,000, when a return is filed late, unless there is reasonable cause for the delay.

All exempt organizations (unless specifically excluded) are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more paid to each employee during a calendar year. Your organization is not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

Organizations that are not private foundations are not subject to the excise taxes under Chapter 42 of the Code. However, these organizations are not automatically exempt from other federal excise taxes.

Donors may deduct contributions to your organization as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to your organization or for its use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

National Tropical Botanical Garden
52-6057064

Your organization is not required to file federal income tax returns unless it is subject to the tax on unrelated business income under section 511 of the Code. If your organization is subject to this tax, it must file an income tax return on the Form 990-T, Exempt Organization Business Income Tax Return. In this letter, we are not determining whether any of your organization's present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

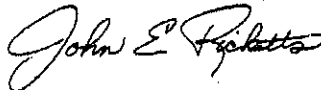
The law requires you to make your organization's annual return available for public inspection without charge for three years after the due date of the return. You are also required to make available for public inspection a copy of your organization's exemption application, any supporting documents and the exemption letter to any individual who requests such documents in person or in writing. You can charge only a reasonable fee for reproduction and actual postage costs for the copied materials. The law does not require you to provide copies of public inspection documents that are widely available, such as by posting them on the Internet (World Wide Web). You may be liable for a penalty of \$20 a day for each day you do not make these documents available for public inspection (up to a maximum of \$10,000 in the case of an annual return).

Because this letter could help resolve any questions about your organization's exempt status and foundation status, you should keep it with the organization's permanent records.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

This letter affirms your organization's exempt status.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Ricketts". The signature is fluid and cursive, with the first name "John" being the most prominent.

John E. Ricketts
Director, TE/GE CAS

**EXHIBIT II - APPROVE TWO DISPOSITIONS OF LAND
THAT WAS ACQUIRED WITH A GRANT FROM THE
LAND CONSERVATION FUND**

RESOURCE VALUE DOCUMENTATION FORM
Legacy Land Conservation Program

I, Janet L. Mayfield (name), do hereby swear or affirm that I am the
COO and CFO (title) of National Tropical Botanical Garden (organization or governmental
entity) and that I am authorized to certify that the information contained in the documents and
attachments listed below is true and correct, and that the information represents the true and accurate
condition of the property at the time of its acquisition by National Tropical Botanical Garden (organization
or governmental entity), omitting no material information.

List all documents and attachments:

Photographs of property, including aerial view

(An appraisal was previously supplied to the Legacy Land Conservation Program)

I acknowledge and agree that any misrepresentation herein is a breach of the Legacy Land
Conservation Program grant award, and may be actionable under Hawaii law for false statement, fraud,
or other applicable offense.

Signed 
Janet L. Mayfield, COO & CFO

Dated 8-22-08
August 22, 2008

STATE OF HAWAII

)
) SS.
)

COUNTY OF

On this 22nd day of August, 2008, before me personally appeared Janet L. Mayfield, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

L.S.

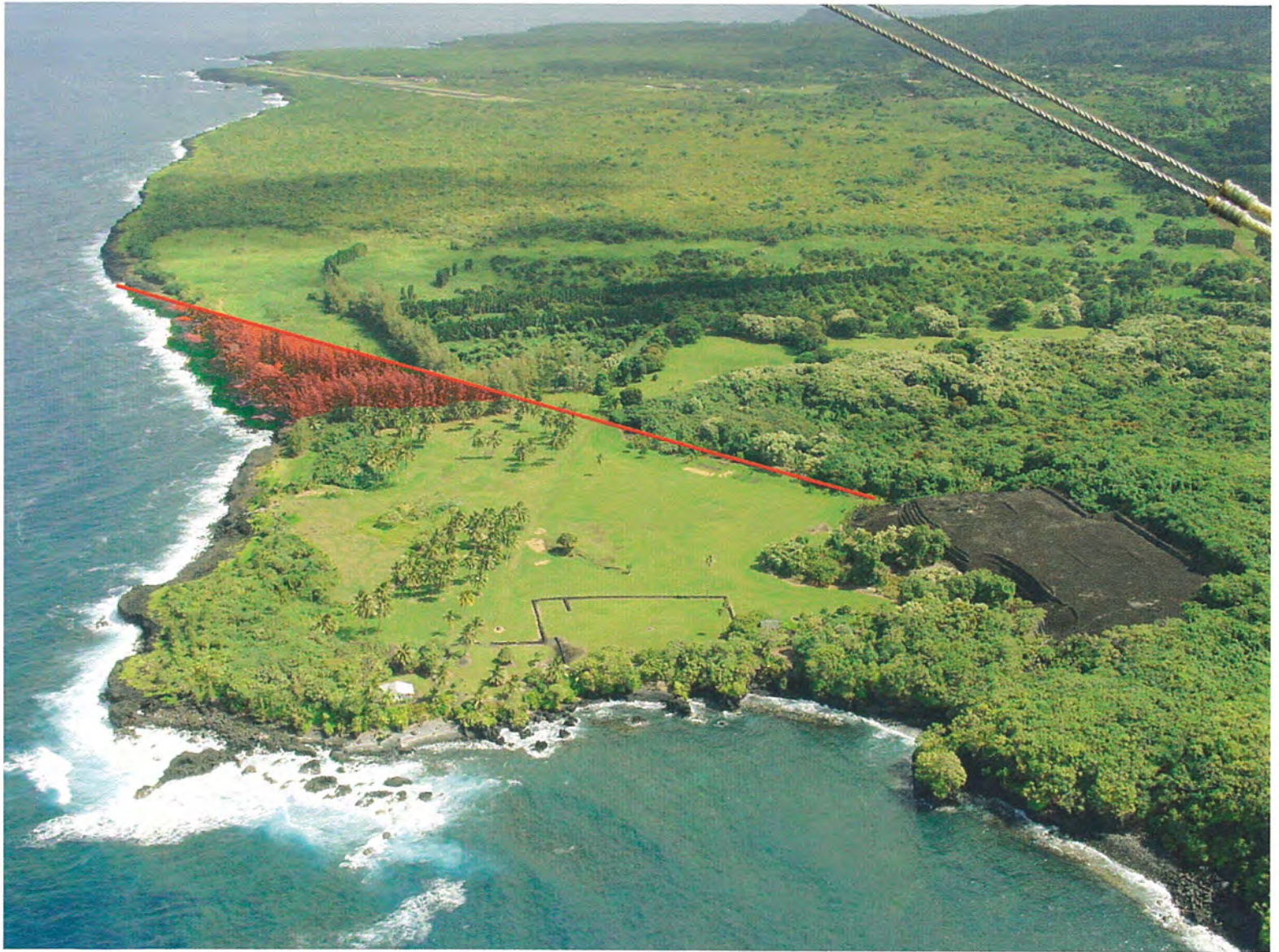
Jennifer A. Uyeda-Gali
Notary Public, State of Hawaii
JENNIFER A. UYEDA-GALI

My commission expires: 12/17/2008

L.S.

Doc. Date: 8/22/08 # Pages: 2
Jennifer A. Uyeda-Gali Fifth Circuit
Doc. Description: Reserve Value Documentation
Jennifer A. Uyeda-Gali 8/22/08
Notary Signature Date
NOTARY CERTIFICATION

Aerial view of the impact of the Kinney Sweet parcel on the view plane of Pi'ilanihale Heiau.



**Aerial view of Kinney Sweet parcel and
surrounding land.**



Native Hala forest located along the coastline of the Kinney Sweet parcel.

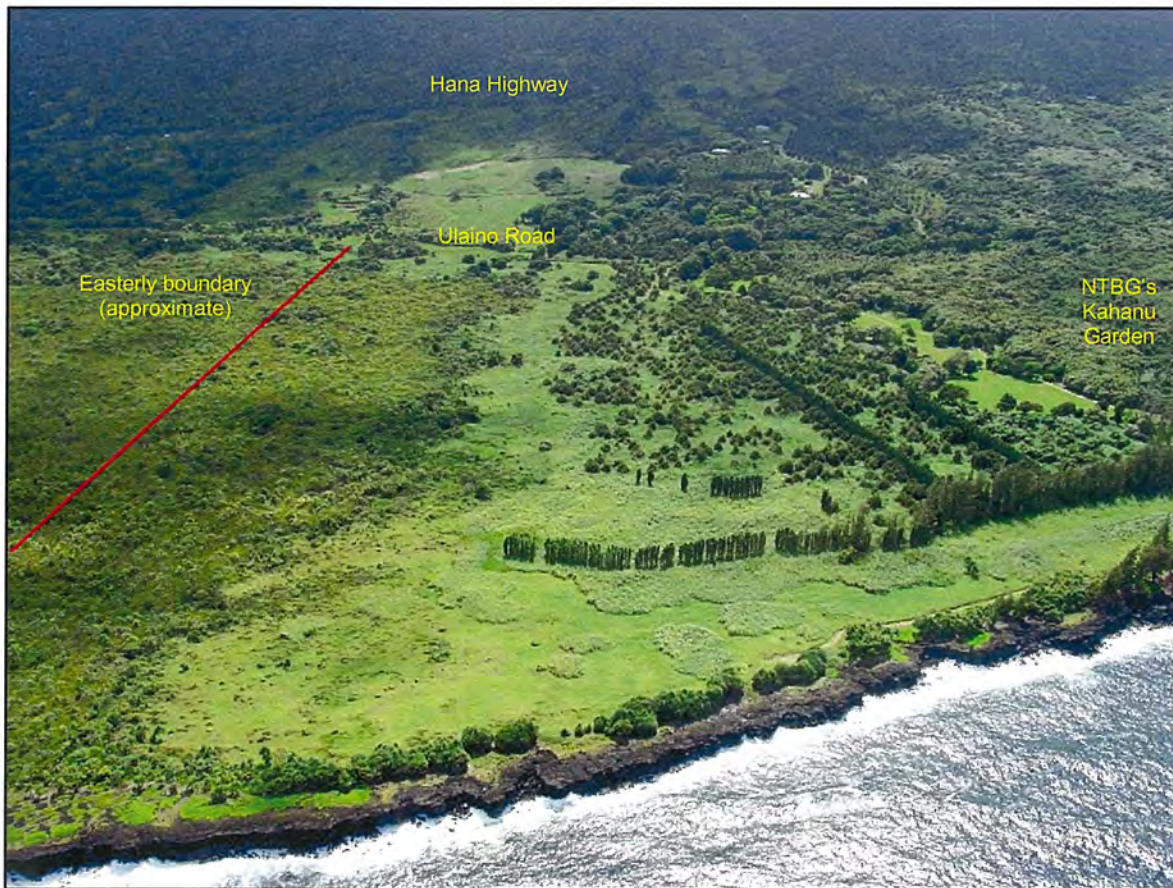


Gazebo located on Kinney Sweet property.



**Macadamia Nut orchard located on Kinney
Sweet property.**





Aerial Photo No. 1: Off-shore view of the Kahanu Kinney Sweet Property in a southerly direction.

[1] Aerial photographs taken by Kamaui Aiona in 2002 and 2006. Ground photographs taken by Paul D. Cool on August 10, 2007.



Aerial Photo No. 2: Off-shore view in a southerly direction of the environs west of the Kahanu Kinney Sweet Property.

[1] Aerial photographs taken by Kamaui Aiona in 2002 and 2006. Ground photographs taken by Paul D. Cool on August 10, 2007.



Aerial Photo No. 3: Off-shore view of the Kahanu Kinney Sweet Property illustrating approximate easterly and westerly boundaries.

[1] Aerial photographs taken by Kamaui Aiona in 2002 and 2006. Ground photographs taken by Paul D. Cool on August 10, 2007.



Aerial Photo No. 4: Location of the Gazebo near the northwest corner of the property.

[1] Aerial photographs taken by Kamaui Aiona in 2002 and 2006. Ground photographs taken by Paul D. Cool on August 10, 2007.



Photo No. 1: View along Ulaino Road in the vicinity of the Kahanu Kinney Sweet Property in a westerly direction.



Photo No. 2: Alternative view along Ulaino Road in an easterly direction.

[1] Aerial photographs taken by Kamaui Aiona in 2002 and 2006. Ground photographs taken by Paul D. Cool on August 10, 2007.



Photo No. 3: View along Honomaele Gulch (right) and the grassed access road (left) from a position within the Kahanu Kinney Sweet Property in a southerly direction.



Photo No. 4: View of Honomaele Gulch near and the northwesterly corner of the Kahanu Kinney Sweet Property.

[1] Aerial photographs taken by Kamaui Aiona in 2002 and 2006. Ground photographs taken by Paul D. Cool on August 10, 2007.



Photo No. 5: Coastal view from the Kahanu Kinney Sweet Property towards Honomaele Gulch and NTBG's Kahanu Garden.



Photo No. 6: Alternative view from a similar position in an easterly direction.

[1] Aerial photographs taken by Kamaui Aiona in 2002 and 2006. Ground photographs taken by Paul D. Cool on August 10, 2007.



Photo No. 7: View of the Gazebo.



Photo No. 8: View along the asphalt-paved portion of Ulaino Road nearer the Hana Agricultural Park.

[1] Aerial photographs taken by Kamaui Aiona in 2002 and 2006. Ground photographs taken by Paul D. Cool on August 10, 2007.

EXHIBIT IV - WARRANTY DEED

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII
OFFICE OF

BUREAU OF CONVEYANCES

Received for record this _____
day of OCT 10 2008, 19_____
at 8:01 o'clock A M, and
recorded as Regular System Document
Number 2008-157417 and/or filed
as Land Court Document Number _____
_____ and as noted on TCT Number

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by: Mail () Pickup ()

TYPE OF DOCUMENT:

WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTOR: KAHANU KINNEY SWEET, LLC, a Hawaii limited liability company

GRANTEE: NATIONAL TROPICAL BOTANICAL GARDEN, a charitable,
educational and scientific non-profit corporation chartered by the United
States Congress (39 U.S.C. §4601 et. seq.)
3530 Papalina Road
Kalaheo, Kauai, Hawaii 96741

TAX MAP KEY FOR PROPERTY:

(2) 1-3-002-001

WARRANTY DEED

KNOW ALL PEOPLE BY THESE PRESENTS:

KAHANU KINNEY SWEET, LLC, a Hawaii limited liability company, whose mailing address is Palmer Capital, 920 East Deerpath, Lake Forrest, Illinois 60045, hereinafter called the "Grantor", in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to the Grantor paid by NATIONAL TROPICAL BOTANICAL GARDEN, a charitable, educational and scientific non-profit corporation chartered by the United States Congress (39 U.S.C. §4601 et. seq.), whose mailing address is 3530 Papalina Road, Kalaheo, Kauai, Hawaii 96741, hereinafter called the "Grantee", the receipt of which is hereby acknowledged, does hereby grant and convey unto the Grantee, as tenant in severalty, its successors and assigns, the property described in Exhibit "A" attached hereto and incorporated herein by reference.

AND the reversions, remainders, rents, issues, 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 the improvements thereon and all rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy herein set forth, forever.

The Grantor hereby covenants with the Grantee that the Grantor is lawfully seised in fee simple of the premises described herein and has good right to sell and convey the same; that the same are free and clear of all encumbrances except as set forth herein and except for the lien of real property taxes not yet required by law to be paid; and that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

The property described herein has been acquired with funds from a state grant from the Legacy Land Conservation Program. Title of the property conveyed by this Warranty Deed shall vest in the National Tropical Botanical Garden, subject to disposition instructions from the State of Hawaii, Board of Land and Natural Resources ("BLNR") or its successor agencies. The property shall be managed consistently with the purposes for which it was awarded a Legacy Land Conservation Program grant and Chapter 173A, Hawaii Revised Statutes. The National Tropical Botanical Garden shall not dispose of, encumber its title or other interests in, or convert the use of this property without the written approval of BLNR or its successor agencies.

If the property is sold, leased, rented, or otherwise disposed of by the National Tropical Botanical Garden, that portion of the net proceeds (sale price less actual expenses of sale) of such sale, rental, or proceeds equal to the proportion that the state grant bears to the original cost of the property shall be paid to the State of Hawaii.

This conveyance and the respective covenants of the Grantor and the Grantee shall be binding on and inure to the benefit of the Grantor and the Grantee, respectively. The terms "Grantor" and "Grantee" as and when used herein, or any pronouns used in place thereof, shall mean and include the singular or plural number, individuals, partnerships, trustees and corporations, and each of their respective heirs, personal representatives, successors and assigns. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed herein.

This Warranty Deed may be executed in counterparts. Each counterpart shall be executed by one or more of the parties hereinbefore named and the several counterparts shall constitute one instrument to the same effect as though the signatures of all the parties are upon the same document.

IN WITNESS WHEREOF, this instrument has been duly executed on this 7th day of October, 2008.

KAHANU KINNEY SWEET, LLC, a Hawaii
limited liability company

By Douglas M. Kinney
Name: Douglas M. Kinney
Its: Manager

Grantor

NATIONAL TROPICAL BOTANICAL GARDEN,
a charitable, educational and scientific non-profit
corporation chartered by the United States Congress
(39 U.S.C. §4601 et. seq.)

By _____
CHARLES R. WICHMAN, JR.
Its Director and Chief Executive Officer

Grantee

This conveyance and the respective covenants of the Grantor and the Grantee shall be binding on and inure to the benefit of the Grantor and the Grantee, respectively. The terms "Grantor" and "Grantee" as and when used herein, or any pronouns used in place thereof, shall mean and include the singular or plural number, individuals, partnerships, trustees and corporations, and each of their respective heirs, personal representatives, successors and assigns. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed herein.

This Warranty Deed may be executed in counterparts. Each counterpart shall be executed by one or more of the parties hereinbefore named and the several counterparts shall constitute one instrument to the same effect as though the signatures of all the parties are upon the same document.

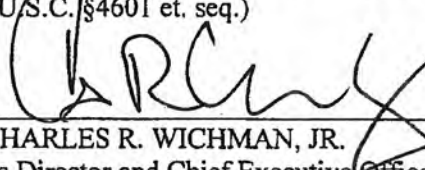
IN WITNESS WHEREOF, this instrument has been duly executed on this _____ day of _____, 2008.

KAHANU KINNEY SWEET, LLC, a Hawaii
limited liability company

By _____
Name:
Its:

Grantor

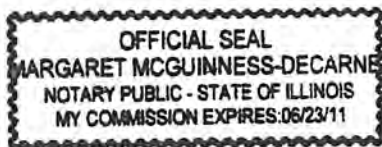
NATIONAL TROPICAL BOTANICAL GARDEN,
a charitable, educational and scientific non-profit
corporation chartered by the United States Congress
(39 U.S.C. §4601 et. seq.)

By  _____
CHARLES R. WICHMAN, JR.
Its Director and Chief Executive Officer

Grantee

STATE OF IL)
COUNTY OF Cook) SS:

On this 7 day of October, 2008, before me appeared Douglas M. Kinney, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing WARRANTY DEED dated October 7, 2008, which document consists of _____ page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Margaret McGuinness-Decarne
Name of Notary:
Notary Public, in and for said County and State.

My commission expires: 6-23-11
Commission No.: 6-23-11

STATE OF HAWAII)
COUNTY OF KAUAI) SS:

On this _____ day of _____, 2008, before me appeared CHARLES R. WICHMAN, JR., to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing WARRANTY DEED dated _____, 2008, which document consists of _____ page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Name of Notary:
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: _____
Commission No.: _____

STATE OF _____)
) SS:
COUNTY OF _____)

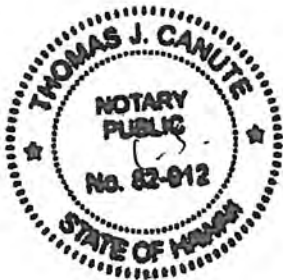
On this _____ day of _____, 2008, before me appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing WARRANTY DEED dated _____, 2008, which document consists of _____ page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Name of Notary:
Notary Public, in and for said County and State.

My commission expires: _____
Commission No.: _____

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this 6th day of October, 2008, before me appeared CHARLES R. WICHMAN, JR., to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing WARRANTY DEED dated 10/7/2008, 2008, which document consists of 9 page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Name of Notary:
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

NP My commission expires: 12/1/2010
Commission No.: 82-912

EXHIBIT "A"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 788 to W. G. Needham and E. J. Kelk) situate, lying and being makai and northerly of the old Ulaino Road, at East Honomaele, Hana, Island and County of Maui, State of Hawaii, and thus bounded and described as per survey of John F. Cory, III, Registered Professional Land Surveyor, dated March 18, 1974, to-wit:

Beginning at a 3/4 inch pipe (set) at the southerly corner of this parcel, being also the southwesterly corner of Grant 2930, Apana 2 to Kahuakailoa, et al., and on the northerly side of Old Ulaino Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HANA S. E. BASE" being 2,835.76 feet north and 2,763.29 feet west, and running by azimuths measured clockwise from true South at "HANA S. E. BASE"; thence,

1. 153° 00' 143.44 feet, along the northerly side of the Old Ulaino Road to a 3/4 inch pipe (set); thence,
2. 141° 06' 1,904.19 feet, along the same to a 3/4 inch pipe (set); thence,
3. 131° 35' 40" 615.61 feet, along same to a point on the centerline of the Honomaele Gulch; thence,
4. Following along the centerline of the Honomaele Gulch to a 1/2 inch pipe (found), the direct azimuth and distance being
239° 59' 11.54 feet; thence,
5. Following along the same to a point, the direct azimuth and distance being
237° 38' 289.62 feet; thence,
6. Following along the same to a 1/2 inch pipe (found), the direct azimuth and distance being
181° 02' 1,015.26 feet; thence,
7. Following along the same to a point, the direct azimuth and distance being
212° 49' 547.29 feet; thence,
8. Following along the same to a point, the direct azimuth and distance being
146° 40' 472.87 feet; thence,

9. Following along the same to a point on the highwater mark at the seashore (passing over a spike (found) at 712.56 feet), the direct azimuth and distance being
184° 04' 733.37 feet; thence,
10. Following along the highwater mark at the seashore to a point, the direct azimuth and distance being
276° 30' 1,734.04 feet; thence,
11. Following along the same to a point, the direct azimuth and distance being
290° 42' 1,490.18 feet; thence,
12. 38° 25' 10" 3,843.12 feet, along Government Land and along Grant 10901, Parcel 4 to Kaeleku Sugar Company, Ltd., (passing over a 3/4 inch pipe (set) at 20.81 feet) to a 3/4 inch pipe (set); thence,
13. 320° 40' 10" 1,188.00 feet, along Grant 10901, Parcel 4 to Kaeleku Sugar Company, Ltd., to a 3/4 inch pipe (set); thence,
14. 43° 40' 10" 176.80 feet, along Grant 2930, Apana 2 to Kahuakailoa, et. al., to the point of beginning and containing and area of 169.87 acres, more or less.

Together with a perpetual non-exclusive road and utility easement appurtenant to, and for ingress and egress to and from, and to provide utility service to, the parcel of land more particularly described above, including the right to install, maintain and repair such apparatus within the servient tenement as may be or become necessary to provide the dominant tenement with such utility service, over and across the central portion of Royal Patent 8215, Mahele Award 42 to Kahanu, at Makapuu, West Honomaele, East Honomaele, Kawela and Kaeleku, Hana, Island and County of Maui, State of Hawaii, designated as access Easement No. 1 (44 feet wide), and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations contained in Deed dated August 24, 1978, recorded in Liber 13104 at Page 740, more particularly described as follows:

Beginning at a 3/4 inch pipe (found) at the southwesterly corner of this easement, being also southwesterly corner of the central portion of Royal Patent 8215, Mahele Award 42 to Kahanu and the southeasterly corner of Lot A-5 of the Honomaele Subdivision and on the northerly side of the main Government Road from Hana to Keanae, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HANA S. E. BASE", being 3,082.37 feet north, and 7,656.13 feet west and running by azimuths from true South at "HANA S. E. BASE"; thence,

1. 198° 13' 38" 2,958.06 feet along Lot A-5 of the Honomaele Subdivision to a 3/4 inch pipe (set); thence,
2. 252° 36' 157.01 feet along the remainder of the central portion of Royal Patent 8215, Mahele Award 42 to Kahanu to a 3/4 inch pipe (set) on the southerly side of the Ulaino Road (44 feet wide); thence,
3. 299° 27' 18" 60.30 feet along the southerly side of Ulaino Road to a 3/4 inch pipe (set); thence,
4. 72° 36' 175.64 feet along the remainder of the central portion of Royal Patent 8215, Mahele Award 42 to Kahanu to a 3/4 inch pipe (set); thence,
5. 18° 13' 38" 2,948.85 feet along the same to a 3/4 inch pipe (set) on the northerly side of the Main Government Road (40 feet wide) between Hana and Keanae; thence,
6. 125° 09' 05" 45.99 feet along the northerly side of the Main Government Road from Hana to Keanae to the point of beginning and containing an area of 3.151 acres.

-Note"- Said access Easement No. 1 (44 feet wide) is not contiguous with Tax Map Key (2) 1-3-002-001.

Being the premises conveyed to KAHANU KINNEY SWEET, LLC, a Hawaii limited liability company by WARRANTY DEED dated June 25, 2002, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-116329.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and the effect, if any, upon the area of the land described herein.
3. Access Easement 1 over and across the northerly and makai portion of Grant 788 to W. G. Needham and E. J. Kelk, in favor of Grant 10901, Parcel 4 to Kaeleku Sugar Co., Ltd., at the east Honomaele, Hana, Maui, Hawaii, and more particularly described as follows:

Beginning at a 3/4 inch pipe (found) at the easterly corner of this easement, being also an angle point in the boundary of Grant 788 to W. G. Needham and E. J. Kelk and an angle point on the boundary of Grant 2930, Apana 2 to Kahuakailoa, et. al., the coordinates of said point of beginning referred to Government Survey Triangulation Station "HANA S. E. BASE", being 2,963.65 feet north and 2,641.21 feet west and running by azimuths measured clockwise from true South at "HANA S. E. BASE"; thence,

1. 43° 40' 10" 176.80 feet, along Grant 2930, Apana 2 to Kahuakailoa et. al., to 3/4 inch pipe (found); thence,
2. 153° 00' 46.63 feet, along the northerly side of the old Ulaino Road to a 3/4 inch pipe (set); thence,
3. 223° 40' 10" 166.77 feet, along the remainder of Grant 788 to W. G. Needham and E. J. Kelk to a 3/4 inch pipe (set); thence,
4. 320° 40' 10" 44.33 feet, along Grant 10901, Parcel 4 to Kaeleku Sugar Company, Ltd., to the point of beginning and containing an area of 7,559 square feet, more or less.

4. The terms and provision, including the failure to comply with any covenants, conditions and reservations, contained in the COVENANT TO INDEMNIFY WATER SUPPLIER AGAINST LOSS OR DAMAGE TO PROPERTY CAUSED BY INADEQUATE WATER FLOW dated July 29, 1983, recorded in Liber 17707 at Page 682.

5. Any rights of the public to use portion (s) of the Old Ulaino Road which meanders within the boundaries of the land described herein, as shown on survey map prepared by Edgardo V. Valera, Land Surveyor, with Valera, Inc., dated October 25, 2000.

6. Any unrecorded leases and matters arising from or affecting the same.

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.

9. The terms and provisions contained in the GAZEBO LICENSE AGREEMENT dated July 2, 2002, recorded as Document No. 2002-116330 between parties KAHANU KINNEY SWEET, LLC, a Hawaii limited liability company, "Licensor", and NATIONAL TROPICAL BOTANICAL GARDEN, a federally chartered corporation, "Licensee".

Said above License Agreement is subject to the following:

The terms and provisions contained in the GAZEBO SUB-LICENSE AGREEMENT dated July 2, 2002, recorded as Document No. 2002-116331 between parties NATIONAL TROPICAL BOTANICAL GARDEN, a federally chartered corporation, "Sub-Licenser", and JAMES T. NABORS, Trustee under that certain unrecorded Jim Nabors Living Trust dated January 29, 1992, "Sub-Licensee."

10. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described herein.

GRANT RECIPIENT SELF-REPORT FORM
Legacy Land Conservation Program

→ maly S.
(rev 7/2010)
rev 4/2011

Complete this form and submit to:
Legacy Land Conservation Program
1151 Punchbowl Street, Rm. 325
Honolulu, HI 96813

EXHIBIT V - Grant Recipient Self-Report Form,
May 9, 2011

Project title: Kahanu Grant Amount: \$1,500,000

Awardee / grant recipient: National Tropical Botanical Garden

Grant agreement number: 00057148-01 Fiscal Year of Award: FY07

**Please respond to the following questions, providing a complete answer for each question.
Reference any attached documents under the appropriate question.**

1. Is the property being used for the purposes intended and allowed, as described in the grant application and grant agreement? Please explain.

Yes. Breadfruit expansion, planting natives, macadamia nut orchard use, and protection of heiau view planes were all part of the intended purposes for preserving this important agricultural acreage. Additionally, we have found a means to include public use and access through our community farm project, "Mahele Farm," and continue to provide community access to the fishing and hunting resources of the property.

2. List and describe all major activities that occur on the land and give a quantitative estimate of annual use for each.

Major activities occurring on this property are:

- Management of existing (7) breadfruit trees that are part of our internationally recognized breadfruit collection.
- Creation of Mahele Farm; ~ 5 acres of organic row crops, fruit orchard, chicken egg production, and compost production, managed and maintained by and for our Hana community.
- Initiation of a riparian buffer project that will plant a 30-foot wide native corridor of trees/shrubs/groundcovers along the Honomalee Gulch edge of the property. Protection of this buffer requires installation of a 4000 hog-wire fence that will help protect the buffer from feral pigs. Funded through USDA NRCS CREP program.
- Resuscitating certain parts of the existing macadamia nut orchard to see if there is viability in a cottage industry project for our community.

3. What level of public access is currently allowed or provided for?

There are three examples of public access that we manage for this property. Because of concerns of liability and property damage, we allow for public access in these ways:

- Fishing Access – Permission must be requested in advance to have the key for vehicular access. Legal access by foot is through the stream bed but is rarely exercised.
- Hunting Access – Permission must be requested in advance to have the key for vehicular access. Access by foot is somewhat common but not encouraged.
- Farming Access – Our community farm as permitted our community, on a voluntary basis, to come and farm with us and in the process take home farm-fresh food for their table in exchange.

GRANT RECIPIENT SELF-REPORT FORM
Legacy Land Conservation Program

(rev. 7/2010)
rev 4/2011

4. Have any events, intentional or uncontrollable, altered the site substantially since the land was acquired using Legacy Land Conservation Program funds? What has been the impact of each alteration on the resources referenced in the grant application and grant agreement? Please provide photographic evidence and explain.

The improvements made have all enhanced the resources of the property. Fencing for enclosure of feral pigs, sustainable farming activities designed for the benefit of our community, planting of native trees along the riparian corridor, these are all alterations intended for the dynamic conservation of this important property. Its significance in terms of its spatial relationship to Piilanihale Heiau next door and the preservation of the view planes from this cultural site have remained undisturbed.

All in all, the alterations made have been towards the goals of our conceptual plan for the property (included in LLCP application). The concept of the community farm was born after our LLCP proposal but has been an appropriate direction for the conservation of legacy lands. We have been able to harvest community interest and perpetuate agrarian (farming) and social (mahele) traditions within our isolated, rural community. This parcel, which was traditionally farmed, has made it possible.

5. Do plans exist for the alteration of the site in the next two years? Please explain. What will be the impact of each alteration on the resources referenced in the grant application and grant agreement?

We are considering expanding the levels of our current use of the property over the next two years. This includes expanding our botanical collection (especially the breadfruit), expanding our community farm operations (fruit orchard and livestock production), macadamia nut farming, and more native plantings along Honomaele Gulch and the coast. These are all uses that are consistent with our grant application and will enhance the property and its benefit for our community.

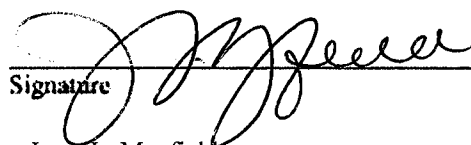
6. What is the name, telephone number, and email address of the preferred contact for arranging site visits?

Kamaui Aiona – Director of Kahanu Garden
808-248-8912
kaiona@ntbg.org

Certification:

I hereby swear and affirm that that I am authorized to certify that the information contained in this document and listed attachments and that the above information is true and complete to the best of my knowledge.

AWARDEE:



Signature

Janet L. Mayfield

Typed or printed name

May 9, 2011

Date

COO & CFO

Title

GRANT RECIPIENT SELF-REPORT FORM
Legacy Land Conservation Program

(rev. 4/2011)

Complete this form and submit to:

Legacy Land Conservation Program
1151 Punchbowl Street, Rm. 325
Honolulu, HI 96813

EXHIBIT VI - Grant Recipient Self-Report Form,
January 26, 2015

Project title: Kahanu Grant amount: \$1,500,000

Awardee / grant recipient: National Tropical Botanical Garden

Grant agreement number: 57148 Fiscal Year of Award: FY 2007

**Please respond to the following questions, providing a complete answer for each question.
Reference any attached documents under the appropriate question.**

1. Is the property being used for the purposes intended and allowed, as described in the grant application and grant agreement? Please explain.

Yes! The subject property was purchased with the primary objective of protecting the view sheds of the sacred Piilanihale Heiau which is located in NTBG's Kahanu Garden (the adjacent property to the west). Additionally we proposed to use the property to advance our mission by expanding our botanical collections, conserving the native hala (*Pandanus tectorius*) growing on portions of the property, and when appropriate restoring native plant communities. A short-term goal was to actively manage and cultivate the abandoned macadamia nut orchard that was planted there in the late 1970s. As further described below we have accomplished all of these objectives.

2. List and describe all major activities that occur on the land and give a quantitative estimate of annual use for each.

Activity: Mahele Farm

Area of use: about 10 acres of the property.

Description: In 2005, we established Mahele Farms - a volunteer farm for the benefit of the Hana where residents can participate in communal farming activities and share in the harvest. This currently feeds about 80 families in Hana. Within the context of Mahele Farms we have also planted and are curating culturally significant botanical collections of breadfruit, kalo, banana, sweet potato and awa. Several small farm-related structures have been built over the past nine years including:

- small compost shed
- equipment shed/garage
- shower house
- composting toilet house with ramp
- covered lanai structure (where camping takes place)
- multi-use structure - two sheds used for storage with a covered breezeway with outdoor kitchen and accessory bamboo hale.

GRANT RECIPIENT SELF-REPORT FORM
Legacy Land Conservation Program

(rev. 4/2011)

Activity: Riparian Fence and landscape buffer

Area of use: less than five acres

Description: In 2008, NTBG was successful in obtaining financial support from the USDA Natural Resource Conservation Service to mitigate flooding, manage invasive stream growth, and protect the subject property from feral pigs. With this grant support we were able to fence the side of the property along the stream, and landscape it with a native riparian buffer. This is a very linear project that flows the path of the stream channel.

Activity: Macadamia Orchard Reclamation

Area of use: approximately 50 acres

Description: In 2012, we signed a 3-year lease with a local rancher (DeCoite Ranch LLC) to run cattle on portions of the property. This has been very successful and the fencing and cattle grazing operations have reclaimed major portions of the macadamia nut orchard which had been long abandoned and completely overgrown by the very aggressive cane grass and African Tulip trees.

Activity: Lease with Ma Ka Hana Ka Ike

Area of use: approximately 10 acres

Description: At the end of 2014, we entered into a lease Ma Ka Hana Ka Ike (an educational non-profit organization based in Hana) to manage and expand Mahele Farm (described above). This will bring additional resources that will expand the project which mobilizes volunteer community members to grow their own food. Included in these crops are important cultural plant cultivars including collections of Ulu, Kalo, Maia, and Uala. All operations are year-around and Mahele Farm will remain a collaborative project of the NTBG and MKHKI.

Activity: Hala Forest Protection

Area of use: approximately 70 acres

Description: The hala forest that occupies the eastern side of the parcel remains a protected area that is not used for any of the above listed activities. This area is not actively managed other than ensuring the cattle do not breach the paddock fences.

GRANT RECIPIENT SELF-REPORT FORM
Legacy Land Conservation Program

(rev. 4/2011)

3. What level of public access is currently allowed or provided for?

Mahele Farm is open to all and is the primary conduit for public access to this parcel. Mahele Farm provides social, educational, physical, and cultural opportunities for all. Best of all, participants can go home with some of the harvest, really connecting this aina to the community in tangible ways. Fishing and hunting access is provided upon request by community members but no dedicated public access way is provided. This arrangement has worked well for both NTBG and the public.

4. Have any events, intentional or uncontrollable, altered the site substantially since the land was acquired using Legacy Land Conservation Program funds? What has been the impact of each alteration on the resources referenced in the grant application and grant agreement? Please provide photographic evidence and explain.

It is unclear what is meant by "event" and "altered the site substantially" in the question. There have been no unanticipated "events" like fire, hurricane, extreme flooding, etc. since NTBG acquired the site. In this regard the answer is NO.

However, NTBG has taken measured steps to gradually alter the site to make it more productive, useful, and accessible as described above. Plantings, fencing, cattle operations, farming activities and accessory structures have all enhanced the use of this site and its function for both the Garden and the Hana community. The improvements have been designed to enhance the productivity of the land while addressing some of its environmental concerns (invasive species, flooding and soil run-off mitigation).

Collectively, the activities and improvements are low-impact and a net-positive for enhancing the use and conservation of the parcel for future generations. By 'developing' the property in appropriate ways that are aligned with historical and community-approved uses, we are taking a multi-layered approach for sustainable use that applies well to current needs of our community. These strategic steps are part of our modern approach to conservation that places heavy emphasis on education and community involvement.

GRANT RECIPIENT SELF-REPORT FORM
Legacy Land Conservation Program

(rev. 4/2011)

5. Do plans exist for the alteration of the site in the next two years? Please explain. What will be the impact of each alteration on the resources referenced in the grant application and grant agreement?

There are no plans for major alterations to the site in the next two years. Current operations will continue with planning for more native plant and hala forest preserve work.

6. What is the name, telephone number, and email address of the preferred contact for arranging site visits?

Please contact:

Peter Gaffney, Acting Director of Kahanu Garden

Phone: (808) 248-8912

Email: pgaffney@ntbg.org

With copy to:

Chipper Wichman, Director and CEO of NTBG

Phone: (808) 332-7324 ext 201

Email: wichman@ntbg.org

Certification:

I hereby swear and affirm that that I am authorized to certify that the information contained in this document and listed attachments and that the above information is true and complete to the best of my knowledge.

AWARDEE:

Signature

Date

Charles Wichman, Jr.

President, Director & CEO

Typed or printed name

Title

EXHIBIT VII - Proposed DeCoite Agricultural Lease
(without Exhibit B, Contract No. 57148)

.....

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by Mail to:
NATIONAL TROPICAL BOTANICAL GARDEN
3530 PAPALINA ROAD
KALAHEO, KAUAI, HAWAII 96741
Telephone: (808) 332-7324

This document consists of 45 pages

TYPE OF DOCUMENT:

DECOITE AGRICULTURAL LEASE

PARTIES TO DOCUMENT:

LESSOR: NATIONAL TROPICAL BOTANICAL GARDEN, a federally chartered
corporation
3530 Papalina Road
Kalaheo, Kauai, Hawaii 96741

LESSEE: A. DeCOITE RANCH LLC, a Hawaii limited liability company
3101 Kaili'iili Road
Haiku, Maui, Hawaii 96708

TAX MAP KEY FOR PROPERTY:

(2) 1-3-002:001 (por.)

DECOITE AGRICULTURAL LEASE

National Tropical Botanical Garden, a federally chartered corporation, whose mailing address is 3530 Papalina Road, Kalaheo, Kauai, Hawaii 96741, hereinafter referred to as "Lessor", and A. DeCoite Ranch LLC, a Hawaii limited liability company, whose mailing address is 3101 Kaili'ili Road, Haiku, Maui, Hawaii 96708, hereinafter referred to as "Lessee", in consideration of the mutual covenants set forth herein, hereby agree as follows:

Premises Leased

Lessor, in consideration of the rents herein reserved and the covenants and conditions herein contained, to be observed and performed by Lessee, does hereby demise and lease to the Lessee the following described premises: Designated portions of Tax Map Key parcel number (2)1-3-002:001, 94 acres in Honomā'ele, Hāna, Maui, Hawai'i as represented in Exhibit A attached hereto.

The designated portions of land to be leased will be determined and agreed upon by the Lessor and Lessee by physically staking the boundary corners together. The lands to be leased shall be limited to areas that are within the State Agricultural Land Use District, only.

Term

This lease shall continue for a term of five years commencing on _____ and expiring on _____ 2023.

Payment of Rent

Lessee shall pay the sum of One Dollar (\$1.00) annually as rent during the Lease Term. Payment shall be made on or before the first day of each Lease year during the Lease Term. Occasional supply of beef to Lessor (appropriate amount at the Lessee's discretion) from cattle raised on leased lands would also be appreciated.

Lessee will at own cost, supply fencing materials and labor to fence grazing pastures in paddocks, to rotate livestock as necessary. Lessee will also provide own tractor for brush control; open roadways, and maintain property boundaries where fences will be established.

All improvements, repairs and maintenance including fencing and water distribution system will be at Lessee's expense. Should the Lessor sell this property within the term of the lease, then Lessor shall reimburse to Lessee on a pro rata basis the cost of materials used in all improvements, including fencing, gates, and water distribution system, Lessee has paid out of pocket.

Taxes and Assessments

The Lessor will pay taxes and assessments.

Assumption of Risk

Lessee will assume all risk of loss of, or damage to, equipment, supplies, merchandise, and other property by whomsoever owned, stored, or placed in the demised premises, and does hereby agree that the Lessor will not be responsible for the loss or damage to any such property from

any cause whatsoever, and the Lessee hereby agrees to indemnify and hold harmless Lessor from and against any and all claims for such loss or damage.

Indemnity

Lessee will hold Lessor harmless from any claim or demand by third persons for loss or damage, including claims for property damage, personal injury, or wrongful death arising out of any accident on the demised premises, or by any 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 caused by Lessee's cattle and equipment whether on or off of the demised premises, and will reimburse Lessor for all attorneys' fees and other costs in connection with the defense of any such claims.

Water Distribution System

Lessee will provide its own water infrastructure and distribution from a water catchment system at Lessee's expense.

Liability Insurance

During the term of the lease, Lessee at his own expense will maintain comprehensive general liability insurance with respect to said premises in a responsible insurance company licensed to do business in the State of Hawaii. The minimum coverage shall be \$1,000,000. Lessee shall provide a current certificate of insurance naming Lessor as indemnified no later than the date of commencement of the lease.

Forfeiture

If Lessee shall fail to observe or perform any of the other covenants herein contained and such default shall continue for 30 days after written notice thereof given to Lessee, or if Lessee shall become bankrupt or make any assignment for the benefit of creditors or abandon said premises, or if this lease or any estate where interest of Lessee hereunder shall be sold under any attachment or execution, Lessor may at once in any such case reenter said premises or any part thereof in the name of the whole and at his option terminate this lease without service of notice or a legal process, and may expel and remove from said premises Lessee and all persons claiming under him and his effects, without being deemed guilty of any trespass or becoming liable for any loss or damage occasioned thereby, and may bring an action for summary possession of said premises, all without prejudice to any other remedy or right of action which Lessor may have for any breach of contract. Such termination may, but need not necessarily, be made effective by recording or filing of record in each of the places in which this lease is recorded or filed an affidavit thereof by Lessor. Upon such termination by Lessor, all Lessee improvements shall become property of Lessor at no cost to Lessor.

Notices

Any notice or demand to Lessor or Lessee provided for or permitted by this lease may be given sufficiently for all purposes in writing mailed as registered or certified mail, addressed to such party at the post office address here in specified or the last such address designated by the party in writing to the other, or delivered personally within the State of Hawai'i to Lessor or Lessee as the case may be, and shall be deemed conclusively to have been given on the date of such mailing or personal delivery.

Permitted Uses

Lessor makes no warranties as to uses permitted by law on the demised premises. The demised premises shall be managed consistently with the purposes for which Lessor was awarded a State of Hawai'i Legacy Land Conservation Program grant, and shall be used in accordance with the terms and conditions of the State of Hawai'i Legacy Land Conservation Program Grant Agreement, Contract Number 57148, attached hereto as Exhibit B, and in accordance with Chapter 173A, Hawai'i Revised Statutes. All expenses in connection with use permits, building permits and the obtaining of water shall be borne by the Lessee.

Inspection and Right of Entry

Lessor and Lessor's representatives shall have the right to enter into and upon the land, or part thereof, for any reasonable purpose without advanced notice to the Lessee. Any such entry shall be at Lessor's sole risk and expense.

Agricultural Hazards

Lessee's use of fertilizers, pesticides, herbicides, hormones and other agricultural chemicals must be in conformance with federal and state regulations and must be pre-approved for use by the Lessor. The Lessee shall hold Lessor harmless for any damage to the Lessee, his employees or agents, including personal injury, which may be caused by the use of such products.

Surrender

At the expiration of the lease, the Lessee shall surrender the leased property in as good condition as it was at the beginning of the term, reasonable use, wear and tear and damages by the elements excepted, and all Lessee improvements shall become property of Lessor at no cost to Lessor.

Modifications

None of the provisions of this lease may be waived, changed or altered except by an instrument in writing signed by Lessor and Lessee.

Sublet

The Lessee may not sublet this lease without both Lessor's prior approval and the prior written approval of the State of Hawai'i Board of Land and Natural Resources or its successor agencies. A sublease conveyance document must provide that the sublet premises shall be managed consistently with the purposes for which Lessor was awarded a State of Hawai'i Legacy Land Conservation Program grant, and that the sublet premises shall be used in accordance with the terms and conditions of the state of Hawai'i Legacy Land Conservation Program Grant Agreement, Contract Number 57148, attached hereto as Exhibit B, and in accordance with Chapter 173A, Hawai'i Revised Statutes. If the Lessee sublets this lease, then that portion of the gross sublease lease rent equal to the proportion of the grant by the State bears to the original cost of the land shall be paid to the State, pursuant to Section 173A-10, Hawai'i Revised Statutes. If the lease is sublet, the Lessee and all subtenants must individually maintain comprehensive general liability insurance as established in Liability Insurance.

SPECIAL CONDITIONS TO THE LEASE

1. Leased lands must be staked and agreed upon by both Lessee and Lessor before any improvements are begun. Leased lands and Lessee's operations on Lessor's property shall be limited to areas that are within the State Agricultural Land Use District, only.
2. Brush Control: Lessee is responsible for continual control and eradication of brush and weedy plants. Lessee will keep all fence lines clear of brush and weeds. Lessee will initiate an aggressive brush control program as soon as possible. Methods will include cutting brush by hand, treating with herbicides of which type and application dosage must be pre-approved by Lessor, and removal with Lessee's equipment. The tractor will not be used in the remnant hala forest, leaving a minimum buffer of 50 feet from the hala forest. The tractor will not be used in wet conditions in areas where its use might damage pastures. When the tractor is used, stumps will also be treated with herbicide.
3. Lessor will provide initial herbicide application to large weedy species in Paddocks #4 and #5 that are located within the macadamia nut orchard prior to removal of material by the Lessee.
4. Lessee is responsible for continual repair, improvement, and maintenance of all fencing to prevent cattle from entering the public right of way; and from damaging structures and plants of Lessor's and other neighboring properties. Damage caused by cattle to Lessee's properties will be repaired or otherwise mitigated by Lessee.
5. Lessee will provide own tractor for brush control at Lessee's expense. Fuel, operator, and maintenance of tractor will be at Lessee's expense.
6. Lessee or Lessor each has the right to terminate the lease within one year after commencement if either party is not satisfied for any reason.
7. Lessor will provide gate keys as needed (from Kihei Safe and Lock) for all gates at the expense of the Lessee.
8. Lessee may request at any time that Mark and Cindy Parris be substituted as the Designated Lessee. Lessor will approve the substitution after Mark and Cindy Parris furnish a statement of acceptance of all terms and conditions of the original lease and a current certificate of general liability insurance as required in Liability Insurance, and after receiving prior written approval of the State of Hawai'i Board of Land and Natural Resources or its successor agencies.
9. Lessee will not cut or adversely affect macadamia nut or other trees specified by the Lessor.
10. Lessee will not access or permit access to a third party to any neighboring lands of leased premises, including the botanical garden, the gazebo, and the coast for fishing.
11. Should Lessor need to recover portions of leased lands (i.e. certain paddocks), exchange for land of comparable size can be negotiated. Agreement by the Lessee will not be unreasonably withheld.

In witness whereof, the parties hereto have executed this lease this ____ day of _____, 2018. This agreement may be executed in counterparts.

[signatures appear on next page]

LESSOR:

NATIONAL TROPICAL BOTANICAL GARDEN,
a federally chartered corporation

By _____
CHARLES R. WICHMAN, JR.
Its Chief Executive Officer and Director

LESSEE:

A. DeCOITE RANCH LLC, a Hawaii limited
liability company

By _____
FRANCES L. DeCOITE, as Trustee of the
Frances L. DeCoite Trust dated July 30, 1981
Its Member

DRAFT

On this _____ day of _____, 201____, before me appeared CHARLES R. WICHMAN, JR., to me personally known, who, being by me duly sworn, did say that he is the Chief Executive Officer and Director of NATIONAL TROPICAL BOTANICAL GARDEN, a federally chartered corporation, that the foregoing DeCOITE AGRICULTURAL LEASE dated _____, 201____, which document consists of _____ pages, was signed on behalf of said corporation, and said CHARLES R. WICHMAN, JR. acknowledged that he executed the same as his free act and deed and as the free act and deed of said corporation.

My commission expires: _____

On this _____ day of _____, 201____, before me appeared FRANCES L. DeCOITE, as Trustee of the Frances L. DeCoite Trust dated July 30, 1981, to me personally known, who, being by me duly sworn, did say that she is the Member of A. DeCOITE RANCH LLC, a Hawaii limited liability company, that the foregoing DeCOITE AGRICULTURAL LEASE dated _____, 201____, which document consists of _____ pages, was signed on behalf of said LLC, and said FRANCES L. DeCOITE, as Trustee aforesaid, acknowledged that she executed the same as her free act and deed and as the free act and deed of said LLC.

My commission expires: _____

Exhibit A

Map of Lease Area

DRAFT





Exhibit B

State of Hawai'i Legacy Land Conservation Program Grant Agreement
Contract Number 57148

DRAFT

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REGULAR SYSTEM

This document consists of 63 pages

LEASE AGREEMENT

(2) 1-3-002:001 (por.)

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is dated this ____ day of _____, 201____, and is entered into by and between NATIONAL TROPICAL BOTANICAL GARDEN, a federally chartered corporation, whose mailing address is 3530 Papalina Road, Kalaheo, Kauai, Hawaii 96741, hereinafter called "Lessor," and MA KA HANA KA 'IKE, a Hawaii non-profit corporation, whose mailing address is P. O. Box 968, Hana, Maui, Hawaii 96713, hereinafter called "Lessee".

RECITALS:

A. One of the primary missions of Lessor is to enrich life through discovery, scientific research, conservation and education by perpetuating the survival of plants, ecosystems and cultural knowledge of tropical regions.

B. Lessor owns and operates Kahanu Garden and Preserve, a branch botanical garden nested in the community of Hana, Hawaii to serve Lessor's mission through its Hawaiian and Pacific ethnobotanical collections, significant cultural sites, and native habitat.

C. Lessor has acquired the parcel of land identified below through the State of Hawaii's Legacy Land Conservation Program for the purposes of adding a significant landholding to Kahanu Garden and Preserve and carrying out the Lessor's mission.

D. Lessee is a non-profit organization whose mission is to provide Hana's youth with a way to learn that makes sense to them, that builds their self-esteem and shows them they have the power to change their futures.

E. Lessor and Lessee wish to operate a joint program under the name of "Mahele Farm", in an effort to develop a sustainable agricultural use of the Premises that would benefit the Hana community and enhance the operations of Kahanu Garden and Preserve, both consistent with the missions of the parties' respective organizations. This use is deemed by Lessor and Lessee to be consistent with and in furtherance of the Legacy Land Conservation Program grant objectives and will enhance the impact of Kahanu Garden in achieving the goals and principals stated herein.

F. The overlap of the parties' missions includes enriching life through discovery, conservation, and education of the host Hana community through the growing and eating of food plants that include important ethnobotanical collections of ulu (breadfruit), kalo (taro), maia (banana) and uala sweet potato) using and perpetuating the cultural subsistence knowledge of the region.

AGREEMENT:

In consideration of the foregoing Recitals and the covenants and agreements herein contained and on the part of Lessee to be observed and performed, and upon and subject to all of the terms and conditions hereinafter set forth, the Lessor hereby demises and leases unto the Lessee, and the Lessee does hereby lease and accept from the Lessor, the property and area (hereinafter sometimes referred to as the "Premises" or "Demised Premises"), as shown on Exhibit "A" attached hereto and incorporated herein by this reference, an area of approximately nine acres, located at West Honomalee, Hana, Island and County of Maui, State of Hawaii, being a portion of Lessor's property designated as TMK No. (2) 1-3-002-001 (hereinafter referred to as the "Lessor's Property"). The Premises are outlined in green on Exhibit "A" to this Lease.

TOGETHER WITH reasonable non-exclusive vehicular access to and from the Premises from Ulaino Road along a roadway, which roadway is shown on Exhibit "A" to this Lease as a red line.

TOGETHER ALSO WITH all improvements currently located on the Premises, including but not necessarily limited to a small compost shed, an equipment shed/garage, a shower hose, a composting toilet house with ramp, a covered lanai structure and a multi-use structure which includes two sheds used for storage with a covered breezeway with outdoor kitchen and accessory bamboo hale.

TO HAVE AND TO HOLD THE SAME, together with all improvements, tenements, rights, easements, privileges and appurtenances thereon or thereunto belonging or appertaining, unto the Lessee, for the term and upon the other conditions hereinafter set forth.

THIS LEASE is on the following terms and conditions:

1. Term.

(a) Unless otherwise agreed by the parties in writing, the term of this Lease (the "Lease Term") shall be for a period of six (6) years commencing on _____, 2018 (the "Commencement Date") and continuing through _____, 2024.

(b) Extensions of Lease Term. If Lessee is not in default at the end of the Lease Term, the Lease Term may be automatically extended for consecutive terms of one (1) year each unless either party elects to terminate the Lease by giving written notice of termination to the other party not less than one (1) year prior to the then-effective expiration date. The Lease as so extended shall be upon the same terms and conditions contained herein except as may be otherwise stated herein or agreed by Lessor and Lessee. It shall not be required that either party must give any notice, written or otherwise, to the other party in order to invoke the automatic extension of the Lease Term. However if the Lessor or Lessee wish to change the terms and conditions contained herein, then Lessor shall first submit the changes to the State of Hawai'i Legacy Land

Conservation Program, or its successor programs, and obtain the prior written approval of the proposed changes from the State of Hawai'i Board of Land and Natural Resources or its successor agencies, as deemed necessary by the State.

2. Rent.

(a) Annual Rent, Conveyance and General Excise Tax.

(1) Annual Rent. Lessee shall pay the sum of One Dollar (1.00) annually as rent during the Lease Term. Payment shall be made on or before the first day of each Lease year during the Lease Term.

(2) State Conveyance Tax. Lessee shall pay if and when due any Conveyance Tax imposed by the State of Hawaii on this Lease.

(3) General Excise Tax. Lessee shall pay to Lessor, together with each payment of any nature required hereunder which is subject to the State of Hawaii general excise tax on gross income, as it may be amended, and all other similar taxes imposed on Lessor on said payments in the nature of a gross receipts tax, sales tax, privilege tax or the like (excluding federal or state net income taxes) whether imposed by the United States of America, State of Hawaii or the County of Maui, an amount which, when added to such payment, shall yield to the Lessor, after deduction of all such taxes payable by Lessor with respect to all such payments, a net amount equal to that which Lessor would have realized from such payments had no such tax been imposed (the current net excise tax rate is 4.166% of Lessor's gross income).

(b) Security Deposit. Not applicable.

(c) Place of Payment. All monies required to be paid by Lessee hereunder shall be paid to Lessor without deduction or offset, prior notice or demand, in lawful money of the United States of America at such place as Lessor may from time to time designate in writing. Until otherwise noticed to Lessee, monies shall be paid to Lessor at 3530 Papalina Road, Kalaheo, Kauai, Hawaii 96741.

(d) No Set-Off By Lessee. Lessee's obligation to pay all charges hereunder shall be independent of any obligation, liability, or alleged default of Lessor, and of any expense or cost incurred by Lessee, and in no event shall Lessee be entitled to deduct or set-off, in any amount or in any manner, any actual or alleged obligations or liabilities of Lessor to Lessee or any expense or cost incurred by Lessee hereunder, or related to the premises, unless Lessor consents to the proposed deduction or set-off in advance and in writing. Lessor shall have no obligation to consent to the same. Any claim or action by Lessee against Lessor arising hereunder shall be pursued separate and apart from any action by Lessor to enforce Lessee's payment obligations hereunder.

3. Purpose of Lease and Use of Premises.

(a) General Use Rules. Lessee shall at all times during the term of this Lease, at its sole cost and expense:

(1) To the extent of Lessee's use of the Premises, maintain the Premises in a clean, neat, sanitary and orderly condition consistent with the highest standards of animal husbandry and agriculture normally observed on the Island of Maui, State of Hawaii;

(2) Comply with all governmental rules, regulations, ordinances, statutes and laws now or hereafter in effect pertaining to the Premises or Lessee's use thereof. All licenses, permits, variances, certificates, releases or similar clearances required by any governmental authority pertaining to Lessee's use of the Premises shall be obtained by Lessee at its sole cost and expense;

(3) Refrain from dumping, disposal, reduction, incineration or other burning of any trash, papers, refuse or garbage of any kind in or about the Premises;

(4) Immediately remove all trash and garbage from and within the Premises that is generated by Lessee's or Lessee's guests' or invitees' use of the Premises;

(5) Refrain from using or permitting the use of the Premises or any portion thereof as living quarters, sleeping quarters or lodging rooms; and

(6) Refrain from committing or suffer to be committed any strip or waste upon, or any unlawful, improper or offensive use of the Premises or any public or private nuisance or act or thing which may disturb the quiet enjoyment of the areas and occupants of other premises in the vicinity of the Premises.

(7) The demised premises shall be managed consistently with the purposes for which Lessor was awarded a State of Hawai'i Legacy Land Conservation Program grant, and shall be used in accordance with the terms and conditions of the State of Hawai'i Legacy Land Conservation Program Grant Agreement, Contract Number 57148, attached hereto as Exhibit B, and in accordance with Chapter 173A, Hawai'i Revised Statutes.

(b) Lessee's Use of Premises and Other Obligations. During the Lease Term:

(1) Lessee shall conduct farming and related activities on the Premises under the name of "Mahele Farm." Lessee shall have the exclusive use of the Premises,

subject to the provisions of this Lease for Lessor's occasional use of the Premises as more fully detailed below;

(2) Lessee shall be responsible for, and shall keep a complete set, of all keys for the gate lock at the entrance to the Premises. Lessor shall be provided with a complete set of the gate lock at the entrance to the premises. Lessee shall not unreasonably prevent or interfere with authorized access to and use of the road that traverses the Premises by Lessor or Lessor's authorized representatives, lessees or invitees.

(3) Representatives of Lessee and Lessor shall meet regularly to continue their collaborative work at Mahele Farm and keep all parties involved and apprised of decision-making processes regarding Mahele Farm operations;

(4) Lessee shall provide Lessor's Kahanu Garden Director with quarterly written reports identifying and describing the programs and activities that took place at Mahele Farm during the immediately preceding three-month reporting period and shall insure that the Lessee's leadership on the Farm is in regular communication with the Kahanu Garden Director about upcoming activities and programs taking place on the Farm.

(5) The parties agree that a shared calendar shall be maintained during the Lease Term that schedules the use of the facilities on the Premises for educational groups and for camping purposes as well as other activities engaged in by both Lessor and Lessee as more fully described in sub-paragraph (c) below. Each party agrees to cooperate with the other in developing and maintaining the shared calendar.

(6) Lessee agrees to acknowledge Lessor as a collaborative party on all signage and printed materials produced or created by Lessee regarding Mahele Farm.

(7) At all times during the Lease Term Lessee shall maintain its good standing as a Sec. 501(c)(3) tax-free entity under applicable Internal Revenue Code provisions. Lessee shall provide Lessor with annual written evidence of its good standing as a Sec. 501(c)(3) entity, which evidence may be a copy of Lessee's annual IRS Form 990.

(c) Lessor's Use of Premises. The parties understand and agree that the following uses and provisions shall apply to Lessor's occasional use of portions of the Premises:

(1) Lessor and its authorized agents, employees, lessees and invitees shall continue to enjoy use of the roadway that traverses the Premises as shown on Exhibit "A" to this Lease at such times and for such purposes as Lessor shall determine or authorize, provided that no use of the roadway will unreasonably interfere with Lessee's use of the Premises.

(2) Lessor shall have the right to use the Premises (including the facilities located thereon) for up to thirty (30) calendar days per calendar year, or portion thereof, during the Lease Term for Lessor's interns and other authorized groups to camp. Requests for additional use days may be considered but are not guaranteed. This use shall be scheduled on the shared calendar referenced in sub-paragraph (b)(5) above.

(3) In addition to the camping use described in the preceding paragraph, Lessor shall retain the right to use the Premises for its Kulia I Ka Pono summer program and other educational programs operated by Lessor. Access and use regarding such activities shall be coordinated between Lessor and Lessee's farm manager and shall be scheduled on the shared calendar.

(4) In addition to Lessor's uses described above, Lessor shall retain the right to construct and operate a "weather port" or similar facility, together with reasonable appurtenant facilities, at a mutually-agreed site on the Premises, which will be used by Lessor to facilitate and enhance the use of the Premises by Lessor's interns or other authorized persons. All costs associated with the weather port shall be Lessor's responsibility.

4. Quiet Possession. Lessor agrees that Lessee upon paying all payments herein required from Lessee, and upon Lessee's performance of all of the provisions, covenants and conditions of this Lease on its part to be kept and performed, may quietly have, hold and enjoy the Premises during the Lease Term subject to the terms and conditions contained in this Lease.

5. Possession of Premises.

(a) Acceptance of Premises. Except as may be otherwise provided, Lessee shall by entering into and occupying the Premises be deemed to have accepted the Premises in their "as is" condition and to have acknowledged that the same are then in the condition called for by this Lease, and are in good order, condition and repair. Lessee hereby agrees and acknowledges that Lessor has not made and will not make any representation or warranty, implied or otherwise, with respect to the condition of the Premises, the facilities located thereon, or the access road, and that Lessee will use and enjoy the Premises, all facilities, and the access road in their "as is" condition. Lessee enters into this Lease with full assumption of the risks, and consequences thereof, and the absence of any such warranty or representation by Lessor.

(b) Surrender of Premises. Upon the expiration or sooner termination of the term of this Lease (and whenever in this Lease reference is made to the term of this Lease or the term hereof such reference shall include any extension or renewal of the term of this Lease) Lessee shall thereupon surrender the Premises in the same condition as they were on the commencement date of this Lease, reasonable wear and tear (including damage thereto which Lessee is not required to repair) excepted and damage or other conditions not caused by Lessee or Lessee's guests or invitees excepted. Upon expiration or sooner termination of the Lease Term Lessee shall promptly

remove any property of Lessee that is located on the Premises ("Lessee's Property"). In the event Lessee shall fail to remove any of Lessee's Property as provided herein, Lessor may, but is not obligated to, at Lessee's expense, with interest at the rate of eighteen percent (18%) per annum or the maximum allowed under Hawaii law, whichever is less, from the date of payment by Lessor, remove all of Lessee's Property not so removed and repair all damage to the Premises resulting from such removal and may, but is not obligated to, at Lessee's expense, store the same in any public or private warehouse, and Lessor shall have no liability to Lessee for any loss or damage to Lessee's Property caused by or resulting from such removal or otherwise.

6. Repairs and Maintenance. Lessee shall at all times keep and maintain the Premises, improvements, additions and fixtures located on the Premises in good repair, order and condition and in a strictly clean and sanitary condition, all solely to the extent of Lessee's or Lessee's guests' or invitees' use of the Premises; PROVIDED, HOWEVER, that Lessor and not Lessee shall be responsible for all maintenance and repair of fence lines on or surrounding the Premises unless the maintenance or repair is due to the action, inaction, negligence or willful misconduct of Lessee or its employees, representatives, invitees or participants. Lessee will comply with all applicable laws, rules and regulations relating to health and safety. Lessee will not do or suffer any acts or carry on any practices that may injure the Premises, or become a nuisance or menace to others. Except as otherwise provided herein, Lessee will not mark, paint, drill or in any way deface the Premises, including any outside wall, wood, stone or iron work or permit or suffer the same to be done without the prior written consent of Lessor.

7. Construction and Alterations. Lessee shall be allowed to construct any new structures on the Premises, or to alter any existing structure on the Premises, with Lessor's prior written approval, which approval shall not be unreasonably withheld. Lessor shall have the right to inspect Lessee's plans and specifications for any new structure prior to approving or disapproving the new structure. All construction or alteration on the Premises shall be done with all required permits or other governmental authorizations or approvals, copies of which shall be delivered to Lessor prior to commencement of construction. All construction or alteration of structures shall be done at Lessee's sole cost and expense unless otherwise agreed in writing by the parties.

8. Lessor's Construction. In the event Lessor is required or elects to construct any improvements, alterations or repairs in or around the Premises, Lessee shall not be entitled to any abatement of rent or other claim or compensation from Lessor due to any inconvenience or annoyance resulting from the same, and Lessee shall cooperate as reasonably necessary or as reasonably requested by Lessor with any temporary inconvenience or annoyance due to the same.

9. Signs, Etc. Lessee shall not erect, install, paint or inscribe on any portion of the Premises any signs, awnings, canopies, shades, lettering, placards, banners, or other advertising media without the prior written consent of Lessor.

10. Real Property Taxes. Lessee shall not be liable for payment of any portion of the real property taxes attributable to the Premises.

11. Payment of Utility Charges. Lessee shall be responsible for payment of any and all utility charges related to Lessee's use of the Premises.

12. Indemnities.

(a) Lessee's Indemnity Obligations. Lessee shall indemnify Lessor and Lessor's Affiliates (defined below) against and shall defend and hold Lessor and Lessor's Affiliates harmless from any and all claims, actions, damages, liabilities and expenses (collectively "Liabilities") in connection with loss of life, personal injury and/or damage to property arising from or out of Lessee's use of the Premises during the Lease Term, or occasioned wholly or in part by any act or omission of Lessee or Lessee's Affiliates, or consequent upon or arising from any failure by Lessee to comply with and conform to all laws, statutes, codes, ordinances and regulations of the United States, the State of Hawaii and the County of Maui, now or hereinafter in force and applicable to the use of the Premises. If Lessor shall, without fault on its part, be made a party to any litigation commenced by or against Lessee, then Lessee shall protect and hold Lessor harmless against, and shall pay all costs, expenses and reasonable attorney's fees and damages incurred or paid by Lessor in connection with, such litigation, and shall pay any final judgment which may be recovered against Lessor or against the Premises on account thereof. The foregoing Lessee indemnity and other obligations will not apply to any Liabilities to the extent such Liabilities arise out of or are based on, caused by, connected to, or related to Lessor's negligence, misconduct, or breach of this Lease. "Affiliates" means a party's trustees, successor trustees, directors, officers, shareholders, managers, members, partners, incorporators, organizers, agents, employees, attorneys, consultants, advisors, lenders, representatives, contractors, servants, concessionaires, brother/sister companies, parent companies, subsidiary companies, cousin and other related companies, and other affiliates.

(b) Lessor's Indemnity Obligations. Lessor shall indemnify, defend, and hold harmless Lessee and Lessee's Affiliates from and against any and all Liabilities based on, arising out of, caused by, connected to, or related to Lessor's and/or Lessor's Affiliates' use of the Premises, negligence, willful misconduct, or breach of this Lease. The foregoing Lessor indemnity and other obligations will not apply to any Liabilities to the extent such Liabilities arise out of or are based on, caused by, connected to, or related to Lessee's or Lessee's Affiliates' negligence, misconduct, or breach of this Lease.

13. Insurance.

(a) General Requirements. Lessee will, at its own expense, at all times during said term of this Lease, keep in force policies of insurance as required in this Lease. All policies shall be issued by insurance companies licensed to do business in the State of Hawaii and

reasonably acceptable to Lessor. All insurance policies shall contain an endorsement specifically naming Lessor as an additional insured party, and shall be primary to any other insurance that may be available to Lessor. Lessee will provide Lessor with current certificates of such insurance, including a copy of all additional insured endorsements, on or before the effective date of this Lease, and will provide true and complete copies of such insurance policies upon Lessor's request.

(b) Waiver of Subrogation. For the purpose of waiver of subrogation, the parties mutually release and waive unto the other all rights to claim damages, costs or expenses for any damages to property caused by a casualty of any type in, on or about the Premises if the amount of such damage, cost or expense has been paid to such damaged party under the terms of any policy of insurance. To the extent that such injury to persons or property is in fact covered by insurance, each party shall cause its insurance carriers to consent to such waiver.

(c) Liability Insurance. Lessee shall maintain commercial general liability insurance for the Premises and any business operations conducted by Lessee, its employees, representatives, volunteers, participants, independent contractors, concessionaires and sublessees, if any. Said insurance shall provide coverages for bodily injury and property damage liability; premises operations; broad form property damage; personal and advertising injury liability; blanket contractual liability; independent contractor's liability; and fire legal liability. If Lessee or its independent contractor(s) engage in any construction, demolition or excavation operations, all policies covering these operations shall be endorsed to provide coverages for explosion, collapse and underground hazards. The policy or policies of insurance shall provide coverage on an "occurrence" basis (not on a "claims made" form) and shall provide limits of no less than Two Million Dollars (\$2,000,000.00) per occurrence and not less than Two Million Dollars (\$2,000,000.00) in the aggregate, and the limit of property damage liability thereunder shall not be less than \$100,000.00 per occurrence. Lessor may from time to time require, with due regard to prevailing prudent business practices, that these limits be increased or that additional liability coverages be provided, as may be reasonably adequate for Lessor's protection.

(d) Insurance on Lessee Improvements, Fixtures and Equipment. Lessee shall procure and maintain insurance for the full replacement value of all of lessee's improvements, fixtures and equipment on the Premises.

(e) Worker's Compensation Insurance. Lessee shall at all times during the Lease Term procure and maintain a Worker's Compensation policy covering any employees of Lessee against workplace injuries or death, in such amounts and on such terms as Lessor may reasonably approve.

(f) Fire Insurance; Increase in Premiums. Lessor shall at all times during the term of this Lease procure and maintain a policy covering the Premises against loss due to fire and other casualties normally insured against in the County of Maui, State of Hawaii, with limits sufficient to cover the full replacement cost of buildings occupied by Lessee. In the event Lessee engages in any conduct or keeps or uses in or upon the Premises any article which may cause an

increase in the premiums for such insurance, Lessee shall be liable for the full amount of the increased premium and the full amount of any escalation in the amount of such increased premium during the term of this Lease.

(g) Blanket Policy. Notwithstanding anything to the contrary contained within this Paragraph 13, the Lessee's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by the Lessee, provided however, that the Lessor shall be named as an additional insured thereunder and that the coverage afforded the Lessor will not be reduced or diminished by reason of the use of such blanket policy of insurance, and provided further that the requirements set forth herein are otherwise satisfied. The Lessee agrees to permit the Lessor at all reasonable times to inspect the policies of insurance of the Lessee covering risks upon the Premises for which policies or copies thereof are not required to be delivered to the Lessor.

14 Hazardous Materials.

(a) Restriction on Use of Hazardous Materials. Lessee shall comply with all governmental requirements, including without limitation all governmental requirements relating to human health, the environment, waste disposal, air or wastewater emissions, occupational safety and health and the handling of Hazardous Materials (defined below) at the Premises. Lessee agrees to indemnify, defend and hold Lessor and its officers, partners, directors, shareholders, employees and agents harmless from any claims, judgments, damages, fines, penalties, costs (including attorney, consultant and expert fees); liabilities (including sums paid in settlement of claims) or loss which arise during or after the Initial Term or Extension Term, in connection with the presence of Hazardous Materials in the soil, groundwater, or soil vapor on or under the Premises to the extent the same are present as the result of the acts of Lessee, its officers, employees, contractors, servants or agents, during the Initial Term or the Extension Term, and also during the term of the Previous Lease.

(b) Notification. Lessee shall give written notice to Lessor within five business days after Lessee learns (1) there has been or will come to be located on the Premises any Hazardous Material which requires a permit or license from any governmental agency and the permit or license has not been obtained or is not in effect, (2) an event involving the release of a Hazardous Material onto, within or under the Premises has occurred, (3) an environmental damage claim has been made, or (4) any report, notice, or complaint has been made to or filed with any governmental agency concerning the presence, use, disposal, or release of any hazardous materials on the Premises during the Term. The notice to Lessor shall describe the event giving rise to the notice and be accompanied by copies of any claim, report, complaint, notice, warning, or other communication that is in the possession of or is reasonably available to Lessee. Thereafter, within five business days of receipt or transmission, Lessee shall provide Lessor with a copy of all documents received by Lessee, or sent by Lessee to, any governmental agency relating to such report, notice, or complaint.

Lessor shall have the right but not the obligation to join and participate, as a party, if it so elects, in any actions initiated in respect of any environmental damage claim. Except in emergencies or as otherwise required by law, Lessee shall not take any remedial action in response to the presence or release of any Hazardous Material on or about the Premises without first giving written notice of such action to Lessor. Lessee shall not enter into any settlement agreement, consent decree, or other compromise with respect to any environmental damage claim in any way relating to the Premises without first notifying Lessor, affording Lessor the opportunity to participate in any such proceedings, and obtaining Lessor's written consent, which latter may not be unreasonably withheld, delayed, or conditioned.

(c) Lessor's Representations, Warranties, and Covenants. To Lessor's knowledge (meaning the knowledge of its directors and officers, each a ("**Manager**")), after due investigation and after consultation with employees or other persons whom each such Manager may in such Manager's reasonable judgment have knowledge of the matters set forth in this Paragraph 14:

(i) Lessor has complied with all Laws concerning the environment, public health and safety, and employee health and safety, and no charge, complaint, action, suit, proceeding, hearing, investigation, claim, demand, or notice has been filed or commenced against Lessor in connection with Lessor's ownership, occupancy or operation of the Premises, alleging any failure to comply with any such Law. In particular and without limitation, Lessor is not in violation of any Hazardous Materials Laws (defined below).

(ii) Lessor has not buried, spilled, leaked, discharged, emitted, generated, stored, used or released any Hazardous Material, on or under the Premises in such forms or quantities as to create any liability or obligation under the common law or any Hazardous Materials Laws, and to the knowledge of Lessor, no other party has buried, spilled, leaked, discharged, emitted, generated, stored, used or released any Hazardous Materials in, on or under the Premises in such forms or quantities as to create any liability or obligation under the common law or any Hazardous Materials Laws. The soil, groundwater, and soil vapor on or under the Premises was free of Hazardous Materials as of the Effective Date of the Previous Lease.

(iii) Lessor has not received notice of any alleged violation of any Hazardous Materials Laws or liability for any release of any Hazardous Material in connection with the occupancy or use of the Premises, and there exists no writ, injunction, decree, order or judgment outstanding, nor any lawsuit, proceeding, citation, summons or governmental agency investigation relating thereto.

(iv) Lessor is not in violation nor has received notice of any alleged violation of the Occupational Safety and Health Act, as amended, or under any other law, rule, or regulation of any federal, state, or local government (or agency thereof) concerning employee health and safety.

(v) Lessor agrees to indemnify, defend and hold Lessee and its officers, partners, directors, shareholders, employees and agents harmless from any claims, judgments, damages, fines, penalties, costs (including attorney, consultant and expert fees), liabilities (including sums paid in settlement of claims) or loss which arise during or after the Initial Term or the Extension Term, in connection with the presence before the Effective Date of the Previous Agreement of Hazardous Materials in the soil, groundwater, or soil vapor on or under the Premises. Without limiting the generality of the foregoing, this indemnification shall survive the expiration of this Lease and does specifically cover costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of the presence of Hazardous Materials in the soil, groundwater or soil vapor on or under the Premises. Without limiting the generality of the foregoing, this indemnification shall also specifically cover costs in connection with:

(a) Hazardous Materials present in the soil, ground water or soil, ground water or soil vapor on or under the Premises before the Effective Date of the Previous Lease; or

(b) Hazardous Materials that migrate, flow, percolate, diffuse or in any way move onto or under the Premises after the Effective Date of the Previous Lease which are not the result of Lessee's use or occupation of the Premises.

(vi) If, during the term of this Lease, any governmental authority requires the investigation, remediation and/or monitoring of Hazardous Materials at the Premises for which Lessor is liable to Lessee under this Paragraph 14, and such investigation, remediation, or monitoring adversely affects Lessee's business operations or poses a safety threat to Lessee's employees or customers, then Lessee shall be entitled to receive an equitable abatement of rent from the date such interference or safety hazard occurs to the date such interference and safety hazard are no longer present.

(d) Material Default. Any default under this Paragraph 14 shall be material default enabling the non-defaulting party to exercise any of the remedies provided in this Lease, as long as the defaulting party has not cured such material default within thirty (30) days of receiving written notice of such material default by the non-defaulting party. But if the material default is of such a nature that it cannot be cured within such 30-day period, the defaulting party shall not be deemed in default if it commences to cure such default within the 30-day period, and thereafter diligently and in good faith pursues the completion of its curative actions.

(e) Continuing Obligation. The obligations of the parties under this Paragraph 14 shall survive any termination or expiration of this Lease and any conveyance by Lessor of its interest in the Premises, and shall continue in full force and effect.

(f) Definitions.

(i) **"Hazardous Materials"** means and includes, but are not limited to: (a) any waste, material or substance (whether in the form of a liquid, a solid, or a gas, and whether or not air-borne), which is deemed to be a pollutant or a contaminant, or to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious to public health or to the environment, and which is or may become regulated by or under the authority of any applicable local, state or federal laws, judgments, ordinances, orders, rules, regulations, codes or other governmental restrictions or requirements, any amendments or successor(s) thereto, replacements thereof or publications promulgated pursuant thereto; (b) petroleum or any petroleum product; (c) asbestos; (d) any polychlorinated biphenyl; (e) any radioactive material; and (f) any other material defined as a "Hazardous Material" under the Previous Lease.

(ii) **"Hazardous Materials Laws"** means "Environmental Laws" as that term is defined in the Previous Lease, as well as all federal, state and local laws, ordinances and regulations in force from time to time regarding and applicable to the management and disposal on, under or about the Demised Premises of Hazardous Materials (as defined hereinbelow) under any such federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 6901, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, and any state and local laws and ordinances and the regulations now or hereafter adopted, published and or promulgated with respect to Hazardous Materials.

15. Noise, etc. Lessee shall not, without the written consent of Lessor, use in or about the Premises any searchlights, loud speakers, phonographs, or other similar visual or audio media, and Lessee shall not make any commercial use of the Premises.

16. Condemnation.

(a) Total or Partial Condemnation; Damages. If at any time or times during the Lease term any authority having the power of eminent domain shall condemn the Premises or any part or parts thereof for any public use or otherwise, then and in every such case the estate or interest of Lessee in said premises or such part or parts, as the case may be, shall thereupon cease and determine, and Lessee shall not by reason of such condemnation be entitled to claim or receive any portion of the compensation or damages paid or to be paid by reason of such condemnation, but the entire amount thereof shall be the sole property of Lessor; provided, however, that if any condemnation (or purchase in lieu thereof) shall result in the permanent loss of all or any part of the improvements constructed by Lessee on the Premises, such compensation as shall represent the value thereof shall be applied first to repairing or restoring any such improvements not taken (or purchased in lieu thereof), and the remainder, if any, shall be divided between Lessor and

Lessee. Lessee's share of such remainder shall be a fraction thereof, the numerator of such fraction to be the period of time remaining on the entire term of this Lease (excluding any optional extension periods) as of the date Lessee loses possession and the denominator of such fraction to be the entire term of this Lease (excluding any optional extension periods). Lessor's share of such remainder shall be the balance thereof. Lessee shall have the right to claim and recover from the condemning authority, but not from Lessor, such compensation as may be separately awarded or recoverable by Lessee, in Lessee's own right, on account of any expense which Lessee might incur or loss which Lessee might suffer in removing Lessee's merchandise, furnishings, fixtures and equipment from the demised premises, or for loss of income or business opportunity. In case a part only of the Premises shall be so condemned and taken, the rent herein reserved shall be equitably reduced to reflect the loss of leasable area and improvements due to the taking; provided, however, that if Lessee reasonably determines that due to the partial taking Lessee cannot continue to conduct its normal business activities on the Premises, Lessee shall be entitled to terminate this Lease no later than the date of the partial taking, by delivering to Lessor written notice of termination.

(b) Condemnation of Leasehold Interest. If a leasehold interest in the Premises only shall be condemned or taken under power of eminent domain, this Lease shall not be terminated nor shall Lessee be excused from full performance of its covenants for the payment of money or any other obligations hereunder capable of performance by Lessee, but in such event Lessee may claim and recover from the condemning authority all compensation and damages payable on account of Lessee's leasehold interest in the Premises.

(c) Voluntary Sale Under Threat of Condemnation. For all purposes under this Paragraph, a voluntary sale of all or any part of the Premises by Lessor to any authority having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed to be a taking under the power of eminent domain.

17. Destruction of Demised Premises. In the event of a partial or total destruction of the Premises from any cause whatsoever, Lessor shall promptly cause the same to be rebuilt or repaired to substantially the same condition as the Premises were in prior to such casualty (excluding, however, any improvements, additions, fixtures, alterations, decorations, installations, furniture, furnishings, equipment or machinery made, installed or placed by Lessee in or upon the Premises) unless, in Lessor's reasonable discretion, Lessor determines that it would be uneconomical or impossible to rebuild or repair the same, in which event this Lease shall terminate as of the date of such destruction upon written notice given by Lessor to Lessee of its intention not to rebuild or repair, such notice to be given within sixty (60) days from the date of such destruction. In the event the Premises cannot reasonably be repaired or restored within three hundred sixty (360) days of the date of such casualty, Lessee shall have the right to terminate this Lease as of the date of written notice of such termination being delivered from Lessee to Lessor. In the event of such termination, Lessee shall forthwith surrender the Premises and shall be relieved of all liability further accruing after the date of termination, and Lessor shall have no further liability or obligation hereunder except as otherwise specifically provided herein. In the event Lessor rebuilds and repairs

the Premises, all amounts payable hereunder shall continue to be due and owing, and Lessee shall, at its option, make a claim for any such payments pursuant to any business interruption or other such insurance available to Lessee. No compensation or claim will be allowed by or brought against Lessor by reason of inconvenience or annoyance arising from reconstructing, repairing, altering or improving any portion of the Premises after any casualty described herein.

18. Assignment and Subletting. It is of the essence of this Lease that, except as otherwise specifically provided herein and excepting any successor owner of Lessee's property identified herein, Lessee shall not assign, sublease or mortgage this Lease or sublet the whole or any part of the Premises or any of the Lessee's rights hereunder to any party without both the prior written consent of the Lessor, which consent need not be given by Lessor, and the prior approval of the State of Hawai'i Board of Land and Natural Resources or its successor agencies. A sublease conveyance document must provide that the sublet premises shall be managed consistently with the purposes for which Lessor was awarded a State of Hawai'i Legacy Land Conservation Program grant, and that the sublet premises shall be used in accordance with the terms and conditions of the state of Hawai'i Legacy Land Conservation Program Grant Agreement, Contract Number 57148, attached hereto as Exhibit B, and in accordance with Chapter 173A, Hawai'i Revised Statutes. If the Lessee sublets this lease, then that portion of the gross sublease lease rent equal to the proportion that the grant by the State bears to the original cost of the land shall be paid to the State, pursuant to Section 173A-10, Hawai'i Revised Statutes.

No such assignment or sublease shall release the Lessee from any of the Lessee's obligations under this Lease and any such assignment or sublease shall be specifically made and therein stated to be made subject to all the terms, conditions and covenants of this Lease. The granting by the Lessor of its consent to any assignment, subletting, occupancy, or use by any other person, shall not be deemed to be a consent to any subsequent assignment, subletting, occupancy or use by any other person. Any assignment or subletting without consent shall be void, and shall, at the option of the Lessor, terminate this Lease. This Lease shall not, nor shall any interest herein, be assignable, as to the interest of the Lessee, by operation of law, without the written consent of the Lessor.

19. Inspection and Entry by Lessor.

(a) Notices, Inspection and Liability. After giving reasonable prior notice to Lessee in each instance, Lessor and its authorized agents and representatives shall be entitled to enter the Premises at all reasonable times for the purpose of serving, posting or keeping posted thereon such notices as Lessor may deem necessary or appropriate for protection of Lessor, its interests or the Premises, for the purpose of inspecting the Premises or any portion thereof; and for the purpose of making necessary repairs to the Premises and performing any work therein or thereon which Lessor may elect, or be required, to make hereunder, or which may be necessary to comply with any laws, ordinances, rules, regulations or requirements of any public authority, or which Lessor may deem necessary or appropriate to prevent waste, loss, damage or of deterioration to or in connection with the Premises. Nothing contained herein shall impose or be deemed to impose any duty on the part of Lessor to do any work of repair, maintenance, reconstruction or

restoration which, under any provision of this Lease, is required to be done by Lessee; and the performance thereof by Lessor shall not constitute a waiver of Lessee's default in failing to do the same. Lessor may, during the progress of any work on the Premises, keep and store upon the Premises all necessary materials, tools and equipment, as long as doing so does not unreasonably interfere with Lessee's use and enjoyment of the Premises. Lessor shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or quiet enjoyment, or other damage or loss to Lessee by reason of making any such repairs or performing any such work upon the Premises or an account of bringing materials, supplies and equipment into, upon or through the Premises during the course thereof, and the obligations of Lessee under this Lease shall not thereby be affected in any manner whatsoever. Lessor shall, however, in connection with the performance of any such work, cause as little inconvenience, disturbance or other damage or loss to Lessee as may be reasonably possible under the circumstances.

(b) Sale and Leasing. After giving reasonable prior notice to Lessee in each instance, Lessor and its authorized agents and representatives shall be entitled to enter the Premises at all reasonable times for the purpose of exhibiting the same to prospective purchasers and, during the final six (6) months of the term of this Lease or at any time subsequent to the date that Lessee notifies Lessor of its intent to vacate the Premises.

20. Default.

(a) Events of Default; Notice and Termination; Lessor's Options.

The following events shall constitute events of default hereunder:

(1) Lessee shall default in the performance of any provision, covenant or condition of this Lease on the part of Lessee to be kept and performed and such default continues for thirty (30) days after written notice thereof from Lessor to Lessee, provided however, that if the default complained of in such notice is of such a nature that the same can be rectified or cured, but cannot with reasonable diligence be done within said thirty (30) day period, then such default shall be deemed to be rectified or cured if Lessee shall, within said thirty (30) day period, commence to rectify and cure the same and shall thereafter complete such rectification and cure with all due diligence, and in any event within sixty (60) days from the date of giving such notice; or

(2) To the extent permitted by law, the filing of any petition in bankruptcy, or the adjudication of Lessee as a bankrupt or insolvent, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Lessee, or a general assignment by Lessee for the benefit of creditors, or any action taken or suffered by Lessee under any State or Federal insolvency or bankruptcy act, or any similar law now or hereafter in effect, including, without limitation, the filing of any petition for or in reorganization; or

(3) If any mechanic's or materialmen's lien shall attach to the Premises or Lessee's estate or interest therein due to the use or enjoyment of the Premises by Lessee or Lessee's guests or invitees and shall not be discharged or released within thirty (30) days after the entry of any judgment or order by a court of competent jurisdiction imposing such lien; or

(4) If the Premises or any portion thereof shall be taken or seized under levy of execution or attachment against Lessee;

then and in any such event (and in addition to all other rights and remedies it may have according to this lease or by law provided) Lessor, at its option, shall have the following rights:

(1) The right to declare the term of this Lease ended and to re-enter the Premises and take possession thereof, and to terminate all of the rights of Lessee in and to the Premises; or

(2) The right without declaring the term of this Lease ended to re-enter the Premises and to occupy the same, or any portion thereof, or to lease the whole or any portion thereof, for and on account of Lessee as hereinafter provided.

Pursuant to said rights of re-entry, Lessor may remove all persons from the Premises who are present with Lessee's consent using such force as may be reasonably necessary therefor and may, but shall not be obligated to remove all property therefrom, including, but not limited to, Lessee's Property, and may, but shall not be obligated to, enforce any rights Lessor may have against said property, or store the same in any public or private warehouse at the cost and for the account of Lessee or the owners or owner thereof. Anything contained herein to the contrary notwithstanding, Lessor shall not be deemed to have terminated this Lease or the liability of Lessee to pay any sum of money thereafter to accrue hereunder, or Lessee's liability for damages under any of the provisions hereof, by any such re-entry, or by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Lessor shall have notified Lessee in writing that it has so elected to terminate this Lease. Lessee covenants and agrees that the service by Lessor of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not (unless Lessor elects to the contrary at the time of, or at any time subsequent to, the service of such notice, and Lessor's election be evidenced by written notice thereof to Lessee) be deemed to be a termination of this Lease, or the termination of any liability of Lessee hereunder to Lessor.

(b) Damages on Termination. Should Lessor at any time terminate this Lease for any default, breach or failure of Lessee hereunder, then, in addition to any other rights or remedies available to Lessor hereunder or by law provided, Lessor may have and recover from Lessee all damages Lessor may incur by reason of such default, breach of contract, or other breach or failure, all costs of recovering the Premises from Lessee including, without limitation, court costs and reasonable attorney's fees for services in recovering possession.

(c) Waiver of Default. The waiver by Lessor of any default or breach of any of the provisions, covenants or conditions hereof on the part of Lessee to be kept and performed shall not be a waiver of any preceding or subsequent breach of the same or any other provision, covenant or condition contained herein. The subsequent acceptance of any payment hereunder by Lessee to Lessor shall not be construed to be a waiver of any preceding breach by Lessee of any provisions, covenant or condition of this Lease other than the failure of Lessee to pay the particular payment or portion thereof so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such payment.

21. Assumption of Risk by Lessee. Lessee understands that Lessee has the right to the non-exclusive use and enjoyment of the Premises and that other persons may from time to time use and enjoy the Premises. Lessee, as a material part of the consideration to Lessor for this Lease, will and hereby does assume all risk of loss or damage to Lessee's property that may be stored or placed in, upon or about the Premises, and does hereby agree that Lessor shall not be responsible for loss or damage to any such property. Lessor shall not be liable to Lessee for any damage attributable to (i) water coming into the Premises from any source whatsoever, (ii) any acts or neglect of the public or of adjacent property owners, (iii) the construction of the Premises or negligent or willful failure to keep the Premises in repair, unless Lessor is obligated to make such repairs under the term of this Lease and unless notice of the need for repairs has been given to Lessor, a reasonable time has elapsed, and Lessor has failed to make such repairs or has failed to diligently pursue the making of such repairs, or (iv) damage occasioned by interruption of occupancy caused by strike, riot, acts of war, subsoil conditions, toxic wastes resulting from prior conditions of the land or any other matter not specifically caused by the Lessor. All property of Lessee kept or stored on the Premises shall be so kept or stored at the sole risk of Lessee, and Lessee shall hold Lessor harmless from any claims arising out of damage thereto (including subrogation claims by Lessee's insurance carriers),.

22. Default by and Liability of Lessor. It is agreed that in the event Lessor fails or refuses to perform any of the provisions, covenants or conditions of this Lease on Lessor's part to be kept or performed, that Lessee, prior to exercising any right or remedy Lessee may have against Lessor on account of such default, shall give a thirty (30) day written notice to Lessor of such default specifying in said notice the default with which Lessor is charged. Notwithstanding any other provision hereof, Lessee agrees that if the default complained of in the notice provided for by this Paragraph 22 is of such a nature that the same can be rectified or cured by Lessor, but cannot with reasonable diligence be rectified or cured within said thirty (30) day period, then such default shall be deemed to be rectified or cured if Lessor within said thirty (30) day period shall have commenced the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing to proceed, and so does complete the same, with the use of diligence as aforesaid.

23. Liens.

(a) Indemnification. Lessee shall at all times indemnify, defend and hold Lessor and the Premises free, clear and harmless from any claims, liens, demands, charges, encumbrances or litigation arising directly or indirectly out of any, occupancy or activity of Lessee, its guests and invitees, or out of any work performed, material furnished, or obligations incurred by Lessee, its agents and employees, in, upon about or otherwise in connection with the Premises, and shall, except as hereinafter permitted in this Paragraph 23, pay or cause to be paid for all work performed and material furnished to the Premises or the Lessor's reversionary estate therein, and will keep the Premises free and clear of all mechanic's liens and materialmen's liens.

(b) Contest of Liens. If Lessee desires to contest any claim of lien, it shall within fifteen (15) days after the filing of the lien for record furnish Lessor with cash or other reasonably acceptable security in the amount of the claim of lien, plus estimated costs and interest, or shall furnish Lessor with a bond of a responsible corporate surety in the same amount conditioned upon the discharge of the lien. Nothing contained herein shall prevent Lessor, at the cost and for the account of Lessee, from obtaining and filing a bond conditioned upon the discharge of such lien, in the event Lessee fails or refuses to furnish the same within said fifteen (15) day period.

(c) Satisfaction of Liens. Immediately upon entry of final judgment in any such action in which Lessee contests any such claim of lien, and if such final judgment shall establish the validity of the lien, or any part thereof, and within fifteen (15) days after the filing of any lien for record which Lessee does not contest, Lessee shall fully pay and discharge such judgment or lien, as the case may be, and Lessee shall reimburse Lessor upon demand for any and all loss, damage and expense, including reasonable attorney's fees, which Lessor may suffer or be put to by reason thereof. Nothing contained herein shall prevent Lessor at the cost and for the account of Lessee, from satisfying any such judgment or lien, as the case may be, in the event Lessee fails or refuses to satisfy the same as herein provided.

(d) Notice To Lessor. Should any claim or lien be filed against the Premises, or any action or proceeding be instituted affecting the title to the Premises, Lessee shall give Lessor written notice thereof as soon as Lessee obtains knowledge thereof.

(e) Waiver of Lessor's Lien. Notwithstanding anything in this Lease to the contrary, Lessor shall have no lien or other security interest in any of the Lessee's Property. Lessor specifically waives its right to a lien on or any interest in any of the Lessee's Property to which it may otherwise be entitled by law, other than any permanently attached Lessee improvements. Lessee shall not have the right to mortgage, pledge or grant a security interest in Lessee's Property located or stored on the Premises.

24. Expenditures By Lessor. Whenever under any provision of this Lease Lessee shall be obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Lessee fails, refuses or neglects to perform as herein required, Lessor shall be entitled but shall not be obligated to make any such payment or expenditure, or do any such act or

thing, or to incur any such liability, all on behalf of and at the cost and for the account of Lessee, and in such event the amount thereof with interest thereon as herein provided shall be deemed additional rental hereunder and shall be added to and deemed a part of the next installment of rent thereafter becoming due from Lessee to Lessor hereunder.

25. Force Majeure. Whenever a day is appointed herein on which, or a period of time is appointed within which, either party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such party is prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of strikes, lock-outs embargoes, unavailability of labor or materials, wars, insurrections, rebellions, civil disorder, declaration of national emergencies, acts of God, or other causes beyond such party's reasonable control (financial ability excepted); provided however, nothing contained in this Paragraph 25 shall excuse Lessee from the prompt payment of any rental or other charge required by Lessee hereunder except as may be expressly provided elsewhere in this Lease.

26. Subordination. Lessee agrees upon request of Lessor to subordinate this Lease and Lessee's rights hereunder to the lien of any mortgage, deed of trust or other encumbrance, together with any conditions, renewals, extensions, or replacements thereof, now or hereafter placed, charged or enforced against the Lessor's interest in this Lease and the leasehold estate thereby created, the Premises or the land, building or improvements included therein or of which the Premises are a part, and execute and deliver (but without cost to Lessee) at any time and from time to time upon demand by Lessor such documents as may be required to effectuate such subordination, and in the event that Lessee shall fail, neglect or refuse to execute and deliver any such document within ten (10) days after receipt of written notice so to do and the receipt by Lessee of the document to be executed by it, Lessee hereby appoints Lessor, its successors and assigns, the attorney-in-fact of Lessee irrevocably to execute and deliver any and all such documents for and on behalf of Lessee; provided however, that Lessee shall not be required to effectuate such subordination, nor shall Lessor be authorized to effect such subordination on behalf of Lessee, unless the mortgagee or trustee named in such mortgage or other encumbrance shall first agree in writing, for the benefit of Lessee, that so long as Lessee is not in default under any of the provisions, covenants or conditions of this Lease on the part of Lessee to be kept and performed, that neither this Lease nor any of the rights of Lessee hereunder shall be terminated or modified or be subject to termination or modification, nor shall Lessee's possession of the Premises be disturbed or interfered with, by any sale or by an action or proceedings to foreclose said mortgage or other encumbrance.

27. Priority of Lease and Attornment. In the event that Lessor's mortgagee shall elect to have this Lease a prior lien to its mortgage, then and in such event, upon such mortgagee notifying Lessee to that effect, this Lease shall have priority over the lien of such mortgage to the same extent as if the same had been placed on record prior to such mortgage. In the event any proceedings are brought for the foreclosure of any mortgage made by Lessor covering the property upon which the Premises are located or in the event of exercise of the power of sale under any

mortgage made by Lessor covering the said property, Lessee covenants and agree that it will, upon request by the purchaser, attorn to the purchaser upon any foreclosure or sale and recognize such purchaser as the Lessor under this Lease, it being the intent thereof that if this Lease should be terminated by such foreclosure or sale, it shall, upon request by the purchaser, be reinstated as a lease between the purchaser and Lessee. Lessee, upon request of any party in interest, shall execute such instrument or instruments as shall be requested to carry out the requirements of this Paragraph. In the event that Lessee shall fail, neglect or refuse to execute and deliver such document within ten (10) days after receipt of written notice to do so, together with the document to be executed, Lessee hereby appoints the requesting party, its successors and assigns, the attorney-in-fact of Lessee irrevocably to execute and deliver any such document for and on behalf of Lessee.

28. Amendment of Lease. Should it become necessary to amend this Lease in order to meet the reasonable demands of any lender with which Lessor may be negotiating for loan commitments, Lessor and Lessee shall join in such amendment(s) to the extent so necessary, so long as such amendment(s) will not have a materially adverse effect on the interests of Lessee.

29. Holding Over. In the event Lessee shall hold over or remain in possession of the Premises without the consent of Lessor past the expiration of the stated term of this Lease, or any written extension or renewal of the term of this Lease, such holding over or continued possession such hold over shall be as a Lessee at sufferance and shall create a tenancy from month-to-month. All of the terms of this Lease shall be applicable during such period and Lessee shall vacate the Premises and deliver the same to Lessor upon Lessee's receipt of notice from Lessor to vacate the same. No holding over by Lessee, whether with or without consent of Lessor shall operate to extend this Lease except as herein expressly provided.

30. Estoppel Certificates. In the event that Lessor's mortgagee, or a prospective purchaser of Lessor's mortgage or of the Lessor's interest in the Lessor's Property upon which the Premises are located, shall desire a statement from Lessee as to claims against Lessor, Lessee agrees to deliver (in recordable form, if requested) to the party demanding the same, certifying (if such be the case) that this Lease is in full force and effect and that there are no defenses or offsets thereto, or stating those claimed by Lessee. Lessee also agrees, upon request, to promptly sign and deliver to the party requesting the same a Receipt of Notice of Lease Assignment in a form satisfactory to Lessor. In the event that Lessee shall fail, neglect or refuse to execute and deliver such document within ten (10) days after receipt of written notice to do so, together with the document to be executed, Lessee hereby appoints Lessor, its successors and assigns, the attorney-in-fact of Lessee irrevocably to execute and deliver any such document for and on behalf of Lessee.

31. Sale or Assignment By Lessor.

(a) Sale or Assignment Permitted. Lessor may at any time assign or transfer its interest as Lessor in and to this Lease, or any part thereof, and may at any time sell or transfer its interest in and to the whole or any portion of the Premises.

(b) Attornment. In the event of a sale or assignment by Lessor, Lessee hereby agrees to attorn to the assignee, transferee, or purchaser of Lessor from and after the date of notice to Lessee of such assignment, transfer or sale, in the same manner and with the same force and effect as though this Lease were made, in the first instance, by and between Lessee and such assignee, transferee or purchaser.

(c) Transfer of Lessor's Obligations. In the event of any assignment, transfer or sale of the Lessor's interest under this Lease other than by way of security only, the Lessor, except as hereinafter provided (and in case of any subsequent transfers or conveyances, except by way of security only, the then Grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyance of all personal liability with respect to the performance of any covenants or obligations on the part of Lessor contained in this Lease thereafter to be performed, provided that any funds in the hands of such Lessor, or the then Grantor, at the time of such assignment, transfer or sale in which Lessee has an interest shall be turned over to the transferee or grantee, and any amount then due and payable to Lessee by Lessor, or by the then Grantor, under any provisions of this Lease shall be paid to Lessee, it being intended hereby that the covenants and obligations contained in this Lease on the part of the Lessor to be kept and performed by it shall, subject as aforesaid, be binding on Lessor, its successors and assigns only during and in respect to their respective successive periods of ownership.

32. Miscellaneous Terms.

(a) No Partnership. Anything contained herein to the contrary notwithstanding, Lessor does not in any way or for any purpose become a principal or partner of Lessee in the conduct of its business or otherwise or a joint venturer or member of a joint enterprise with Lessee hereunder.

(b) Remedies Cumulative. The various rights, options, elections and remedies of Lessor and Lessee, respectively, contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Lease.

(c) Attorney's Fees. Should the Lessor engage an attorney or collection agency to collect any sums owing hereunder or institute any action or proceeding, including but not limited to any court action, to enforce any provision hereof or for damages or other relief by reason of any alleged breach of any provision hereof, Lessor shall be entitled to receive from Lessee reasonable attorney's fees or collection agency fees for the services rendered.

(d) Non-Waiver. Lessor's election not to pursue remedies available to it for breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenants or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or

condition of this Lease, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

(e) No Accord and Satisfaction. No payment by Lessee or receipt by Lessor of lesser amount than the payments required herein shall be deemed to be other than on account of the required payment, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed a full accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to pursue any remedy provided for by law in this Lease.

(f) Partial Invalidity. If any term, provision, covenant or condition of this Lease should be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

(g) Recordation. This Lease may at Lessor's option be recorded. Upon the request of Lessee, Lessor shall join in the execution of a short memorandum or so-called "short form" of this Lease for the purpose of recordation. Any such memorandum or short form of the Lease shall describe the parties, the premises and the term of this Lease, shall incorporate this Lease by reference, and shall otherwise be in form reasonably satisfactory to Lessor.

(h) Time of the Essence. Time is of the essence of this Lease and all of the terms, provisions, covenants and conditions hereof.

(i) Captions, Pronouns and Interpretation.

(1) Captions. The captions appearing at the commencement of the Paragraphs hereof, are descriptive only and intended for convenience in reference to this Lease, and should there be any conflict or inconsistency between any such caption and the text of any such Paragraph at the head of which it appears, the text of the said Paragraph, and not such caption, shall control and govern in the construction of the terms of this Lease.

(2) Pronouns. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution or substitutions.

(3) Interpretations. The laws of the State of Hawaii shall govern the validity, construction and effect of this Lease. Whenever in this Lease any words of obligation or duty are used in connection with either party, such words shall have the same force and effect as though framed in the form of express covenants on the part of the party obligated. In the event either party hereunto now or hereafter shall consist of more than one person, firm or corporation, then and in such event all such persons, firms or

corporations shall be jointly and severally liable as parties hereunder. This Lease is made and entered into for the sole protection and benefit of the Lessor and the Lessee, and their respective successors and assigns (including permitted mortgagees), and no other persons shall be entitled to claim any rights arising out of any of the terms or conditions hereof, nor shall any rights in any such third parties be implied from any of the terms or conditions hereof.

(j) Broker's Commission. There are no broker's or other commissions or finder's fees payable by either party to this Lease.

(k) Binding Effect. The terms, provisions, covenants and conditions contained in this Lease shall apply to, bind and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns (where assignment is permitted) of Lessor and Lessee, respectively.

(l) Entire Agreement. This Lease constitutes the entire agreement of Lessor and Lessee and supersedes all oral and written agreements and understandings made and entered into by the parties hereto prior to the date hereof. Except as here and otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by each of them. Without limiting the generality of the foregoing, this Lease may not be amended or modified without the written consent of all beneficiaries under any mortgages or deeds of trust constituting a lien on the fee of all or any portion of the Demised Premises. This Lease does not supersede, amend, or replace the Previous Lease, but constitutes a new and separate agreement between the parties except as otherwise stated herein.

(m) Notices. All notices to be given to either party shall be in writing and shall be delivered personally or shall be deposited in the United States mail, registered or certified, return receipt requested, addressed to the other party at its last known place of business. Any notice sent by mail shall be deemed given as of two (2) business days after mailing.

33. Arbitration and Dispute Resolution. In the event of a dispute arising out of this Lease, the parties agree to submit such dispute to binding arbitration before a single arbitrator, in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

34. Counterpart Signatures. This Lease may be executed by the parties in separate instruments or in one and the same instrument. Signature and notary pages from separate signed copies may be attached to a single copy for purposes of recording.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first above written.

LESSOR:

NATIONAL TROPICAL BOTANICAL GARDEN,
a federally chartered corporation

By: _____
CHARLES R. WICHMAN, JR.
Its Director and CEO

LESSEE:

MA KA HANA KA 'IKE, a Hawaii non-profit
corporation

By: _____
Name:
Its:

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this _____ day of _____, 20____, before me appeared CHARLES R. WICHMAN, JR., to me personally known, who, being by me duly sworn, did say that he is the Director and CEO of NATIONAL TROPICAL BOTANICAL GARDEN, a federally chartered corporation, and that the foregoing LEASE AGREEMENT dated _____, 20____, which document consists of _____ page(s), was signed in behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

Name of Notary:
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: _____

DRAFT

STATE OF HAWAII)
) SS:
COUNTY OF MAUI)

On this _____ day of _____, 20____, before me appeared _____, to me personally known, who, being by me duly sworn, did say that _____ is the _____ of MA KA HANA KA 'IKE, a Hawaii non-profit corporation, and that the foregoing LEASE AGREEMENT dated _____, 20____, which document consists of _____ page(s), was signed in behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

Name of Notary:
Notary Public, Second Judicial Circuit,
State of Hawaii.

My commission expires: _____

Exhibit A

Lease Area

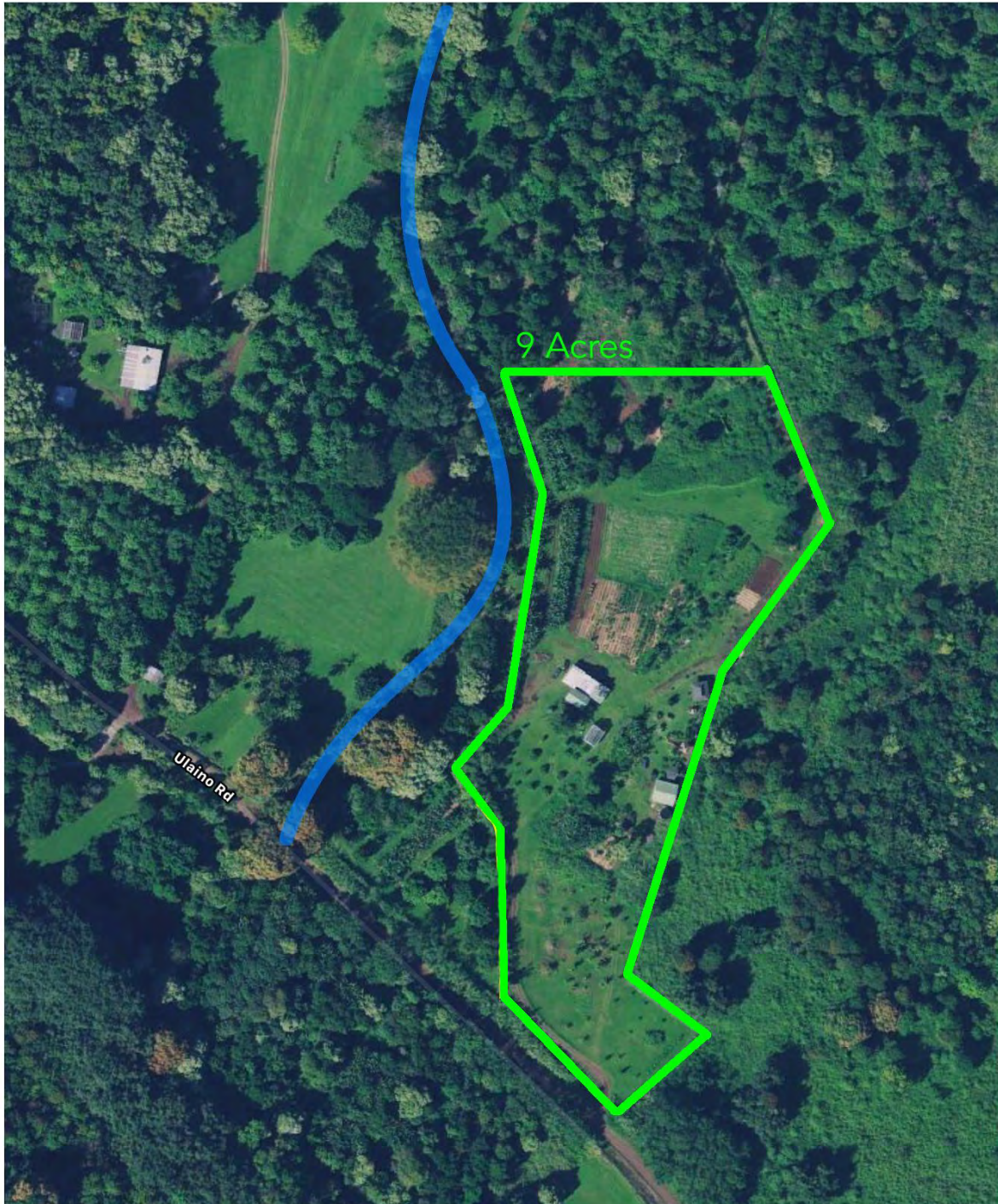


Exhibit A

— Mahele Farm
— Stream



Exhibit B

State of Hawai'i Legacy Land Conservation Program Grant Agreement
Contract Number 57148

SEE EXHIBIT I - APPROVE TWO DISPOSITIONS OF LAND
THAT WAS ACQUIRED WITH A GRANT FROM THE LAND
CONSERVATION FUND

EXHIBIT IX – Proposed Cancellation of Lease
CANCELLATION OF LEASE

This Cancellation of Lease, is made as of this ____ day of _____, 2018 by and between NATIONAL TROPICAL BOTANICAL GARDEN, a federally chartered corporation, whose mailing address is 3530 Papalina Road, Kalaheo, Kauai, Hawaii 96741, hereinafter referred to as "Lessor", and MA KA HANA KA 'IKE, a Hawaii non-profit corporation, whose mailing address is P. O. Box 968, Hana, Maui, Hawaii 96713, hereinafter referred to as "Lessee".

WITNESSETH THAT:

WHEREAS, Lessor and Lessee entered into that certain unrecorded Lease Agreement (the "Lease") dated December 1, 2014, covering that certain parcel of land situate at West Honomalee, Hana, Island and County of Maui, State of Hawaii, being a portion of Lessor's property designated as TMK No. (2) 1-3-002-001 and being more fully described therein; and

WHEREAS, the parties now wish to cancel and forever terminate the Lease.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) to each party paid by the other, and in consideration of the mutual covenants and conditions contained herein, the Lessor and Lessee agree:

1. Lessor and Lessee hereby cancel and terminate the Lease, such cancellation being effective as of the date of this instrument as stated above.
2. Lessor hereby releases and discharges Lessee from all of Lessee's obligations under the Lease, and Lessee hereby releases and discharges Lessor from all of Lessor's obligations under the Lease.

This Cancellation of Lease may be executed in counterparts. Each counterpart shall be executed by one or more of the parties hereinbefore named and the several counterparts shall constitute one instrument to the same effect as though the signatures of all the parties are upon the same document.

[signatures appear on next page]

EXHIBIT IX – Proposed Cancellation of Lease

IN WITNESS WHEREOF, Lessor and Lessee have executed this Cancellation of Lease on the date first above written.

LESSOR:

NATIONAL TROPICAL BOTANICAL GARDEN,
a federally chartered corporation

By _____
CHARLES R. WICHMAN, JR.
Its Director and CEO

LESSEE:

MA KA HANA KA 'IKE, a Hawaii non-profit
corporation

By _____
Name:
Its:

EXHIBIT IX – Proposed Cancellation of Lease

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this _____ day of _____, 20____, before me appeared CHARLES R. WICHMAN, JR., to me personally known, who, being by me duly sworn, did say that he is the Director and CEO of NATIONAL TROPICAL BOTANICAL GARDEN, a federally chartered corporation, and that the foregoing CANCELLATION OF LEASE dated _____, 20____, which document consists of _____ pages, was signed in behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

Name of Notary:
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: _____

STATE OF HAWAII)
) SS:
COUNTY OF MAUI)

On this _____ day of _____, 20____, before me appeared _____, to me personally known, who, being by me duly sworn, did say that _____ is the _____ of MA KA HANA KA 'IKE, a Hawaii non-profit corporation, and that the foregoing CANCELLATION OF LEASE dated _____, 20____, which document consists of _____ pages, was signed in behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

Name of Notary:
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: _____

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is dated this 1st day of December, 2014, and is entered into by and between NATIONAL TROPICAL BOTANICAL GARDEN, a federally chartered corporation, whose mailing address is 3530 Papalina Road, Kalaheo, Kauai, Hawaii 96741, hereinafter called "Lessor," and MA KA HANA KA 'IKE, a Hawaii non-profit corporation, whose mailing address is P. O. Box 968, Hana, Maui, Hawaii 96713, hereinafter called "Lessee".

RECITALS:

A. One of the primary missions of Lessor is to enrich life through discovery, scientific research, conservation and education by perpetuating the survival of plants, ecosystems and cultural knowledge of tropical regions.

B. Lessor owns and operates Kahanu Garden and Preserve, a branch botanical garden nested in the community of Hana, Hawaii to serve Lessor's mission through its Hawaiian and Pacific ethnobotanical collections, significant cultural sites, and native habitat.

C. Lessor has acquired the parcel of land identified below through the State of Hawaii's Legacy Land Conservation Program for the purposes of adding a significant landholding to Kahanu Garden and Preserve and carrying out the Lessor's mission.

D. Lessee is a non-profit organization whose mission is to provide Hana's youth with a way to learn that makes sense to them, that builds their self-esteem and shows them they have the power to change their futures.

E. Lessor and Lessee wish to operate a joint program under the name of "Mahele Farm", in an effort to develop a sustainable agricultural use of the Premises that would benefit the Hana community and enhance the operations of Kahanu Garden and Preserve, both consistent with the missions of the parties' respective organizations. This use is deemed by Lessor and Lessee to be consistent with and in furtherance of the Legacy Land Conservation Program grant objectives and will enhance the impact of Kahanu Garden in achieving the goals and principals stated herein.

F. The overlap of the parties' missions includes enriching life through discovery, conservation, and education of the host Hana community through the growing and eating of food plants that include important ethnobotanical collections of ulu (breadfruit), kalo (taro), maia (banana) and uala (sweet potato) using and perpetuating the cultural subsistence knowledge of the region.

AGREEMENT:

In consideration of the foregoing Recitals and the covenants and agreements herein contained and on the part of Lessee to be observed and performed, and upon and subject to all of

the terms and conditions hereinafter set forth, the Lessor hereby demises and leases unto the Lessee, and the Lessee does hereby lease and accept from the Lessor, the property and area (hereinafter sometimes referred to as the "Premises" or "Demised Premises"), as shown on Exhibit "A" attached hereto and incorporated herein by this reference, located at West Honomaele, Hana, Island and County of Maui, State of Hawaii, being a portion of Lessor's property designated as TMK No. (2) 1-3-002-001 (hereinafter referred to as the "Lessor's Property"). The Premises are outlined in black on Exhibit "A" to this Lease but do not include the portion outlined in yellow.

TOGETHER WITH reasonable non-exclusive vehicular access to and from the Premises from Ulaino Road along a roadway, which roadway is shown on Exhibit "A" to this Lease as a red line.

TOGETHER ALSO WITH all improvements currently located on the Premises, including but not necessarily limited to a small compost shed, an equipment shed/garage, a shower house, a composting toilet house with ramp, a covered lanai structure and a multi-use structure which includes two sheds used for storage with a covered breezeway with outdoor kitchen and accessory bamboo hale.

TO HAVE AND TO HOLD THE SAME, together with all improvements, tenements, rights, easements, privileges and appurtenances thereon or thereunto belonging or appertaining, unto the Lessee, for the term and upon the other conditions hereinafter set forth.

THIS LEASE is on the following terms and conditions:

1. Term.

(a) The term of this Lease (the "Lease Term") shall be for a period of six (6) years commencing on December 1, 2014 (the "Commencement Date") and continuing through November 30, 2020.

(b) Extensions of Lease Term. If Lessee is not in default at the end of the Lease Term, the Lease Term may be automatically extended for consecutive terms of one (1) year each unless either party elects to terminate the Lease by giving written notice of termination to the other party not less than one (1) year prior to the then-effective expiration date. The Lease as so extended shall be upon the same terms and conditions contained herein except as may be otherwise stated herein or agreed by the parties. It shall not be required that either party must give any notice, written or otherwise, to the other party in order to invoke the automatic extension of the Lease Term.

2. Rent.

(a) Annual Rent, Conveyance and General Excise Tax.

(1) Annual Rent. Lessee shall pay the sum of One Dollar (1.00) annually as rent during the Lease Term. Payment shall be made on or before the first day of each Lease year during the Lease Term.

(2) State Conveyance Tax. Lessee shall pay if and when due any Conveyance Tax imposed by the State of Hawaii on this Lease.

(3) General Excise Tax. Lessee shall pay to Lessor, together with each payment of any nature required hereunder which is subject to the State of Hawaii general excise tax on gross income, as it may be amended, and all other similar taxes imposed on Lessor on said payments in the nature of a gross receipts tax, sales tax, privilege tax or the like (excluding federal or state net income taxes) whether imposed by the United States of America, State of Hawaii or the County of Maui, an amount which, when added to such payment, shall yield to the Lessor, after deduction of all such taxes payable by Lessor with respect to all such payments, a net amount equal to that which Lessor would have realized from such payments had no such tax been imposed (the current net excise tax rate is 4.166% of Lessor's gross income).

(b) Security Deposit. Not applicable.

(c) Place of Payment. All monies required to be paid by Lessee hereunder shall be paid to Lessor without deduction or offset, prior notice or demand, in lawful money of the United States of America at such place as Lessor may from time to time designate in writing. Until otherwise noticed to Lessee, monies shall be paid to Lessor at 3530 Papalina Road, Kalaheo, Kauai, Hawaii 96741.

(d) No Set-Off By Lessee. Lessee's obligation to pay all charges hereunder shall be independent of any obligation, liability, or alleged default of Lessor, and of any expense or cost incurred by Lessee, and in no event shall Lessee be entitled to deduct or set-off, in any amount or in any manner, any actual or alleged obligations or liabilities of Lessor to Lessee or any expense or cost incurred by Lessee hereunder, or related to the premises, unless Lessor consents to the proposed deduction or set-off in advance and in writing. Lessor shall have no obligation to consent to the same. Any claim or action by Lessee against Lessor arising hereunder shall be pursued separate and apart from any action by Lessor to enforce Lessee's payment obligations hereunder.

3. Purpose of Lease and Use of Premises.

(a) General Use Rules. Lessee shall at all times during the term of this Lease, at its sole cost and expense:

(1) To the extent of Lessee's use of the Premises, maintain the Premises in a clean, neat, sanitary and orderly condition consistent with the highest standards of

animal husbandry and agriculture normally observed on the Island of Maui, State of Hawaii;

(2) Comply with all governmental rules, regulations, ordinances, statutes and laws now or hereafter in effect pertaining to the Premises or Lessee's use thereof. All licenses, permits, variances, certificates, releases or similar clearances required by any governmental authority pertaining to Lessee's use of the Premises shall be obtained by Lessee at its sole cost and expense;

(3) Refrain from dumping, disposal, reduction, incineration or other burning of any trash, papers, refuse or garbage of any kind in or about the Premises;

(4) Immediately remove all trash and garbage from and within the Premises that is generated by Lessee's or Lessee's guests' or invitees' use of the Premises;

(5) Refrain from using or permitting the use of the Premises or any portion thereof as living quarters, sleeping quarters or lodging rooms, provided that occasional camping shall be allowed; and

(6) Refrain from committing or suffer to be committed any strip or waste upon, or any unlawful, improper or offensive use of the Premises or any public or private nuisance or act or thing which may disturb the quiet enjoyment of the areas and occupants of other premises in the vicinity of the Premises.

(b) Lessee's Use of Premises and Other Obligations. During the Lease Term:

(1) Lessee shall conduct farming and related activities on the Premises under the name of "Mahele Farm." Lessee shall have the exclusive use of the Premises, subject to the provisions of this Lease for Lessor's occasional use of the Premises as more fully detailed below. Lessee shall also be allowed to use the Premises for short-term camping for its volunteers and employees in connection with collaborative groups participating in Lessee's programs.

(2) Lessee shall be responsible for, and shall keep a complete set, of all keys for the gate lock at the entrance to the Premises. Lessor shall be provided with a complete set of the gate lock at the entrance to the premises. Lessee shall not unreasonably prevent or interfere with authorized access to and use of the road that traverses the Premises by Lessor or Lessor's authorized representatives, lessees or invitees.

(3) Representatives of Lessee and Lessor shall meet regularly to continue their collaborative work at Mahele Farm and keep all parties involved and apprised of decision-making processes regarding Mahele Farm operations.

(4) Lessee's leadership at Mahele Farm shall maintain regular communication with the Kahanu Garden Director about upcoming activities and programs taking place on the Farm. Farm reports, in the form of quarterly and annual grant reports, will be provided to the Kahanu Garden Director upon request.

(5) The parties agree that a shared calendar shall be maintained during the Lease Term that schedules the use of the facilities on the Premises for educational groups and for camping purposes as well as other activities engaged in by both Lessor and Lessee as more fully described in sub-paragraph (c) below. Each party agrees to cooperate with the other in developing and maintaining the shared calendar.

(6) Lessee agrees to acknowledge Lessor as a collaborative party on all signage and printed materials produced or created by Lessee regarding Mahele Farm.

(7) At all times during the Lease Term Lessee shall maintain its good standing as a Sec. 501(c)(3) tax-free entity under applicable Internal Revenue Code provisions. Lessee shall provide Lessor with annual written evidence of its good standing as a Sec. 501(c)(3) entity, which evidence may be a copy of Lessee's annual IRS Form 990.

(c) Lessor's Use of Premises. The parties understand and agree that the following uses and provisions shall apply to Lessor's occasional use of portions of the Premises:

(1) Lessor and its authorized agents, employees, lessees and invitees shall continue to enjoy use of the roadway that traverses the Premises as shown on Exhibit "A" to this Lease at such times and for such purposes as Lessor shall determine or authorize, provided that no use of the roadway will unreasonably interfere with Lessee's use of the Premises.

(2) Lessor shall have the right to use the Premises (including the facilities located thereon) for up to thirty (30) calendar days per calendar year, or portion thereof, during the Lease Term for Lessor's interns and other authorized groups to camp. Requests for additional use days may be considered but are not guaranteed. This use shall be scheduled on the shared calendar referenced in sub-paragraph (b)(5) above.

(3) In addition to the camping use described in the preceding paragraph, Lessor shall retain the right to use the Premises for its Kulia I Ka Pono summer program and other educational programs operated by Lessor. Access and use regarding such activities shall be coordinated between Lessor and Lessee's farm manager and shall be scheduled on the shared calendar.

(4) In addition to Lessor's uses described above, Lessor shall retain the right to construct and operate a "weather port" or similar facility, together with reasonable appurtenant facilities, at a mutually-agreed site on the Premises, which will be used by Lessor to facilitate and enhance the use of the Premises by Lessor's interns or other

authorized persons. All costs associated with the weather port shall be Lessor's responsibility.

4. Quiet Possession. Lessor agrees that Lessee upon paying all payments herein required from Lessee, and upon Lessee's performance of all of the provisions, covenants and conditions of this Lease on its part to be kept and performed, may quietly have, hold and enjoy the Premises during the Lease Term subject to the terms and conditions contained in this Lease.

5. Possession of Premises.

(a) Acceptance of Premises. Except as may be otherwise provided, Lessee shall by entering into and occupying the Premises be deemed to have accepted the Premises in their "as is" condition and to have acknowledged that the same are then in the condition called for by this Lease, and are in good order, condition and repair. Lessee hereby agrees and acknowledges that Lessor has not made and will not make any representation or warranty, implied or otherwise, with respect to the condition of the Premises, the facilities located thereon, or the access road, and that Lessee will use and enjoy the Premises, all facilities, and the access road in their "as is" condition. Lessee enters into this Lease with full assumption of the risks, and consequences thereof, and the absence of any such warranty or representation by Lessor.

(b) Surrender of Premises. Upon the expiration or sooner termination of the term of this Lease (and whenever in this Lease reference is made to the term of this Lease or the term hereof such reference shall include any extension or renewal of the term of this Lease) Lessee shall thereupon surrender the Premises in the same condition as they were on the commencement date of this Lease, reasonable wear and tear (including damage thereto which Lessee is not required to repair) excepted and damage or other conditions not caused by Lessee or Lessee's guests or invitees excepted. Upon expiration or sooner termination of the Lease Term Lessee shall promptly remove any property of Lessee that is located on the Premises ("Lessee's Property"). In the event Lessee shall fail to remove any of Lessee's Property as provided herein, Lessor may, but is not obligated to, at Lessee's expense, with interest at the rate of eighteen percent (18%) per annum or the maximum allowed under Hawaii law, whichever is less, from the date of payment by Lessor, remove all of Lessee's Property not so removed and repair all damage to the Premises resulting from such removal and may, but is not obligated to, at Lessee's expense, store the same in any public or private warehouse, and Lessor shall have no liability to Lessee for any loss or damage to Lessee's Property caused by or resulting from such removal or otherwise.

6. Repairs and Maintenance. Lessee shall at all times keep and maintain the Premises, improvements, additions and fixtures located on the Premises in good repair, order and condition and in a strictly clean and sanitary condition, all solely to the extent of Lessee's or Lessee's guests' or invitees' use of the Premises; PROVIDED, HOWEVER, that Lessor and not Lessee shall be responsible for all maintenance and repair of fence lines on or surrounding the Premises unless the maintenance or repair is due to the action, inaction, negligence or willful misconduct of Lessee or its employees, representatives, invitees or participants. Lessee will comply with all applicable laws, rules and regulations relating to health and safety. Lessee will not do or suffer any acts or

carry on any practices that may injure the Premises, or become a nuisance or menace to others. Except as otherwise provided herein, Lessee will not mark, paint, drill or in any way deface the Premises, including any outside wall, wood, stone or iron work or permit or suffer the same to be done without the prior written consent of Lessor.

7. Construction and Alterations. Lessee shall be allowed to construct any new structures on the Premises, or to alter any existing structure on the Premises, with Lessor's prior written approval, which approval shall not be unreasonably withheld. Lessor shall have the right to inspect Lessee's plans and specifications for any new structure prior to approving or disapproving the new structure. All construction or alteration on the Premises shall be done with all required permits or other governmental authorizations or approvals, copies of which shall be delivered to Lessor prior to commencement of construction. All construction or alteration of structures shall be done at Lessee's sole cost and expense unless otherwise agreed in writing by the parties.

8. Lessor's Construction. In the event Lessor is required or elects to construct any improvements, alterations or repairs in or around the Premises, Lessee shall not be entitled to any abatement of rent or other claim or compensation from Lessor due to any inconvenience or annoyance resulting from the same, and Lessee shall cooperate as reasonably necessary or as reasonably requested by Lessor with any temporary inconvenience or annoyance due to the same.

9. Signs, Etc.. Lessee shall not erect, install, paint or inscribe on any portion of the Premises any signs, awnings, canopies, shades, lettering, placards, banners, or other advertising media without the prior written consent of Lessor.

10. Real Property Taxes. Lessee shall not be liable for payment of any portion of the real property taxes attributable to the Premises.

11. Payment of Utility Charges. Lessee shall be responsible for payment of any and all utility charges related to Lessee's use of the Premises.

12. Indemnities.

(a) Lessee's Indemnity Obligations. Lessee shall indemnify Lessor and Lessor's Affiliates (defined below) against and shall defend and hold Lessor and Lessor's Affiliates harmless from any and all claims, actions, damages, liabilities and expenses (collectively "Liabilities") in connection with loss of life, personal injury and/or damage to property arising from or out of Lessee's use of the Premises during the Lease Term, or occasioned wholly or in part by any act or omission of Lessee or Lessee's Affiliates, or consequent upon or arising from any failure by Lessee to comply with and conform to all laws, statutes, codes, ordinances and regulations of the United States, the State of Hawaii and the County of Maui, now or hereinafter in force and applicable to the use of the Premises. If Lessor shall, without fault on its part, be made a party to any litigation commenced by or against Lessee, then Lessee shall protect and hold Lessor harmless against, and shall pay all costs, expenses and reasonable attorney's fees and damages incurred or paid by Lessor in connection with, such litigation, and shall pay any final judgment

which may be recovered against Lessor or against the Premises on account thereof. The foregoing Lessee indemnity and other obligations will not apply to any Liabilities to the extent such Liabilities arise out of or are based on, caused by, connected to, or related to Lessor's negligence, misconduct, or breach of this Lease. "Affiliates" means a party's trustees, successor trustees, directors, officers, shareholders, managers, members, partners, incorporators, organizers, agents, employees, attorneys, consultants, advisors, lenders, representatives, contractors, servants, concessionaires, brother/sister companies, parent companies, subsidiary companies, cousin and other related companies, and other affiliates.

(b) Lessor's Indemnity Obligations. Lessor shall indemnify, defend, and hold harmless Lessee and Lessee's Affiliates from and against any and all Liabilities based on, arising out of, caused by, connected to, or related to Lessor's and/or Lessor's Affiliates' use of the Premises, negligence, willful misconduct, or breach of this Lease. The foregoing Lessor indemnity and other obligations will not apply to any Liabilities to the extent such Liabilities arise out of or are based on, caused by, connected to, or related to Lessee's or Lessee's Affiliates' negligence, misconduct, or breach of this Lease.

13. Insurance.

(a) General Requirements. Lessee will, at its own expense, at all times during said term of this Lease, keep in force policies of insurance as required in this Lease. All policies shall be issued by insurance companies licensed to do business in the State of Hawaii and reasonably acceptable to Lessor. All insurance policies shall contain an endorsement specifically naming Lessor as an additional insured party, and shall be primary to any other insurance that may be available to Lessor. Lessee will provide Lessor with current certificates of such insurance, including a copy of all additional insured endorsements, on or before the effective date of this Lease, and will provide true and complete copies of such insurance policies upon Lessor's request.

(b) Waiver of Subrogation. For the purpose of waiver of subrogation, the parties mutually release and waive unto the other all rights to claim damages, costs or expenses for any damages to property caused by a casualty of any type in, on or about the Premises if the amount of such damage, cost or expense has been paid to such damaged party under the terms of any policy of insurance. To the extent that such injury to persons or property is in fact covered by insurance, each party shall cause its insurance carriers to consent to such waiver.

(c) Liability Insurance. Lessee shall maintain commercial general liability insurance for the Premises and any business operations conducted by Lessee, its employees, representatives, volunteers, participants, independent contractors, concessionaires and sublessees, if any. Said insurance shall provide coverages for bodily injury and property damage liability; premises operations; broad form property damage; personal and advertising injury liability; blanket contractual liability; independent contractor's liability; and fire legal liability. If Lessee or its independent contractor(s) engage in any construction, demolition or excavation operations, all policies covering these operations shall be endorsed to provide coverages for explosion, collapse and underground hazards. The policy or policies of insurance shall provide coverage on an

"occurrence" basis (not on a "claims made" form) and shall provide limits of no less than Two Million Dollars (\$2,000,000.00) per occurrence and not less than Two Million Dollars (\$2,000,000.00) in the aggregate, and the limit of property damage liability thereunder shall not be less than \$100,000.00 per occurrence. Lessor may from time to time require, with due regard to prevailing prudent business practices, that these limits be increased or that additional liability coverages be provided, as may be reasonably adequate for Lessor's protection.

(d) Insurance on Lessee Improvements, Fixtures and Equipment. Lessee shall procure and maintain insurance for the full replacement value of all of lessee's improvements, fixtures and equipment on the Premises.

(e) Worker's Compensation Insurance. Lessee shall at all times during the Lease Term procure and maintain a Worker's Compensation policy covering any employees of Lessee against workplace injuries or death, in such amounts and on such terms as Lessor may reasonably approve.

(f) Fire Insurance; Increase in Premiums. Lessor shall at all times during the term of this Lease procure and maintain a policy covering the Premises against loss due to fire and other casualties normally insured against in the County of Maui, State of Hawaii, with limits sufficient to cover the full replacement cost of buildings occupied by Lessee. In the event Lessee engages in any conduct or keeps or uses in or upon the Premises any article which may cause an increase in the premiums for such insurance, Lessee shall be liable for the full amount of the increased premium and the full amount of any escalation in the amount of such increased premium during the term of this Lease.

(g) Blanket Policy. Notwithstanding anything to the contrary contained within this Paragraph 13, the Lessee's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by the Lessee, provided however, that the Lessor shall be named as an additional insured thereunder and that the coverage afforded the Lessor will not be reduced or diminished by reason of the use of such blanket policy of insurance, and provided further that the requirements set forth herein are otherwise satisfied. The Lessee agrees to permit the Lessor at all reasonable times to inspect the policies of insurance of the Lessee covering risks upon the Premises for which policies or copies thereof are not required to be delivered to the Lessor.

14 Hazardous Materials.

(a) Restriction on Use of Hazardous Materials. Lessee shall comply with all governmental requirements, including without limitation all governmental requirements relating to human health, the environment, waste disposal, air or wastewater emissions, occupational safety and health and the handling of Hazardous Materials (defined below) at the Premises. Lessee agrees to indemnify, defend and hold Lessor and its officers, partners, directors, shareholders, employees and agents harmless from any claims, judgments, damages, fines, penalties, costs (including attorney, consultant and expert fees); liabilities (including sums paid in settlement of

claims) or loss which arise during or after the Initial Term or Extension Term, in connection with the presence of Hazardous Materials in the soil, groundwater, or soil vapor on or under the Premises to the extent the same are present as the result of the acts of Lessee, its officers, employees, contractors, servants or agents, during the Initial Term or the Extension Term, and also during the term of the Previous Lease.

(b) Notification. Lessee shall give written notice to Lessor within five business days after Lessee learns (1) there has been or will come to be located on the Premises any Hazardous Material which requires a permit or license from any governmental agency and the permit or license has not been obtained or is not in effect, (2) an event involving the release of a Hazardous Material onto, within or under the Premises has occurred, (3) an environmental damage claim has been made, or (4) any report, notice, or complaint has been made to or filed with any governmental agency concerning the presence, use, disposal, or release of any hazardous materials on the Premises during the Term. The notice to Lessor shall describe the event giving rise to the notice and be accompanied by copies of any claim, report, complaint, notice, warning, or other communication that is in the possession of or is reasonably available to Lessee. Thereafter, within five business days of receipt or transmission, Lessee shall provide Lessor with a copy of all documents received by Lessee, or sent by Lessee to, any governmental agency relating to such report, notice, or complaint.

Lessor shall have the right but not the obligation to join and participate, as a party, if it so elects, in any actions initiated in respect of any environmental damage claim. Except in emergencies or as otherwise required by law, Lessee shall not take any remedial action in response to the presence or release of any Hazardous Material on or about the Premises without first giving written notice of such action to Lessor. Lessee shall not enter into any settlement agreement, consent decree, or other compromise with respect to any environmental damage claim in any way relating to the Premises without first notifying Lessor, affording Lessor the opportunity to participate in any such proceedings, and obtaining Lessor's written consent, which latter may not be unreasonably withheld, delayed, or conditioned.

(c) Lessor's Representations, Warranties, and Covenants. To Lessor's knowledge (meaning the knowledge of its directors and officers, each a ("**Manager**")), after due investigation and after consultation with employees or other persons whom each such Manager may in such Manager's reasonable judgment have knowledge of the matters set forth in this Paragraph 14:

(i) Lessor has complied with all Laws concerning the environment, public health and safety, and employee health and safety, and no charge, complaint, action, suit, proceeding, hearing, investigation, claim, demand, or notice has been filed or commenced against Lessor in connection with Lessor's ownership, occupancy or operation of the Premises, alleging any failure to comply with any such Law. In particular and without limitation, Lessor is not in violation of any Hazardous Materials Laws (defined below).

(ii) Lessor has not buried, spilled, leaked, discharged, emitted, generated, stored, used or released any Hazardous Material, on or under the Premises in such forms or quantities as to create any liability or obligation under the common law or any Hazardous Materials Laws, and to the knowledge of Lessor, no other party has buried, spilled, leaked, discharged, emitted, generated, stored, used or released any Hazardous Materials in, on or under the Premises in such forms or quantities as to create any liability or obligation under the common law or any Hazardous Materials Laws. The soil, groundwater, and soil vapor on or under the Premises was free of Hazardous Materials as of the Effective Date of the Previous Lease.

(iii) Lessor has not received notice of any alleged violation of any Hazardous Materials Laws or liability for any release of any Hazardous Material in connection with the occupancy or use of the Premises, and there exists no writ, injunction, decree, order or judgment outstanding, nor any lawsuit, proceeding, citation, summons or governmental agency investigation relating thereto.

(iv) Lessor is not in violation nor has received notice of any alleged violation of the Occupational Safety and Health Act, as amended, or under any other law, rule, or regulation of any federal, state, or local government (or agency thereof) concerning employee health and safety.

(v) Lessor agrees to indemnify, defend and hold Lessee and its officers, partners, directors, shareholders, employees and agents harmless from any claims, judgments, damages, fines, penalties, costs (including attorney, consultant and expert fees), liabilities (including sums paid in settlement of claims) or loss which arise during or after the Initial Term or the Extension Term, in connection with the presence before the Effective Date of the Previous Agreement of Hazardous Materials in the soil, groundwater, or soil vapor on or under the Premises. Without limiting the generality of the foregoing, this indemnification shall survive the expiration of this Lease and does specifically cover costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of the presence of Hazardous Materials in the soil, groundwater or soil vapor on or under the Premises. Without limiting the generality of the foregoing, this indemnification shall also specifically cover costs in connection with:

(a) Hazardous Materials present in the soil, ground water or soil, ground water or soil vapor on or under the Premises before the Effective Date of the Previous Lease; or

(b) Hazardous Materials that migrate, flow, percolate, diffuse or in any way move onto or under the Premises after the Effective Date of the Previous Lease which are not the result of Lessee's use or occupation of the Premises.

(vi) If, during the term of this Lease, any governmental authority requires the investigation, remediation and/or monitoring of Hazardous Materials at the Premises

for which Lessor is liable to Lessee under this Paragraph 14, and such investigation, remediation, or monitoring adversely affects Lessee's business operations or poses a safety threat to Lessee's employees or customers, then Lessee shall be entitled to receive an equitable abatement of rent from the date such interference or safety hazard occurs to the date such interference and safety hazard are no longer present.

(d) Material Default. Any default under this Paragraph 14 shall be material default enabling the non-defaulting party to exercise any of the remedies provided in this Lease, as long as the defaulting party has not cured such material default within thirty (30) days of receiving written notice of such material default by the non-defaulting party. But if the material default is of such a nature that it cannot be cured within such 30-day period, the defaulting party shall not be deemed in default if it commences to cure such default within the 30-day period, and thereafter diligently and in good faith pursues the completion of its curative actions.

(e) Continuing Obligation. The obligations of the parties under this Paragraph 14 shall survive any termination or expiration of this Lease and any conveyance by Lessor of its interest in the Premises, and shall continue in full force and effect.

(f) Definitions.

(i) **"Hazardous Materials"** means and includes, but are not limited to: (a) any waste, material or substance (whether in the form of a liquid, a solid, or a gas, and whether or not air-borne), which is deemed to be a pollutant or a contaminant, or to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious to public health or to the environment, and which is or may become regulated by or under the authority of any applicable local, state or federal laws, judgments, ordinances, orders, rules, regulations, codes or other governmental restrictions or requirements, any amendments or successor(s) thereto, replacements thereof or publications promulgated pursuant thereto; (b) petroleum or any petroleum product; (c) asbestos; (d) any polychlorinated biphenyl; (e) any radioactive material; and (f) any other material defined as a "Hazardous Material" under the Previous Lease.

(ii) **"Hazardous Materials Laws"** means "Environmental Laws" as that term is defined in the Previous Lease, as well as all federal, state and local laws, ordinances and regulations in force from time to time regarding and applicable to the management and disposal on, under or about the Demised Premises of Hazardous Materials (as defined hereinbelow) under any such federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 6901, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C.

Sections 300f through 300j, and any state and local laws and ordinances and the regulations now or hereafter adopted, published and or promulgated with respect to Hazardous Materials.

15. Noise, etc. Lessee shall not, without the written consent of Lessor, use in or about the Premises any searchlights, loud speakers, phonographs, or other similar visual or audio media, and Lessee shall not make any commercial use of the Premises.

16. Condemnation.

(a) Total or Partial Condemnation; Damages. If at any time or times during the Lease term any authority having the power of eminent domain shall condemn the Premises or any part or parts thereof for any public use or otherwise, then and in every such case the estate or interest of Lessee in said premises or such part or parts, as the case may be, shall thereupon cease and determine, and Lessee shall not by reason of such condemnation be entitled to claim or receive any portion of the compensation or damages paid or to be paid by reason of such condemnation, but the entire amount thereof shall be the sole property of Lessor; provided, however, that if any condemnation (or purchase in lieu thereof) shall result in the permanent loss of all or any part of the improvements constructed by Lessee on the Premises, such compensation as shall represent the value thereof shall be applied first to repairing or restoring any such improvements not taken (or purchased in lieu thereof), and the remainder, if any, shall be divided between Lessor and Lessee. Lessee's share of such remainder shall be a fraction thereof, the numerator of such fraction to be the period of time remaining on the entire term of this Lease (excluding any optional extension periods) as of the date Lessee loses possession and the denominator of such fraction to be the entire term of this Lease (excluding any optional extension periods). Lessor's share of such remainder shall be the balance thereof. Lessee shall have the right to claim and recover from the condemning authority, but not from Lessor, such compensation as may be separately awarded or recoverable by Lessee, in Lessee's own right, on account of any expense which Lessee might incur or loss which Lessee might suffer in removing Lessee's merchandise, furnishings, fixtures and equipment from the demised premises, or for loss of income or business opportunity. In case a part only of the Premises shall be so condemned and taken, the rent herein reserved shall be equitably reduced to reflect the loss of leasable area and improvements due to the taking; provided, however, that if Lessee reasonably determines that due to the partial taking Lessee cannot continue to conduct its normal business activities on the Premises, Lessee shall be entitled to terminate this Lease no later than the date of the partial taking, by delivering to Lessor written notice of termination.

(b) Condemnation of Leasehold Interest. If a leasehold interest in the Premises only shall be condemned or taken under power of eminent domain, this Lease shall not be terminated nor shall Lessee be excused from full performance of its covenants for the payment of money or any other obligations hereunder capable of performance by Lessee, but in such event Lessee may claim and recover from the condemning authority all compensation and damages payable on account of Lessee's leasehold interest in the Premises.

(c) Voluntary Sale Under Threat of Condemnation. For all purposes under this Paragraph, a voluntary sale of all or any part of the Premises by Lessor to any authority having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed to be a taking under the power of eminent domain.

17. Destruction of Demised Premises. In the event of a partial or total destruction of the Premises from any cause whatsoever, Lessor shall promptly cause the same to be rebuilt or repaired to substantially the same condition as the Premises were in prior to such casualty (excluding, however, any improvements, additions, fixtures, alterations, decorations, installations, furniture, furnishings, equipment or machinery made, installed or placed by Lessee in or upon the Premises) unless, in Lessor's reasonable discretion, Lessor determines that it would be uneconomical or impossible to rebuild or repair the same, in which event this Lease shall terminate as of the date of such destruction upon written notice given by Lessor to Lessee of its intention not to rebuild or repair, such notice to be given within sixty (60) days from the date of such destruction. In the event the Premises cannot reasonably be repaired or restored within three hundred sixty (360) days of the date of such casualty, Lessee shall have the right to terminate this Lease as of the date of written notice of such termination being delivered from Lessee to Lessor. In the event of such termination, Lessee shall forthwith surrender the Premises and shall be relieved of all liability further accruing after the date of termination, and Lessor shall have no further liability or obligation hereunder except as otherwise specifically provided herein. In the event Lessor rebuilds and repairs the Premises, all amounts payable hereunder shall continue to be due and owing, and Lessee shall, at its option, make a claim for any such payments pursuant to any business interruption or other such insurance available to Lessee. No compensation or claim will be allowed by or brought against Lessor by reason of inconvenience or annoyance arising from reconstructing, repairing, altering or improving any portion of the Premises after any casualty described herein.

18. Assignment and Subletting. It is of the essence of this Lease that, except as otherwise specifically provided herein and excepting any successor owner of Lessee's property identified herein, Lessee shall not assign, sublease or mortgage this Lease or sublet the whole or any part of the Premises or any of the Lessee's rights hereunder to any party without the prior written consent of the Lessor, which consent need not be given by Lessor. No such assignment or sublease shall release the Lessee from any of the Lessee's obligations under this Lease and any such assignment or sublease shall be specifically made and therein stated to be made subject to all the terms, conditions and covenants of this Lease. The granting by the Lessor of its consent to any assignment, subletting, occupancy, or use by any other person, shall not be deemed to be a consent to any subsequent assignment, subletting, occupancy or use by any other person. Any assignment or subletting without consent shall be void, and shall, at the option of the Lessor, terminate this Lease. This Lease shall not, nor shall any interest herein, be assignable, as to the interest of the Lessee, by operation of law, without the written consent of the Lessor.

19. Inspection and Entry by Lessor.

(a) Notices, Inspection and Liability. After giving reasonable prior notice to Lessee in each instance, Lessor and its authorized agents and representatives shall be entitled to enter the Premises at all reasonable times for the purpose of serving, posting or keeping posted thereon such notices as Lessor may deem necessary or appropriate for protection of Lessor, its interests or the Premises, for the purpose of inspecting the Premises or any portion thereof; and for the purpose of making necessary repairs to the Premises and performing any work therein or thereon which Lessor may elect, or be required, to make hereunder, or which may be necessary to comply with any laws, ordinances, rules, regulations or requirements of any public authority, or which Lessor may deem necessary or appropriate to prevent waste, loss, damage or of deterioration to or in connection with the Premises. Nothing contained herein shall impose or be deemed to impose any duty on the part of Lessor to do any work of repair, maintenance, reconstruction or restoration which, under any provision of this Lease, is required to be done by Lessee; and the performance thereof by Lessor shall not constitute a waiver of Lessee's default in failing to do the same. Lessor may, during the progress of any work on the Premises, keep and store upon the Premises all necessary materials, tools and equipment, as long as doing so does not unreasonably interfere with Lessee's use and enjoyment of the Premises. Lessor shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or quiet enjoyment, or other damage or loss to Lessee by reason of making any such repairs or performing any such work upon the Premises or an account of bringing materials, supplies and equipment into, upon or through the Premises during the course thereof, and the obligations of Lessee under this Lease shall not thereby be affected in any manner whatsoever. Lessor shall, however, in connection with the performance of any such work, cause as little inconvenience, disturbance or other damage or loss to Lessee as may be reasonably possible under the circumstances.

(b) Sale and Leasing. After giving reasonable prior notice to Lessee in each instance, Lessor and its authorized agents and representatives shall be entitled to enter the Premises at all reasonable times for the purpose of exhibiting the same to prospective purchasers and, during the final six (6) months of the term of this Lease or at any time subsequent to the date that Lessee notifies Lessor of its intent to vacate the Premises.

20. Default.

(a) Events of Default; Notice and Termination; Lessor's Options.

The following events shall constitute events of default hereunder:

(1) Lessee shall default in the performance of any provision, covenant or condition of this Lease on the part of Lessee to be kept and performed and such default continues for thirty (30) days after written notice thereof from Lessor to Lessee, provided however, that if the default complained of in such notice is of such a nature that the same can be rectified or cured, but cannot with reasonable diligence be done within said thirty (30) day period, then such default shall be deemed to be rectified or cured if Lessee shall,

within said thirty (30) day period, commence to rectify and cure the same and shall thereafter complete such rectification and cure with all due diligence, and in any event within sixty (60) days from the date of giving such notice; or

(2) To the extent permitted by law, the filing of any petition in bankruptcy, or the adjudication of Lessee as a bankrupt or insolvent, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Lessee, or a general assignment by Lessee for the benefit of creditors, or any action taken or suffered by Lessee under any State or Federal insolvency or bankruptcy act, or any similar law now or hereafter in effect, including, without limitation, the filing of any petition for or in reorganization; or

(3) If any mechanic's or materialmen's lien shall attach to the Premises or Lessee's estate or interest therein due to the use or enjoyment of the Premises by Lessee or Lessee's guests or invitees and shall not be discharged or released within thirty (30) days after the entry of any judgment or order by a court of competent jurisdiction imposing such lien; or

(4) If the Premises or any portion thereof shall be taken or seized under levy of execution or attachment against Lessee;

then and in any such event (and in addition to all other rights and remedies it may have according to this lease or by law provided) Lessor, at its option, shall have the following rights:

(1) The right to declare the term of this Lease ended and to re-enter the Premises and take possession thereof, and to terminate all of the rights of Lessee in and to the Premises; or

(2) The right without declaring the term of this Lease ended to re-enter the Premises and to occupy the same, or any portion thereof, or to lease the whole or any portion thereof, for and on account of Lessee as hereinafter provided.

Pursuant to said rights of re-entry, Lessor may remove all persons from the Premises who are present with Lessee's consent using such force as may be reasonably necessary therefor and may, but shall not be obligated to remove all property therefrom, including, but not limited to, Lessee's Property, and may, but shall not be obligated to, enforce any rights Lessor may have against said property, or store the same in any public or private warehouse at the cost and for the account of Lessee or the owners or owner thereof. Anything contained herein to the contrary notwithstanding, Lessor shall not be deemed to have terminated this Lease or the liability of Lessee to pay any sum of money thereafter to accrue hereunder, or Lessee's liability for damages under any of the provisions hereof, by any such re-entry, or by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Lessor shall have notified Lessee in writing that it has so elected to terminate this Lease. Lessee covenants and agrees that the service by Lessor of any notice in unlawful detainer and the surrender of possession pursuant to such notice

shall not (unless Lessor elects to the contrary at the time of, or at any time subsequent to, the service of such notice, and Lessor's election be evidenced by written notice thereof to Lessee) be deemed to be a termination of this Lease, or the termination of any liability of Lessee hereunder to Lessor.

(b) Damages on Termination. Should Lessor at any time terminate this Lease for any default, breach or failure of Lessee hereunder, then, in addition to any other rights or remedies available to Lessor hereunder or by law provided, Lessor may have and recover from Lessee all damages Lessor may incur by reason of such default, breach of contract, or other breach or failure, all costs of recovering the Premises from Lessee including, without limitation, court costs and reasonable attorney's fees for services in recovering possession.

(c) Waiver of Default. The waiver by Lessor of any default or breach of any of the provisions, covenants or conditions hereof on the part of Lessee to be kept and performed shall not be a waiver of any preceding or subsequent breach of the same or any other provision, covenant or condition contained herein. The subsequent acceptance of any payment hereunder by Lessee to Lessor shall not be construed to be a waiver of any preceding breach by Lessee of any provisions, covenant or condition of this Lease other than the failure of Lessee to pay the particular payment or portion thereof so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such payment.

21. Assumption of Risk by Lessee. Lessee understands that Lessee has the right to the non-exclusive use and enjoyment of the Premises and that other persons may from time to time use and enjoy the Premises. Lessee, as a material part of the consideration to Lessor for this Lease, will and hereby does assume all risk of loss or damage to Lessee's property that may be stored or placed in, upon or about the Premises, and does hereby agree that Lessor shall not be responsible for loss or damage to any such property. Lessor shall not be liable to Lessee for any damage attributable to (i) water coming into the Premises from any source whatsoever, (ii) any acts or neglect of the public or of adjacent property owners, (iii) the construction of the Premises or negligent or willful failure to keep the Premises in repair, unless Lessor is obligated to make such repairs under the term of this Lease and unless notice of the need for repairs has been given to Lessor, a reasonable time has elapsed, and Lessor has failed to make such repairs or has failed to diligently pursue the making of such repairs, or (iv) damage occasioned by interruption of occupancy caused by strike, riot, acts of war, subsoil conditions, toxic wastes resulting from prior conditions of the land or any other matter not specifically caused by the Lessor. All property of Lessee kept or stored on the Premises shall be so kept or stored at the sole risk of Lessee, and Lessee shall hold Lessor harmless from any claims arising out of damage thereto (including subrogation claims by Lessee's insurance carriers),.

22. Default by and Liability of Lessor. It is agreed that in the event Lessor fails or refuses to perform any of the provisions, covenants or conditions of this Lease on Lessor's part to be kept or performed, that Lessee, prior to exercising any right or remedy Lessee may have against Lessor on account of such default, shall give a thirty (30) day written notice to Lessor of such default specifying in said notice the default with which Lessor is charged. Notwithstanding any

other provision hereof, Lessee agrees that if the default complained of in the notice provided for by this Paragraph 22 is of such a nature that the same can be rectified or cured by Lessor, but cannot with reasonable diligence be rectified or cured within said thirty (30) day period, then such default shall be deemed to be rectified or cured if Lessor within said thirty (30) day period shall have commenced the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing to proceed, and so does complete the same, with the use of diligence as aforesaid.

23. Liens.

(a) Indemnification. Lessee shall at all times indemnify, defend and hold Lessor and the Premises free, clear and harmless from any claims, liens, demands, charges, encumbrances or litigation arising directly or indirectly out of any, occupancy or activity of Lessee, its guests and invitees, or out of any work performed, material furnished, or obligations incurred by Lessee, its agents and employees, in, upon about or otherwise in connection with the Premises, and shall, except as hereinafter permitted in this Paragraph 23, pay or cause to be paid for all work performed and material furnished to the Premises or the Lessor's reversionary estate therein, and will keep the Premises free and clear of all mechanic's liens and materialmen's liens.

(b) Contest of Liens. If Lessee desires to contest any claim of lien, it shall within fifteen (15) days after the filing of the lien for record furnish Lessor with cash or other reasonably acceptable security in the amount of the claim of lien, plus estimated costs and interest, or shall furnish Lessor with a bond of a responsible corporate surety in the same amount conditioned upon the discharge of the lien. Nothing contained herein shall prevent Lessor, at the cost and for the account of Lessee, from obtaining and filing a bond conditioned upon the discharge of such lien, in the event Lessee fails or refuses to furnish the same within said fifteen (15) day period.

(c) Satisfaction of Liens. Immediately upon entry of final judgment in any such action in which Lessee contests any such claim of lien, and if such final judgment shall establish the validity of the lien, or any part thereof, and within fifteen (15) days after the filing of any lien for record which Lessee does not contest, Lessee shall fully pay and discharge such judgment or lien, as the case may be, and Lessee shall reimburse Lessor upon demand for any and all loss, damage and expense, including reasonable attorney's fees, which Lessor may suffer or be put to by reason thereof. Nothing contained herein shall prevent Lessor at the cost and for the account of Lessee, from satisfying any such judgment or lien, as the case may be, in the event Lessee fails or refuses to satisfy the same as herein provided.

(d) Notice To Lessor. Should any claim or lien be filed against the Premises, or any action or proceeding be instituted affecting the title to the Premises, Lessee shall give Lessor written notice thereof as soon as Lessee obtains knowledge thereof.

(e) Waiver of Lessor's Lien. Notwithstanding anything in this Lease to the contrary, Lessor shall have no lien or other security interest in any of the Lessee's Property.

Lessor specifically waives its right to a lien on or any interest in any of the Lessee's Property to which it may otherwise be entitled by law, other than any permanently attached Lessee improvements. Lessee shall not have the right to mortgage, pledge or grant a security interest in Lessee's Property located or stored on the Premises.

24. Expenditures By Lessor. Whenever under any provision of this Lease Lessee shall be obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Lessee fails, refuses or neglects to perform as herein required, Lessor shall be entitled but shall not be obligated to make any such payment or expenditure, or do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the account of Lessee, and in such event the amount thereof with interest thereon as herein provided shall be deemed additional rental hereunder and shall be added to and deemed a part of the next installment of rent thereafter becoming due from Lessee to Lessor hereunder.

25. Force Majeure. Whenever a day is appointed herein on which, or a period of time is appointed within which, either party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such party is prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of strikes, lock-outs embargoes, unavailability of labor or materials, wars, insurrections, rebellions, civil disorder, declaration of national emergencies, acts of God, or other causes beyond such party's reasonable control (financial ability excepted); provided however, nothing contained in this Paragraph 25 shall excuse Lessee from the prompt payment of any rental or other charge required by Lessee hereunder except as may be expressly provided elsewhere in this Lease.

26. Subordination. Lessee agrees upon request of Lessor to subordinate this Lease and Lessee's rights hereunder to the lien of any mortgage, deed of trust or other encumbrance, together with any conditions, renewals, extensions, or replacements thereof, now or hereafter placed, charged or enforced against the Lessor's interest in this Lease and the leasehold estate thereby created, the Premises or the land, building or improvements included therein or of which the Premises are a part, and execute and deliver (but without cost to Lessee) at any time and from time to time upon demand by Lessor such documents as may be required to effectuate such subordination, and in the event that Lessee shall fail, neglect or refuse to execute and deliver any such document within ten (10) days after receipt of written notice so to do and the receipt by Lessee of the document to be executed by it, Lessee hereby appoints Lessor, its successors and assigns, the attorney-in-fact of Lessee irrevocably to execute and deliver any and all such documents for and on behalf of Lessee; provided however, that Lessee shall not be required to effectuate such subordination, nor shall Lessor be authorized to effect such subordination on behalf of Lessee, unless the mortgagee or trustee named in such mortgage or other encumbrance shall first agree in writing, for the benefit of Lessee, that so long as Lessee is not in default under any of the provisions, covenants or conditions of this Lease on the part of Lessee to be kept and performed, that neither this Lease nor any of the rights of Lessee hereunder shall be terminated or modified or be subject to termination or modification, nor shall Lessee's possession of the

Premises be disturbed or interfered with, by any sale or by an action or proceedings to foreclose said mortgage or other encumbrance.

27. Priority of Lease and Attornment. In the event that Lessor's mortgagee shall elect to have this Lease a prior lien to its mortgage, then and in such event, upon such mortgagee notifying Lessee to that effect, this Lease shall have priority over the lien of such mortgage to the same extent as if the same had been placed on record prior to such mortgage. In the event any proceedings are brought for the foreclosure of any mortgage made by Lessor covering the property upon which the Premises are located or in the event of exercise of the power of sale under any mortgage made by Lessor covering the said property, Lessee covenants and agree that it will, upon request by the purchaser, attorn to the purchaser upon any foreclosure or sale and recognize such purchaser as the Lessor under this Lease, it being the intent thereof that if this Lease should be terminated by such foreclosure or sale, it shall, upon request by the purchaser, be reinstated as a lease between the purchaser and Lessee. Lessee, upon request of any party in interest, shall execute such instrument or instruments as shall be requested to carry out the requirements of this Paragraph. In the event that Lessee shall fail, neglect or refuse to execute and deliver such document within ten (10) days after receipt of written notice to do so, together with the document to be executed, Lessee hereby appoints the requesting party, its successors and assigns, the attorney-in-fact of Lessee irrevocably to execute and deliver any such document for and on behalf of Lessee.

28. Amendment of Lease. Should it become necessary to amend this Lease in order to meet the reasonable demands of any lender with which Lessor may be negotiating for loan commitments, Lessor and Lessee shall join in such amendment(s) to the extent so necessary, so long as such amendment(s) will not have a materially adverse effect on the interests of Lessee.

29. Holding Over. In the event Lessee shall hold over or remain in possession of the Premises without the consent of Lessor past the expiration of the stated term of this Lease, or any written extension or renewal of the term of this Lease, such holding over or continued possession such hold over shall be as a Lessee at sufferance and shall create a tenancy from month-to-month. All of the terms of this Lease shall be applicable during such period and Lessee shall vacate the Premises and deliver the same to Lessor upon Lessee's receipt of notice from Lessor to vacate the same. No holding over by Lessee, whether with or without consent of Lessor shall operate to extend this Lease except as herein expressly provided.

30. Estoppel Certificates. In the event that Lessor's mortgagee, or a prospective purchaser of Lessor's mortgage or of the Lessor's interest in the Lessor's Property upon which the Premises are located, shall desire a statement from Lessee as to claims against Lessor, Lessee agrees to deliver (in recordable form, if requested) to the party demanding the same, certifying (if such be the case) that this Lease is in full force and effect and that there are no defenses or offsets thereto, or stating those claimed by Lessee. Lessee also agrees, upon request, to promptly sign and deliver to the party requesting the same a Receipt of Notice of Lease Assignment in a form satisfactory to Lessor. In the event that Lessee shall fail, neglect or refuse to execute and deliver such document within ten (10) days after receipt of written notice to do so, together with the

document to be executed, Lessee hereby appoints Lessor, its successors and assigns, the attorney-in-fact of Lessee irrevocably to execute and deliver any such document for and on behalf of Lessee.

31. Sale or Assignment By Lessor.

(a) Sale or Assignment Permitted. Lessor may at any time assign or transfer its interest as Lessor in and to this Lease, or any part thereof, and may at any time sell or transfer its interest in and to the whole or any portion of the Premises.

(b) Attornment. In the event of a sale or assignment by Lessor, Lessee hereby agrees to attorn to the assignee, transferee, or purchaser of Lessor from and after the date of notice to Lessee of such assignment, transfer or sale, in the same manner and with the same force and effect as though this Lease were made, in the first instance, by and between Lessee and such assignee, transferee or purchaser.

(c) Transfer of Lessor's Obligations. In the event of any assignment, transfer or sale of the Lessor's interest under this Lease other than by way of security only, the Lessor, except as hereinafter provided (and in case of any subsequent transfers or conveyances, except by way of security only, the then Grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyance of all personal liability with respect to the performance of any covenants or obligations on the part of Lessor contained in this Lease thereafter to be performed, provided that any funds in the hands of such Lessor, or the then Grantor, at the time of such assignment, transfer or sale in which Lessee has an interest shall be turned over to the transferee or grantee, and any amount then due and payable to Lessee by Lessor, or by the then Grantor, under any provisions of this Lease shall be paid to Lessee, it being intended hereby that the covenants and obligations contained in this Lease on the part of the Lessor to be kept and performed by it shall, subject as aforesaid, be binding on Lessor, its successors and assigns only during and in respect to their respective successive periods of ownership.

32 Miscellaneous Terms.

(a) No Partnership. Anything contained herein to the contrary notwithstanding, Lessor does not in any way or for any purpose become a principal or partner of Lessee in the conduct of its business or otherwise or a joint venturer or member of a joint enterprise with Lessee hereunder.

(b) Remedies Cumulative. The various rights, options, elections and remedies of Lessor and Lessee, respectively, contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Lease.

(c) Attorney's Fees. Should the Lessor engage an attorney or collection agency to collect any sums owing hereunder or institute any action or proceeding, including but not limited to any court action, to enforce any provision hereof or for damages or other relief by reason

of any alleged breach of any provision hereof, Lessor shall be entitled to receive from Lessee reasonable attorney's fees or collection agency fees for the services rendered.

(d) Non-Waiver. Lessor's election not to pursue remedies available to it for breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenants or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

(e) No Accord and Satisfaction. No payment by Lessee or receipt by Lessor of lesser amount than the payments required herein shall be deemed to be other than on account of the required payment, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed a full accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to pursue any remedy provided for by law in this Lease.

(f) Partial Invalidity. If any term, provision, covenant or condition of this Lease should be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

(g) Recordation. This Lease shall not be recorded. However, upon the request of Lessee, Lessor shall join in the execution of a short memorandum or so-called "short form" of this Lease for the purpose of recordation. Any such memorandum or short form of the Lease shall describe the parties, the premises and the term of this Lease, shall incorporate this Lease by reference, and shall otherwise be in form reasonably satisfactory to Lessor.

(h) Time of the Essence. Time is of the essence of this Lease and all of the terms, provisions, covenants and conditions hereof.

(i) Captions, Pronouns and Interpretation.

(1) Captions. The captions appearing at the commencement of the Paragraphs hereof, are descriptive only and intended for convenience in reference to this Lease, and should there be any conflict or inconsistency between any such caption and the text of any such Paragraph at the head of which it appears, the text of the said Paragraph, and not such caption, shall control and govern in the construction of the terms of this Lease.

(2) Pronouns. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution or substitutions.

(3) Interpretations. The laws of the State of Hawaii shall govern the validity, construction and effect of this Lease. Whenever in this Lease any words of obligation or duty are used in connection with either party, such words shall have the same force and effect as though framed in the form of express covenants on the part of the party obligated. In the event either party hereunto now or hereafter shall consist of more than one person, firm or corporation, then and in such event all such persons, firms or corporations shall be jointly and severally liable as parties hereunder. This Lease is made and entered into for the sole protection and benefit of the Lessor and the Lessee, and their respective successors and assigns (including permitted mortgagees), and no other persons shall be entitled to claim any rights arising out of any of the terms or conditions hereof, nor shall any rights in any such third parties be implied from any of the terms or conditions hereof.

(j) Broker's Commission. There are no broker's or other commissions or finder's fees payable by either party to this Lease.

(k) Binding Effect. The terms, provisions, covenants and conditions contained in this Lease shall apply to, bind and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns (where assignment is permitted) of Lessor and Lessee, respectively.

(l) Entire Agreement. This Lease constitutes the entire agreement of Lessor and Lessee and supersedes all oral and written agreements and understandings made and entered into by the parties hereto prior to the date hereof. Except as here and otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by each of them. Without limiting the generality of the foregoing, this Lease may not be amended or modified without the written consent of all beneficiaries under any mortgages or deeds of trust constituting a lien on the fee of all or any portion of the Demised Premises. This Lease does not supersede, amend, or replace the Previous Lease, but constitutes a new and separate agreement between the parties except as otherwise stated herein.

(m) Notices. All notices to be given to either party shall be in writing and shall be delivered personally or shall be deposited in the United States mail, registered or certified, return receipt requested, addressed to the other party at its last known place of business. Any notice sent by mail shall be deemed given as of two (2) business days after mailing.

33. Arbitration and Dispute Resolution. In the event of a dispute arising out of this Lease, the parties agree to submit such dispute to binding arbitration before a single arbitrator, in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

34. Counterparts. This Grant may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute

one and the same instrument. Signature pages from separate signed copies may be attached to a single copy for purposes of recording.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first above written.

LESSOR:

NATIONAL TROPICAL BOTANICAL GARDEN,
a federally chartered corporation

By: 

CHARLES R. WICHMAN, JR.
Its Director and CEO

LESSEE:

MA KA HANA KA 'IKE, a Hawaii non-profit
corporation

By: _____

Name:

Its:

one and the same instrument. Signature pages from separate signed copies may be attached to a single copy for purposes of recording.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first above written.

LESSOR:

NATIONAL TROPICAL BOTANICAL GARDEN,
a federally chartered corporation

By: _____
CHARLES R. WICHMAN, JR.
Its Director and CEO

LESSEE:

MA KA HANA KA 'IKE, a Hawaii non-profit
corporation

By:  _____
Name: **Rick Rutiz**
Its: **Executive Director**



**SITE VISIT REPORT**

LLCP 07-02, Kahanu

Contract No. 57148, National Tropical Botanical Garden

Location: Hāna, Maui, Tax Map Key Number (2) 1-3-002:001
Date: December 5, 2017
Staff: David Penn, Program Specialist, Division of Forestry and Wildlife
Julie China, Deputy Attorney General, Land/Transportation Division
Sidney Stiefel, KUPU (intern with Division of Forestry and Wildlife)
Grantee: Michael Opgenorth, Director, Kahanu Garden and Preserve, National Tropical Botanical Garden

Purpose: The Legacy Land Conservation Program (LLCP) includes a monitoring component to help assure that land acquired with a grant from the Land Conservation Fund (LCF) retains, forever, its value as a resource to the State, and that an owner of land acquired with a LCF grant maintains compliance with the statutes, administrative rules, grant agreement, and terms and conditions of real property conveyances that govern the management and disposition of a conserved property. Subsection 13-140-32(a), Hawai‘i Administrative Rules (Haw. Admin. R.) authorizes the Department to “monitor the awardee, any additional managing entities, and the land acquired to determine the status of any resource values protected under the terms of the grant agreement.” Section 13-140-33 (Site visits), subsection (a), authorizes the Department to “enter lands acquired through land acquisition grants for the purpose of inspecting the condition of the property and resources.” On December 5, 2017, the LLCP conducted a Site visit at land acquired by the National Tropical Botanical Garden (NTBG) through an LLCP Grant Agreement (Contract No. 57148), for the purpose of inspecting the condition of the property and resources. The LLCP will use the results of the Site visit (this report) to help determine the status of resource values protected and to help formulate recommendations to the Board of Land and Natural Resources (BLNR) about existing and proposed dispositions of the property by NTBG.

Background: Based on notations left by former program staff, the LLCP selected NTBG’s “Grant Recipient Self-Report Form,” dated January 26, 2015, for verification. LLCP staff initiated communication with NTBG in September 2017 about two leases reported in NTBG’s 2015 Self-Report Form, which led to mutual decisions by LLCP and NTBG to (1) conduct a LLCP Site visit to inspect the condition of the property, and (2) pursue BLNR decisionmaking for new, proposed dispositions of the property to each of the two lessees identified in the 2015 Self-Report Form. In preparation for the LLCP Site visit and a LLCP staff submittal to BLNR, LLCP staff reviewed program files, researched other sources of information about the property, and requested additional information from NTBG, as summarized in Table 1, Sources of Kahanu Background Information, and Table 2, Digest of Kahanu Background Information, below.

Table 1 – Sources of Kahanu Background Information

ITEM	DESCRIPTION	SOURCE	DATE
1	LLCP Application (includes 3 undated aerial photos, and site map from Kahanu Garden Master Plan)	LLCP	10/16/2006
2	LLCC Minutes, Item 3	LLCP	05/18/2007
3	BLNR ITEM C-3, Project 2 (submittal + minutes)	BLNR	06/08/2007
4	LLCP Grant Agreement	LLCP	06/30/2007
5	LLCP Resource Value Documentation (includes 5 undated color photos; refers to 2007 Appraisal)	LLCP	08/22/2008
6	Appraisal (Addendum 5, Photographs of the Kahanu Kinney Sweet Property)	LLCP	2007
7	Warranty Deed	LLCP	10/10/2008
8	LLCP Grant Recipient Self-Report Form	LLCP	05/09/2011
9	LLCP Fact Sheet, Kahanu Garden Acquisition	LLCP	09/09/2011
10	LLCP Grant Recipient Self-Report Form	LLCP	01/26/2015
11	Kahanu Gardens Proposal from A. DeCoite Ranch LLC	NTBG	05/16/2012
12	Lease Agreement between NTBG and MKHKI (includes Exhibit A showing lease area)	NTBG	12/01/2014
13	CREP Program Agreement (incl. Exhibit A, NRCS Conservation Plan, w/ two maps), ends 06/30/2024	DOFAW	07/12/2011
14	CREP Annual Report	DOFAW	07/13/2017
15	Draft Long-Range Management Plan, Kahanu Garden and Preserve (Forest Stewardship Plan, with thirteen figures, including photos and Conceptual Map, and two budget tables, but without appendices)	DOFAW	12/25/2016
16	Forest Stewardship Advisory Committee Minutes, Item 4.2	DOFAW	01/20/2017
17	State Conservation Land Use District Boundary Map	OCCL	online
18	State and National Registers of Historic Places	SHPD/NPS	online databases
19	State Official Land Records	BOC	online database
20	Maui County Property Records	RPTD/DOF	online database
21	Various media reports, websites, and social media feeds concerning land, resources, landowner, lessees, and activities		
22	Map of Mahele Farms Structures	NTBG	12/02/2017
23	Map of Conservation Actions	NTBG	12/02/2017

LLCP = Legacy Land Conservation Program

BLNR = Board of Land and Natural Resources

CREP = Conservation Reserve Enhancement Project

NRCS = Natural Resources Conservation Service, U.S. Department of Agriculture

SHPD = State Historic Preservation Division

BOC = Bureau of Conveyances

LLCC = Legacy Land Conservation Commission

NTBG = National Tropical Botanical Garden

MKHKI = Ma Ka Hana Ka 'Ike

DOFAW = Division of Forestry and Wildlife

OCCL = Office of Conservation and Coastal Lands

NPS = National Park Service

RPTD/DOF = Real Property Tax Division,
Department of Finance

Table 2 – Digest of Kahanu Background Information

SOURCE (Table 1, ITEM)	Background Information
1 LLCP Application	NTBG proposes to acquire the property for four preservation purposes—Habitat protection, Cultural and historical sites, Natural areas, and Open space and scenic resources (Section B.3, Type of Acquisition).
	As part of the Kahanu Garden Master Plan, the property would primarily be used to expand the Kahanu Garden’s botanical collection (Section F.3, Project Description).
	Short-term objectives include the cultivation of the pre-existing mature macadamia nut orchard, with proceeds used to offset costs to operate and maintain the property (Section F.3, Project Description).
	Long-term projects proposed include establishment of a coastal plant community adjacent to the shoreline; creation of a native forest preserve/restoration, and expansion of the breadfruit collection area (Section F.3, Project Description).
	Includes three undated color aerial photos showing (a) outline of the parcel boundary, with clear view of orchard rows; (b) heiau overview, looking eastward, with delineation of parcel boundary along Honomā’ele stream; and (c) same view as (b) above, without delineation of parcel boundary.
	Site map indicates areas planned for coastal plant community, native forest preservation, ‘ulu collection expansion, macadamia orchard/future collections, gulch bank stabilization, and gazebo.
2 LLCC Minutes	NTBG indicated that there hadn’t been any biological or cultural surveys done, but cultural sites may remain on the property despite its history of heavy use (plowing).
	NTBG indicated that there wouldn’t be any commercial agricultural.
5 LLCP Resource Value Documentation	Includes five undated color photographs showing aerial view of (a) the impact of the property on the viewplane of Pi’ilani Heiau and (b) the property and surrounding land, and ground views of (c) native hala forest located along the coastline of the parcel; (d) gazebo located on the property; and (e) macadamia nut orchard located on the property.
	Incorporates, by reference, an appraisal that was previously supplied to the Legacy Land Conservation Program.
6 Appraisal	Includes four aerial photographs (color) taken in 2002 and 2006 and eight ground photographs (color) taken on August 10, 2007, showing (a) view plane of Pi’ilanihale Heiau; (b) coastal views, particularly native hala forest along the coastline; (c) gazebo; (d) macadamia nut orchard; (e) NTBG’s adjacent Kahanu Garden; (f) Honomā’ele Gulch; (g) entry gate and views along ‘Ula’ino Road; and (h) grassed access road.
	Estimates the area of land within the State Conservation Land Use District at 25 acres.
7 Warranty Deed	Incorporates language required under the grant agreement, including notice of State participation and requirements for Board approval of a proposed disposition; sharing of associated revenue; and that the property “be managed consistently with the purposes for which it was awarded an LLCP grant and Chapter 173A, Hawaii Revised Statutes.”
8 LLCP Self-Report Form (2011)	NTBG “found a means to include public use and access through our community farm project, “Mahele Farm,” and continue to provide community access to the fishing and hunting resources of the property” (Question 1, Use of Property). The community farm “[h]as permitted our community, on a voluntary basis, to come and farm with us and . . . take home farm-fresh food . . . in exchange” (Question 3, Public Access).
	Major activities also include “[r]esuscitating certain parts of the existing macadamia nut orchard to see if there is viability in a cottage industry project for our community” (Question 2, Major Activities).

SOURCE (Table 1, ITEM)	Table 2 – Digest of Kahanu Background Information (continued) Background Information
9 LLCP Fact Sheet	NTBG manages the land under the Kahanu Garden Master Plan, with the main purposes of maintaining the natural integrity of the property and preserving an appropriate buffer for the neighboring heiau. NTBG has established a native coastal forest preserve, expanded its breadfruit collection area, created an organic community farm, established a native riparian buffer along Honomā‘ele Gulch, cultivated a pre-existing macadamia nut orchard, and has created environmentally-friendly footpaths and maintenance roads to improve access to the Garden.
10 LLCP Self-Report Form (2015)	Mahele Farms is open to all and is the primary conduit for public access to this parcel (Question 3, Public Access). Mahele Farms feeds about 80 families in Hāna. Within the context of Mahele Farms, NTBG planted and curates culturally significant botanical collections of breadfruit, kalo, banana, sweet potato, and ‘awa. Built at least six small farm-related structures (Question 2, Major Activities).
	Fenced the side of the property along the stream and landscaped it with a native riparian buffer (Question 2, Major Activities).
	“In 2012, signed a three-year lease with a local rancher . . . to run cattle on portions of the property” (Question 2, Major Activities).
	“At the end of 2014 . . . entered into a lease [with] . . . an educational non-profit organization . . . to manage and expand Mahele Farm.” (Question 2, Major Activities)
	“The hala forest . . . remains a protected area that is not . . . actively managed other than ensuring the cattle do not breach the paddock fences” (Question 2, Major Activities).
11 DeCoite Ranch Proposal (2012)	Grub all areas where fence is to be located. Fence road front property boundary, with gate entrance. Tie first fenced pasture paddock into Mahele Farms existing new fence, as a storm holding area for the cattle. Paddock, off of the existing Mahele Farms repaired fence after determining what area of the Mac Nuts to be cattle grazed first. Three year estimated time line for all the Mac Nuts areas to be fenced into an estimated four paddocks, and grazed low enough for machine mowing.
12 Existing Lease Agreement with MKHKI	Lease includes all improvements on the Premises, including six named structures.
	Terms and conditions 3(b)(1) allows Lessee to “use the Premises for short-term camping for its volunteers and employees in connection with collaborative groups participating in Lessee’s programs.”
	Terms and conditions 3(c)(2) and (3) allows Lessor to use the Premises “for Lessor’s interns and other authorized groups to camp” for up to thirty days per year, and for Lessor’s educational programs, including its Kulia I Ka Pono summer program.
	Terms and conditions 3(c)(4) allows Lessor “to construct [and use] a ‘weather port’ or similar facility, together with reasonable appurtenant facilities, at a mutually-agreed site on the premises”
	Terms and Conditions 3(a)(2) requires that Lessee “[c]omply with all governmental rules, regulations, ordinances, statutes and laws now or hereafter in effect pertaining to the Premises or Lessee’s use thereof.” Terms and Conditions 3(a)(1) and (3) through (6) establish standards and prohibitions for Lessee’s maintenance and use of the Premises.
	Terms and Conditions 18 provides that “Lessee shall not assign, sublease, or mortgage . . . without the prior written consent of the Lessor”
	Terms and Conditions 26 provides that under certain conditions, Lessee shall not be required to effectuate, and Lessor shall not be required to effect, a subordination of the Lease and of Lessee’s rights thereunder, unless the encumbering mortgagee or trustee agrees that the Lease and Lessee’s rights thereunder shall not be terminated or modified.

SOURCE (Table 1, ITEM)	Table 2 – Digest of Kahanu Background Information (continued) Background Information
13 CREP Program Agreement	Planned/contractual conservation treatments include (a) using firearms and possibly snares to exclude pigs from 33 acres to protect the natural resources; (b) constructing 3,900 lineal feet of woven wire fence as a barrier to wildlife, livestock, or people; (c) establishing and maintaining two acres of riparian forest buffer, thirty feet wide, including an initial planting of 871 native plants; and (d) creating, maintaining, or enhancing 33 acres that provide upland wildlife food and cover;
14 CREP Annual Report (2017)	Fence completed July 19, 2011. Riparian forest buffer completed December 31, 2011. “We continue to monitor and free the upland management area of invasive species and plant native species. We have not lost any plants in the buffer zone within the timeframe of this report. Approximately 26 Ohi’a lehua (<i>Metrosideros polymorpha</i>) plants have been out planted in the west bank of the Honomā‘ele stream to further manage upland region of the riparian buffer zone. Staff reports 200 hours spent in 2017 preventing the establishment of (<i>Ardesia elliptica</i> , <i>Spathodea campanulata</i> , and <i>Solanum torvum</i>)” [shoebutton Ardesia, African tulip, and turkey berry].
15 Forest Stewardship Plan (FSP)	<p>Plan focuses on the conservation and reintroduction of native plant communities (page 5).</p> <p>The conservation strategy of Kahanu Garden and the greater Preserve areas is to develop a requisite environment where in-situ and ex-situ conservation can successfully coexist (page 19).</p> <p>The primary goal of the work undertaken is to restore and improve the health, diversity and function of a rich coastal hala forest in East Maui (page 20).</p> <p>The East Honomā‘ele section of the Kahanu Preserve will not benefit from management actions associated with this management plan. Due to its isolation, disturbance and barriers to complete management practices in East Honomā‘ele, efforts will focus on the Kalāhū and ‘Akiala sections (page 22, IV.A.2). The Honomā‘ele coastal area experiences ungulate damage and features only partial fencing throughout the properties. Fencing initiatives need to be completed to ensure ungulate damage is fully eliminated and native plant establishment rates are optimized (page 22, IV.A.7).</p> <p>East Honomā‘ele (After Forest Stewardship conclusion) – 63.7 acres of separated forested area located East of Kahanu Garden, next to the forest surrounding Hāna Airport. This area is highly disturbed, with scattered hala trees still existing in the area. (page 24). The coastal forest that exists within this area is moderately disturbed with a mixture of alien species and indigenous hala trees (page 26).</p> <p>Fencing is not yet planned for East Honomā‘ele since it is heavily disturbed, and not planned for as extensive rare plant restoration as other areas. The East Honomā‘ele parcel will maintain its integrity through community involved management of ungulate species (pages 36-37).</p> <p>The targeted areas within Honomā‘ele targeted for active management have only one currently listed endangered species, <i>Ischaemum byrone</i> [Hilo ischaemum, an endemic, short-lived, stoloniferous, perennial grass]. Nonetheless, this area in itself possesses a rare type of coastal ecosystem that, along with irreplaceable archaeological assets, creates a glimpse into the past of Hawai‘i’s cultural heritage (pages 38-39).</p> <p>The general public will not be allowed to enter culturally sensitive preserve areas within the timeframe of this management plan (page 22, IV.A.9). The East Honomā‘ele section will not feature any new trails, as management practices will not take place in this forest during the FSP project period (page 29)</p>

SOURCE (Table 1, ITEM)	Table 2 – Digest of Kahanu Background Information (continued) Background Information
15 Forest Stewardship Plan (FSP) continued	Rich archaeological and cultural resources are scattered throughout the preserve areas. Therefore, appropriate supervision from respected cultural practitioners and/or Kahanu Garden staff will be required at all times when entering these areas. Through previous archaeological surveys in the area, it was mentioned that many more archaeological assets may still exist within the targeted areas. If sites are found, they will be marked by Kahanu Garden staff and adequate precautions will be taken in consultation with the Hawaii State Historic Preservation Division (page 23, IV.A.10).
16 FSAC Minutes	Forest Stewardship Advisory Committee (FSAC) approved the management plan, and wants more details on how clearing will be done, and what kind of inventories (vegetative and archaeological) have been completed.
17 CLUD Map	Indicates that a narrow strip of land along the shoreline is within the State Conservation Land Use District (CLUD), Limited Subzone.
18 Historic Places	Indicates that the State Register and the National Registers do not include a listing for the subject parcel, as searched by Tax Map Key Number.
20 Property Records	Plat maps and ownership records indicate that the property includes over one mile of a nearly six mile stretch of coastline that is managed by the State or a nonprofit land conservation organization, stretching eastward from Kalāhū Point, past Hāna Airport, and through Wai‘ānapanapa State Park to Ka‘inalimu Bay.
	Indicates that Maui County zoned a portion of the property for agricultural use, and issued ten building permits for farm buildings, one in 2000 and nine in 2014.
22 Map of Farm Structures	Presents an aerial view of the appearance and locations of ten structures located on the property, with a legend that indicates the function, dimensions, and building permit number for each.
23 Map of Conservation Actions	Shows existing and proposed footprints for the Mahele Farms lease area, DeCoite lease cattle paddocks (seven), coastal zone, CREP riparian buffer zone, invasive grass, macadamia nut orchard, and native hala preserve.

Site Visit Summary: Three members of the LLCP staff, guided and accompanied by the Director of NTBG’s Kahanu Garden and Preserve, spent about three hours during the late morning/early afternoon of December 5, 2017, conducting a Site visit that covered each area and feature shown in:

- Conceptual Map, and other maps and photos, from Item 15, Background Information (Draft Long-Range Management Plan);
- Site Map, and other maps and photos, from Item 1, Background Information (LLCP Application);
- Maps from the Conservation Plan in Item 13, Background Information (CREP Program Agreement);
- Exhibit A from Item 12, Background Information, showing area leased to MKHKI (Lease Agreement);
- Items 23 and 22, Background Information (Map of Conservation Areas and Map of Mahele Farms Structures); and
- Photos from Items 5 and 6, Background Information (Resource Value Documentation and Appraisal),

as well as other site-specific and landscape-level features of the conserved property, adjacent properties that NTBG owns and manages, and neighboring properties and regions. Selected maps appear on the following seven pages.

**LLCP 17-02, KAHANU
SITE VISIT REPORT
MAPS PAGE 1 of 7**

Owners of Parcels 14-15

- Kiamoku Marakahi Est. 36
- David Hooper 36
- Kahaloa Hooper 36
- Maui Hooper 36
- Ella Kahaloa 36
- Marlene Nahi 36
- John M. Nahi 36
- Shirley L. Nahi 36
- Emilia M. Nahi 36

- Umi Kalam Est. 36
- David Makahalaia 36
- Hana 36
- Long 36
- Joseph 36
- John E. Brown 36
- Arthur E. Brown 36
- Albert E. Brown 36

NATIONAL TROPICAL BOTANICAL GARDEN,
INITIAL PROPERTIES

NATIONAL TROPICAL BOTANICAL
GARDEN LAND CONSERVATION
FUND PROPERTY (LLCP 07-02)

STATE OF HAWAII OWNS COASTAL PROPERTIES FROM HERE TO KANALIMU BAY

SECOND DIVISION		
ZONE	SEC.	PLAT
1	3	02
CONTAINING PARCELS		
SCALE: 1 in = 500 ft.		

PRINTED

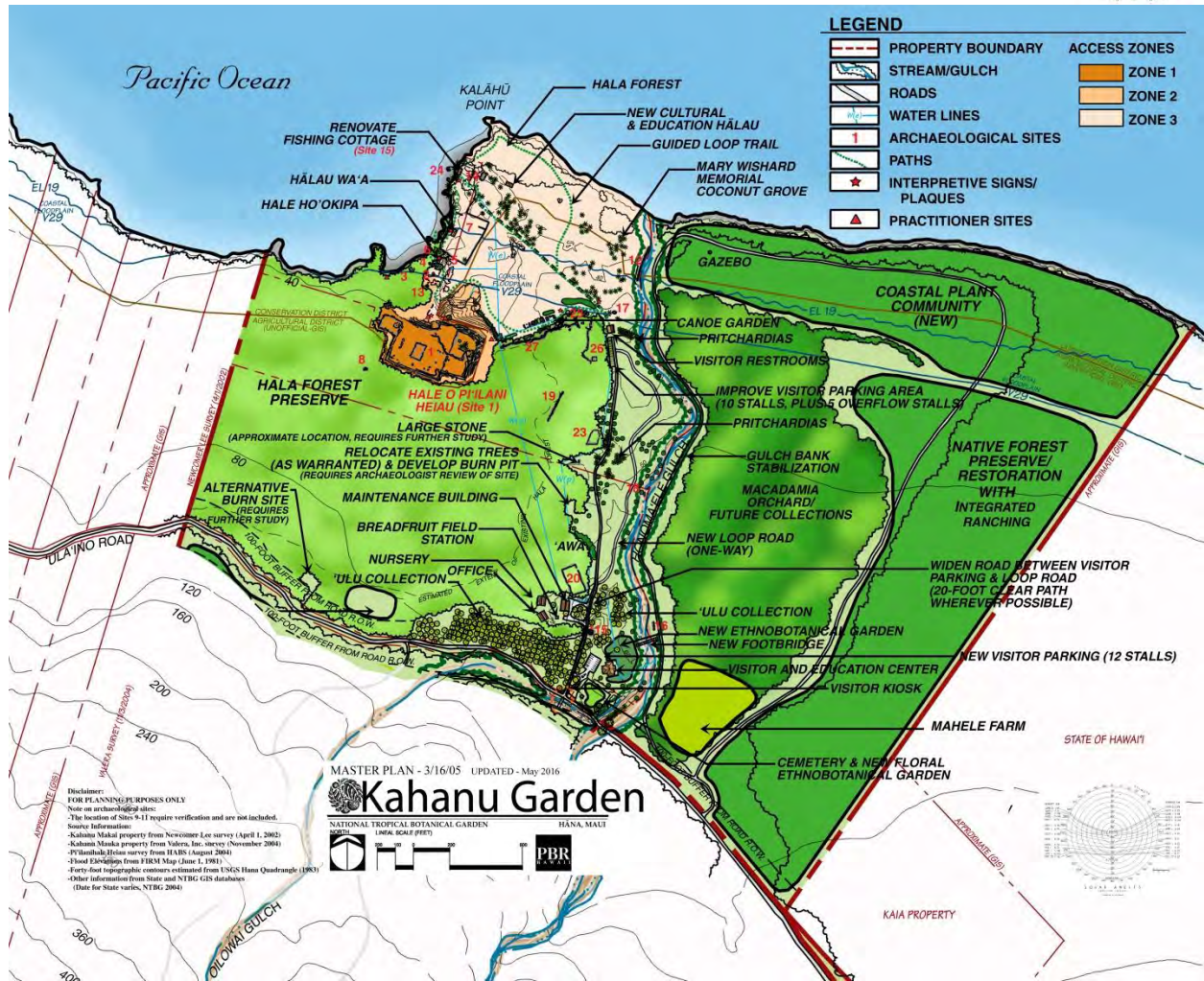
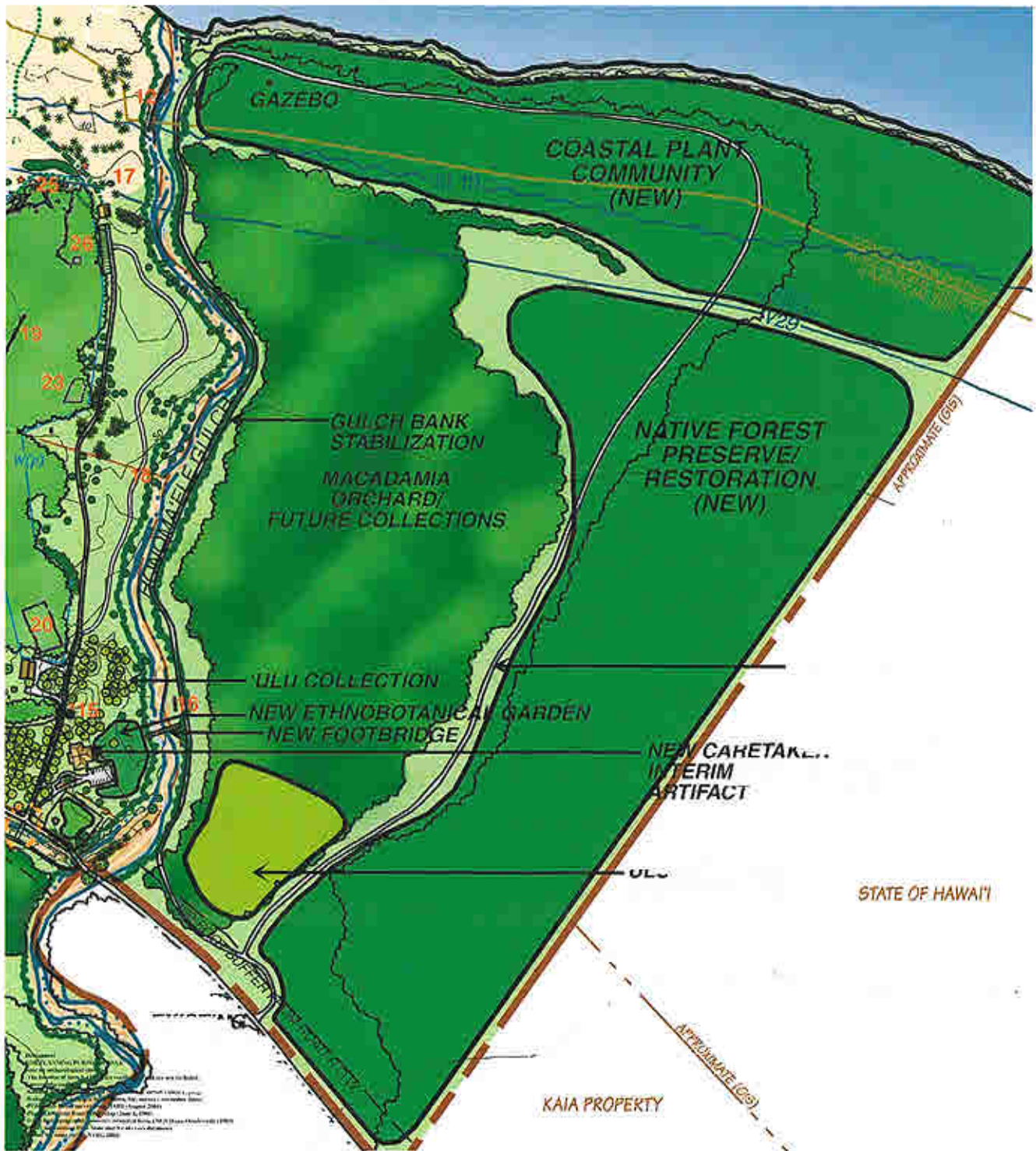


Figure 1: Kahanu Garden and Preserve Conceptual Map representing the entire NTBG Hāna property in Honomā‘ele.

CONCEPTUAL MAP FROM ITEM 15 OF BACKGROUND INFORMATION



SITE MAP FROM ITEM 1 OF BACKGROUND INFORMATION, LLC APPLICATION

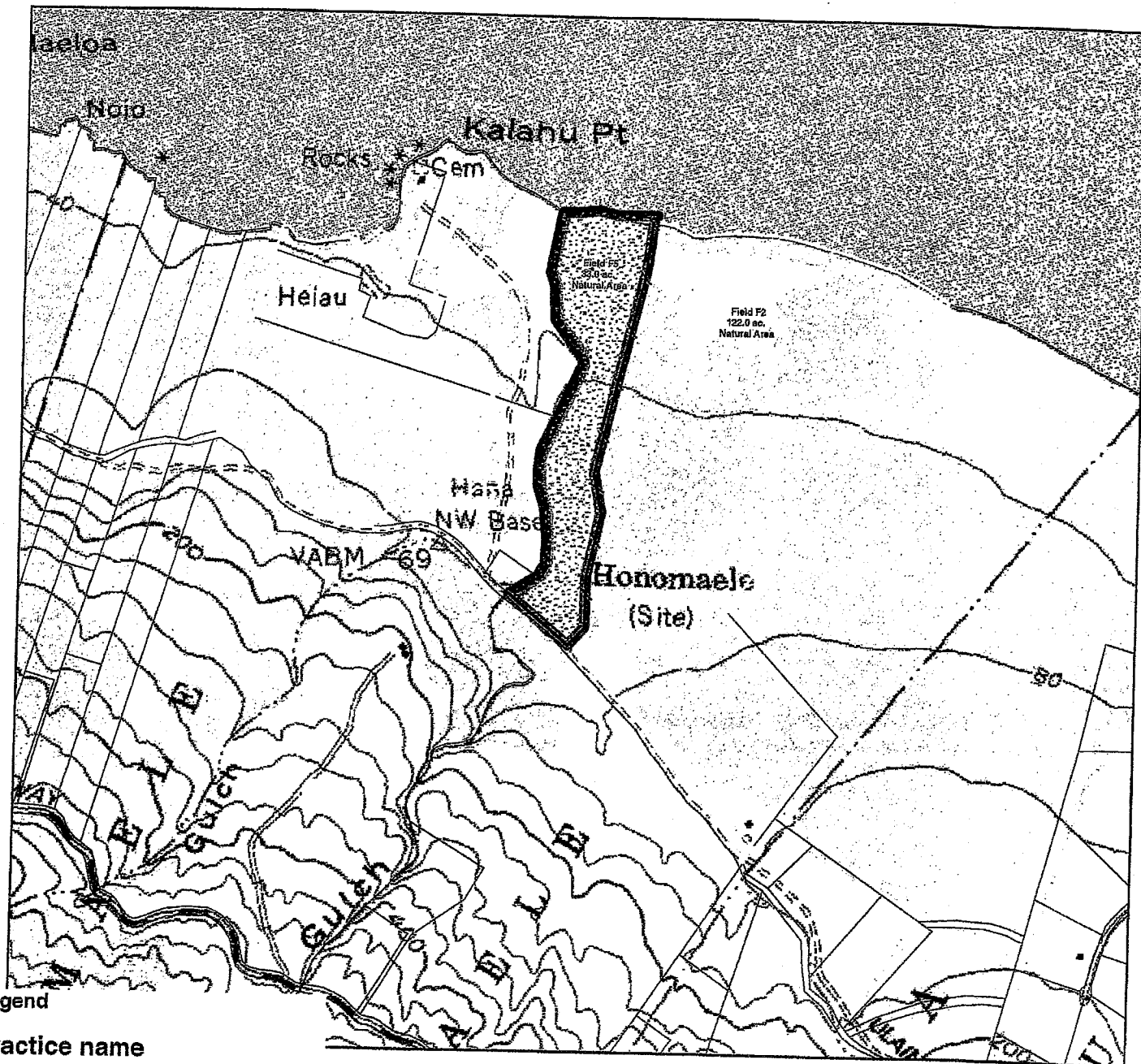
CREP 2010 Location Map

Date: 9/8/2010

Customer(s): NATIONAL TROPICAL BOTANICAL GARDEN
District: HANA SOIL & WATER CONSERVATION DISTRICT

Field Office: KAHULUI FIELD OFFICE
Agency: NRCS
Assisted By: Ranae F Ganske-Cerizo

Legal Description: TMK: 213002001 FN: 1222 TN: 1367



Legend

Practice name

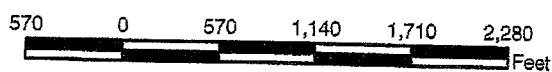
← CREP- Fence

Practices (polygons)

Practice Note

- CTA Access Control
- CREP 30' riparian buffer; 2.0acres
- CTA - Upland Wildlife Habitat
- CREP_FY2010
- tmkmau_a_hi009

FROM ITEM 13 OF BACKGROUND INFORMATION



**FROM ITEM 12 OF BACKGROUND INFORMATION, MKHKI LEASE AREA
(outlined in black, does not include area outlined in yellow)**









Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Conservation Actions



0 50 100 200 m

-  **CREP riparian buffer zone**
-  **Mahele Farm**
-  **Cattle Paddocks**
-  **Coastal Zone**

-  **Invasive Grass**
-  **Macadamia Nut Orchard**
-  **Native Hala Preserve**

ITEM 23 IN BACKGROUND INFORMATION

**ITEM 22 IN BACKGROUND INFORMATION
MAHELE FARMS STRUCTURES**



1. Chicken Coops BX20140085 6'x6'
2. Water Tank BX 20140084
3. Drying/Processing Pavilion 24x16' BX20140083
4. Composting Toilet Building 8'x8' BX20140082
5. Shower building 16'x8' BX20140081
6. Tractor Shed and Barn 24'x24' BX20140080
7. Composing Shed BX20140079
8. Greenhouse 24'x18' BX20140078
9. Breakroom/Storage/Operations building 48'x16' BX20140077
10. Pavilion (Gazebo) B 20001715

Site Visit Summary (continued): Based on all the information obtained, the LLC concluded that the property is managed consistently with the purposes for which it was awarded a Legacy Land Conservation Program grant; the condition of the property and resources is satisfactory; and the status of resource values protected under the terms of the grant agreement is intact, although threats to some values are growing.

Arriving at ‘Ula‘ino Road in Hāna, we passed by the Mahele Farms entrance, crossed a stream ford at Honomā‘ele, and continued through the main entrance to Kahanu Garden (photo below).



Noting a new building under construction, we met up with the Director at the Garden baseyard area. After talking about the historical context for the Garden and the LLC grant, the Garden’s vision and mission for its partnership with the Hāna community, and the details of current operations on the property, we traveled by ATV past the Garden’s breadfruit collection and expansion area (recently trimmed, see photo below) and into the center of the Mahele Farms building compound.

From the makai side of the farm operations structure (number “9” on previous map, Item 22, Background Information, photo below), we could see the breadfruit collection area (right), macadamia nut orchard, farm plots (below right), and other structures. We conversed with one of the farm managers about farm operations and infrastructure, educational partnerships and activities, community involvement, and the success of the farm as a hub for statewide conservation learning, innovation, and action.



We then traveled makai through the riparian buffer conservation corridor and along the edge of the macadamia nut orchard, observing and discussing the CREP-funded riparian buffer plantings, weedy orchard overgrowth, signs of recent bank full streamflow and pig activity, and four-strand barbwire fencing, in good condition, parallel to the streambank (photos below).



Riparian buffer planting,
pig sign, fence



Riparian buffer canopy



Macadamia Nut Orchard

Just before reaching the shoreline, we turned left and crossed the ephemeral stream bed to catch a view of the public access portion of Kahanu Garden proper (below left), and talked about how the restoration and protection of Pi'ilanihale Heiau, including clarification of NTB's perspective that the viewplane from the heiau is protected by the tall ironwood trees along the stream corridor that separates Kahanu Garden proper from the Site visit property (below right).



Arriving at the shoreline, dotted with ironwood trees (below left), we viewed the gazebo exterior, well-maintained. LLCP staff paced off the distance from the shoreline to the parallel makai cattle fence at two locations, estimating that distances at 40 paces and 65 paces (below right, at intersection with CREP-funded makai-mauka ungulate exclusion fence), or about 120-195 feet.





We then rode east along the shoreline, through a gate in the makai-mauka CREP ungulate exclusion fence (left), then across waist-high invasive grasses just mauka of a thin, coastal stand at the edge of the native hāla forest (below, looking mauka).



Upon reaching the easternmost section of makai-to-mauka cattle fence (below left), we walked further along the shoreline at the makai margin of the main native hāla preserve area (below right), noting signs of public use (broken glass and charred firewood) and pockets of native coastal vegetation serving as groundcover and forest understory.



Closer views of native hāla forest margin (below)



On our way back along the shoreline, we rode up along a lengthy portion of the makai-mauka CREP ungulate exclusion fence, which appears to be in good condition (right, looking mauka, above, and makai, below), and talked about fence maintenance procedures, which focus on post-storm inspection and repairs.

We then crossed the ephemeral stream bed and finished the Site visit with a tour across the public access grounds of the Kahanu Garden proper, including discussion of its botanical collections, cultural features and heritage, and the coastal restoration demonstration area at Kalāhū (see map, bottom left, from Item 15, Background Information), where lessons learned from intensive, active restoration (see photos, bottom right) may be applied to future efforts in the native hala forest preserve at Honomā‘ele (63.7 acre area at right of map, below).



Site Visit Analysis and Conclusions:

Requirement for Board Approval of Dispositions

1. *Cattle Grazing* – Recent communications with NTBG, along with the contents of the 2012 Kahanu Gardens Proposal from A. DeCoite Ranch LLC (Item 11, Background Information, “Proposed Kahanu Garden pasture lease term of 10 years”) suggest that NTBG did not execute a “three-year lease with a local rancher . . . to run cattle on portions of the property” (as reported in 2015 Grant Recipient Self-Report, Item 10, Background Information). The Ranch did construct barbed-wire stock fencing, and grazed cattle on portions of the property, during the post-acquisition period (exact locations, stocking rates, and grazing periods undetermined). However, it appears that this activity did not involve a disposition of property interests and did not require Board approval. Nonetheless, NTBG and the Ranch agreed to remove grazing livestock from the property pending Board action on NTBG’s proposed lease agreement with the Ranch. We observed signs of livestock presence, not animals themselves, during the Site visit.

Cattle grazing is a permitted use in the State Agricultural Land Use District and conforms with County zoning ordinance. DLNR is well-aware of the benefits that grazing animals provide for brush control and fuel load management in conservation settings, and the 2012 Ranch Proposal estimates that three years of rotational grazing would create a situation that effectuates a transition to machine mowing and other management alternatives. Key concerns about ongoing grazing activity include:

- use of land within the State Conservation Land Use District;
- use of land within NTBG’s East Honomā‘ele Native Hāla Forest Preserve;
- possible disturbance of conservation plantings within the riparian buffer zone; and
- possible disturbance of cultural resources throughout the property.

2. *Mahele Farms* – The existing Lease Agreement between NTBG and Ma Ka Hana Ka ‘Ike (Item 12, Background Information”) requires Board approval as a disposition of property that was acquired with a grant from the Land Conservation Fund. Rather than requesting after-the-fact approval for this disposition, NTBG decided to request Board approval of a new lease agreement that NTBG and Ma Ka Hana Ka ‘Ike (MKHKI) would execute simultaneously with cancellation of the existing Lease Agreement.

Farming is a permitted use in the State Agricultural Land Use District and conforms with County zoning ordinance, and it appears that each farm building that MKHKI constructed on the property is properly permitted and remains functional. NTBG and MKHKI make a strong case in favor of the benefits of a lease, as expressed in the recitals of the existing Agreement (page 1), including mutual acknowledgement of a relationship with the LLCP (*see* part E, below):

D. Lessee [MKHKI] is a non-profit organization whose mission is to provide Hana’s youth with a way to learn that makes sense to them, that builds their self-esteem and shows them they have the power to change their futures.

E. Lessor and Lessee wish to operate a joint program under the name of “Mahele Farms”, in an effort to develop a sustainable agricultural use of the Premises that would benefit the Hana community and enhance the operations of the Kahanu Garden and Preserve, both

consistent with the missions of the parties' respective organizations. This use is deemed by Lessor and Lessee to be consistent with and in furtherance of the Legacy Land Conservation Program grant objectives and will enhance the impact of Kahanu Garden in achieving the goals and principals [sic] stated herein.

F. The overlap of the parties' missions includes enriching life through discovery, conservation, and education of the host Hana community through the growing and eating of food plants that include important ethnobotanical collections of ulu (breadfruit), kalo (taro), maia (banana) and uala (sweet potato) using and perpetuating the subsistence cultural knowledge of the region.

Despite these benefits, which the parties appear to deliver consistently, key concerns about ongoing farm activity under a lease agreement include:

- possible proliferation of accessory farm buildings;
 - management of public access and educational programming for visitors and local community, as numbers increase; and
 - possible disturbance of cultural resources throughout the property.
3. *Next steps* – In reviewing existing and proposed lease documents for each disposition discussed above, NTBG and LLCP staff (including the Deputy Attorney General) identified possible components for conveyance of a new disposition, including:
- citations within the lease terms and conditions that reference LLCP statutory and contractual requirements, and attachment of the LLCP grant agreement as an exhibit;
 - limit lessee operations to portions of the property that are within the State Agricultural Land Use District; and
 - emphasize the role of the LLCP and the Board in provisions about lease extension, renewal, assignment, and subletting.

The LLCP is aware that the token annual rent established in each disposition is/would be augmented by lessee donations of goods and services to lessor, and that a lessee may generate income from its operations on the leased property through cattle sales (for Ranch LLC) and through charitable donations received in exchange for farm tours or produce (for MKHKI, and also for NTBG in its roles as landowner and manager over unencumbered areas and resources on the property). However, interrelationships among token lease rent, lessee donations, lessee and lessor income, fair market value, and LLCP revenue sharing requirements are embedded in a somewhat fuzzy network of mutual work-sharing and product-sharing that may be onerous to track and evaluate within the context of NTBG operations, and which may be of limited value for deciding about implementation of LLCP revenue sharing requirements for dispositions of interests. Please see further discussion, below, about agricultural usage of the property.

Deed requirement that “the property shall be managed consistently with the purposes for which it was awarded a Legacy Land Conservation Program grant”

1. *Agricultural Production* – In its application for a grant from the Land Conservation Fund, NTBG proposed to acquire the property for four preservation purposes–Habitat protection, Cultural and historical sites, Natural areas, and Open space and scenic resources (Item 1, Background Information, Section B.3, Type of Acquisition). NTBG did not check the box

provided for “Agricultural Production,” but did identify “the cultivation of the pre-existing mature macadamia nut orchard, with proceeds used to offset costs to operate and maintain the property” as a short-term objective (Section F.3, Project Description). The application also noted “expansion of the Kahanu Garden’s breadfruit collection area” as a “long term, environmentally-appropriate project for the site.”

Later, in its first post-acquisition LLCP self-report (Item 8, Background Information), NTBG reported that it “found a means to include public use and access through our community farm project, ‘Mahele Farm’ . . . [which h]as permitted our community, on a voluntary basis, to come and farm with us and . . . take home farm-fresh food . . . in exchange,” and that its major activities also included “[r]esuscitating certain parts of the existing macadamia nut orchard to see if there is viability in a cottage industry project for our community.” The LLCP appeared to endorse these forms of agricultural production in the Fact Sheet that it published (Item 9, Background Information) shortly after receiving the LLCP self-report, advertising the facts that “NTBG has . . . expanded its breadfruit collection area, created an organic community farm, [and] cultivated a pre-existing macadamia nut orchard.”

The overall extent to which agricultural production enhances or detracts from managing the property consistently with the four preservation purposes listed in the application is not entirely clear. Regardless, the main concerns of the LLCP are (1) the condition of the property and resources now, compared with that identified at the time of acquisition (see discussion below); (2) the status of the resource values protected under the terms of the grant agreement (see discussion below); and (3) progress in reconciling whether or not the agricultural production that the property supports is “commercial agricultural.” Background for concern (3) originates from the LLCP application process, when in response to a question from the Legacy Land Conservation Commission, NTBG responded that there wouldn’t be any commercial agricultural (Item 2, Background Information). However, a “commercial” grey area may exist in the presence of references to “proceeds to offset costs” and “cottage industry project” for macadamia nut; cattle grazing by a for-profit business entity; and the possibility that a charitable donor to NTBG may happen to receive a commercially-viable quantity of free breadfruit from NTBG, or a charitable donor to MKHKI may go home with an armload of farm-fresh free produce.

Nonetheless, based on the present condition of the property and resources, the current status of resource values protected under the grant agreement, and the rationales provided by NTBG, it appears that existing agricultural production on the property does not conflict with managing the property consistently with the purpose for which it was awarded a LLCP grant. Enhancements provided include numerous conservation benefits, such as farm fencing, public access, visitor and resident awareness, applied education, labor force development, and community integration.

Condition of the property and resources

The results of the Site visit and related investigation suggests that the condition of the property and the resources has changed since the property was acquired with a grant from the Land Conservation Fund, largely if not entirely for the better. Unlike later LLCP acquisitions, the Legacy Land Conservation Commission did not conduct a field visit to the property as part of the application process. The lack of dating for some of the Background Information, and the

absence of a conservation easement over the property, also handicap our identification of baseline conditions at the time of acquisition.

Noticeable improvements in the condition of the property and resources stem from both active and passive management activities, such as the creation of a riparian forest buffer corridor that also provides ungulate exclusion fencing; expansion of botanical collections; and non-development of key areas (such as retaining the ironwood trees along the property boundary that protect the viewplane from Pi'ilanihale Heiau). However, earlier undated photos of the macadamia nut orchard suggest a well-groomed operation that far surpasses current conditions. Similarly, the lack of active management within most of the native hāla forest preserve area suggests a potential for degrading conditions, and there seems to be LLCP-NTBG consensus that a thorough biological survey of this area (about 64 acres) is overdue.

Status of resource values protected under the terms of the grant agreement

1. *Sections A and D* – The grant agreement (Project Description) states that the Awardee shall use funds from the LLCP for land acquisition of the Property “for the protection of resource values stated in Sections ‘A,’ ‘D,’ and ‘F’ of the Project application” and that “Property acquired with LLCP funding from the Land Conservation Fund shall be held and managed in a manner designed to protect the Property’s resource values.” Section A of the NTBG application, Applicant Information, does not include a statement of resource values. Section D, Description of Land, describes the “most exceptional natural resources on the property” as “Lower forest areas, sodden shoreline.” As mentioned above (Condition of the property and resources), the resource values of the lower forest areas and sodden shoreline appear to be intact, although wanting of additional future attention. NTBG is aware of this situation, noting that because the East Honomā‘ele area (aerial photo below) is isolated, moderately to highly disturbed by alien vegetation and ungulate damage, and encounters barriers to complete management practices, NTBG’s planning and implementation of fencing, rare plant restoration, trailbuilding, and other activities for this area will be scaled back and delayed. In the meantime, NTBG suggests that “[t]he East Honomā‘ele parcel will maintain its integrity through community involved management of ungulate species” (Item 15, Background Information, Draft Long-Range Management Plan, various pages).



2. *Section F – Part 1* in Section F of the Application (Project Description) notes the significance of the property “from cultural, historical, and environmental perspective,” focusing on:

- (a) the sight of Pi‘ilanihale Heiau in the distance (“one of Hawaii's most sacred sites . . . largest intact ancient place of worship . . . registered as a National Historical Landmark”);
- (b) “ideal conditions” for native coastal plant communities; and
- (c) “the lower forest area and sodden shorelines” of a “struggling” forest of native hāla (*Pandanus tectorius*).

With regard to Part 1(a), the sight of the heiau from the LLCP parcel remains protected by preservation status of the heiau parcel and by NTBG management activities on both sides of the property boundary, particularly the lack of intervening structures and other visual impediments, and the cattle fencing that deters cattle from crossing the streambed and entering the Garden grounds proper. However, in the absence of a conservation easement or similar deed restrictions or covenants that explicitly disable the potential for securing subdivision and other development entitlements, the statutory and contractual requirements of the LLCP may not provide all of the protection desired to fully protect this resource value, and could be harder to wield in defense of an attack than the other alternatives mentioned above.

With regard to Part 1(b), the status of conditions for native coastal plant communities will continue to be impacted by rising sea levels, extremes in the variability of moisture and temperature, and other changes in the physical environment resulting from a changing global climate system. During the Site visit, we did not observe, and were not made aware of, substantial changes in soil health, invasive species, plant disease, or wildlife damage that would negatively impact the conditions available to support native coastal plant communities. Existing communities that we viewed appeared to be well-established and surviving, if not thriving.

With regard to Part 1(c), native hāla forest, please see the discussion above, under Condition of the property and resources.

Part 2 in Section F of the Application describes the importance of “protection of these undeveloped treasures and the viewplanes surrounding these natural wonders,” which are up against “the possible development of pristine Hawaiian lands.” Although we did not have an opportunity during the site visit to ascend Pi‘ilanihale Heiau and inspect the viewplane from its heights, we learned that the main concern of NTBG and its partners is to maintain the old stand of tall ironwood trees, new riparian forest buffer plantings, and other vegetative screens that block the view of the LLCP parcel from the heiau. In that context, note the discussion in Part 1(a), above, and a conclusion that the status of this resource value remains intact (photo below).

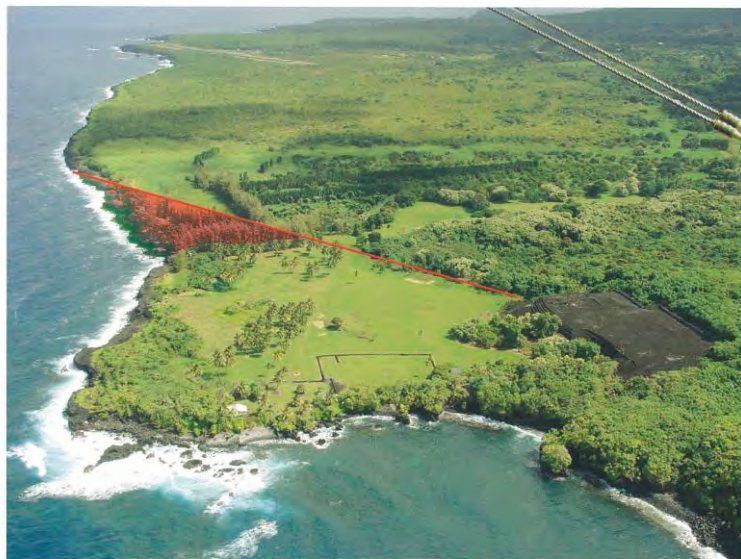
Part 3 identifies short term objectives for expanding the Garden’s botanical collection; constructing appropriate access to the parcel while maintaining its natural integrity; and cultivating the macadamia nut orchard, along with long term objectives for establishing a coastal plant community adjacent to the shoreline; creating a native forest preserve/restoration; and expanding the Garden’s breadfruit collection area. Short term expansion of the botanical collection appears to be successful through its integration with operations at Mahele Farms, and

access seems to have improved through the same relationship. The short-term cultivation of the macadamia nut orchard, however, appears to have suffered a setback, and it is unclear how NTBG will transition the use of this area to serve its longer-term objectives. Please see Condition of the property and resources, above, for additional discussion of this resource value.

The status of resource values that would contribute to the achievement of long-term objectives appears to be sound overall, while each is faced with varying degrees of protection and threat. Establishing a coastal plant community, and creating a native forest preserve restoration, appear to be back-burner objectives that will be harder, but not impossible, to achieve as time goes by, as discussed above under **Part 1** for Section F and under Condition of the property and resources. Expanding the breadfruit collection area seems to be the simplest of NTBG's long-term objectives to achieve under present circumstances, with successes already accomplished and more area available for further expansion.

Recommendation: LLCP recommends that NTBG prepare to (1) appear before the Board of Land and Natural Resources in support of a request from the LLCP for Board actions on existing and proposed dispositions of the property, and (2) submit a Grant Recipient Self-Report Form, no later than January 31, 2019, that incorporates, clarifies, and discusses the information, analysis, and conclusions contained in this Site visit report.

Aerial view of the impact of the Kinney Sweet parcel on the view plane of Pi'ilanihale Heiau.



Total project cost =

\$ 6,900,000.

DRAFT

Form done wrong,
but numbers
work out.

work out.

work out.

(Contract and letter attached)

(Contract and letter attached)

Grant Agreement number: Contract No. 57148

AWARDEE: *McGuire* 8-22-08
Signature Date

Janet L. Mayfield NTBG COO & CFO
Typed or printed name Title

**Kahanu Kinney Sweet, LLC
c/o Palmer Capital
920 East Deerpath Rd.
Lake Forest, Illinois 60045**

August 7, 2008

Department of Land and Natural Resources (DLNR)
Legacy Land Conservation Program
1151 Punchbowl Street, Room 325
Honolulu, HI 95813

RE: National Tropical Botanical Garden (NTBG)
Contract #57148

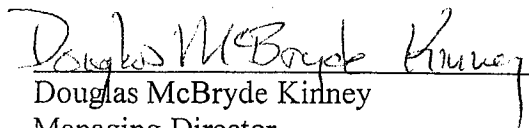
ATTN: Molly Schmidt, DLNR-DPRAW
Contract Administrator

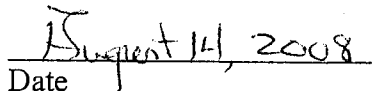
This letter certifies that Kahanu Kinney Sweet LLC, owner of Honomaele Parcel (TMK 13002001000) has entered into an agreement to sell the aforementioned property to NTBG for \$1,500,000 cash and to donate the remaining value of \$5,400,000 as a charitable contribution to the NTBG, (a qualified 501(c)3 nonprofit organization).

The total value of the property has been determined to be \$6,900,000 by an independent real estate appraisal report on September 19, 2007 prepared by John Child & Company, (copy previously provided to DLNR by NTBG). Confirmation of the charitable contribution portion of the land will be acknowledged by NTBG to the company, in writing.

It is acknowledged and confirmed that the contribution will be used as matching funding for the grant contract #57148 to fulfill requirements of the award.

Respectfully,


Douglas McBryde Kinney
Managing Director


Date