

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

July 27, 2018

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

O'AHU

Land board members:

SUBJECT: REQUEST APPROVAL OF: 1) ACQUISITION OF PRIVATE LANDS;
2) ISSUANCE OF MANAGEMENT RIGHT-OF-ENTRY TO DIVISION
OF FORESTRY AND WILDLIFE; 3) ISSUANCE OF SET ASIDE TO
DIVISION OF FORESTRY AND WILDLIFE FOR FORESTRY AND
WILDLIFE PURPOSES; AND 4) AUTHORIZE DIVISION OF
FORESTRY AND WILDLIFE TO CONDUCT PUBLIC HEARING ON
THE ISLAND OF O'AHU FOR PROPOSED ADDITION TO 'EWA
FOREST RESERVE, PA'ALA'A-UKA, WAIALUA, AND WAHIAWA,
O'AHU, TAX MAP KEYS (1) 6-3-001:003, 6-4-004:011, 7-1-002:011
AND 7-2-001:003; AND

REQUEST DELAGATION OF AUTHORITY TO THE O'AHU
BRANCH MANAGER TO ISSUE ACCESS PERMITS FOR THESE
PARCELS UNDER CHAPTER 171, HRS, UNTIL SUCH TIME AS THE
PARCELS ARE ADDED TO THE FOREST RESERVE SYSTEM.

PRIVATE LANDOWNER:

Dole Food Company, Inc., a North Carolina Corporation (Dole)

LEGAL REFERENCE:

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

LOCATION:

Privately-owned lands of Dole Food Company, Inc. situated at Pa'ala'a-Uka, Waialua, Wahiawa, O'ahu, identified by Tax Map Keys (1) 6-3-001:003, 6-4-004:011, 7-1-002:011 and 7-2-001:003, as shown on the attached map labeled Exhibit A and collectively referred to as "the Property".

AREA:

6-3-001:003: 1,143.490 acres, more or less
6-4-004:011: 1,247.697 acres, more or less
7-1-002:011: 58.540 acres, more or less
7-2-001:003: 431.899 acres, more or less

TOTAL: 2,881.626 acres, more or less.

ZONING:

State Land Use District: Agriculture/Conservation
City and County of Honolulu CZO: Agriculture/Preservation

CURRENT USE:

Vacant and unencumbered, except a portion of parcel (1) 6-4-004:011 is being used for pasture purposes, see Remarks Section for further discussion.

CONSIDERATION:

Total purchase price is \$15,163,800.00; see Remarks Section for further discussion.

PURPOSE:

Forestry and Wildlife purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

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

REQUIREMENTS:

- 1) Obtain an appraisal report to determine the value of the properties to be acquired;
- 2) Process and obtain subdivision approval;
- 3) Provide survey maps and descriptions for the privately-owned property according to State DAGS standards;
- 4) Obtain a title report for the privately-owned property subject to review and approval by the Department;
- 5) Conduct a Phase I environmental site assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and

all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department.

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

BACKGROUND:

In early 2013, the Division of Forestry and Wildlife (DOFAW) became aware of Dole listing of approximately 20,000 acres of land for sale on Oahu's North Shore. The Division evaluated the land offerings, determined that certain parcels would meet the DOFAW's mission, and began fundraising to purchase high priority parcels in collaboration with the Trust for Public Land (TPL).

In particular, parcels 6-3-001:003 and 6-4-004:011 contain a road that provides access to the Poamoho Section of the 'Ewa Forest Reserve. Public access across this privately-owned land was restricted in 2000 due to vandalism and agricultural theft. As a result of public pressure to regain access to this high value recreational area, State Representative Marcus Oshiro assisted the Department in negotiating a 10-year Memorandum of Understanding (MOU) with Dole, which was executed on February 10, 2006 (renewed on February 3, 2016). However, the MOU is subject to termination upon sale of the land to a third party. The forest reserve is a popular hunting and hiking area for the public, and is a priority management area for DOFAW as it contains important watershed forest, critically endangered Hawaiian plants and animals, and listed species recovery habitat. Loss of access to this road would severely impact DOFAW operations and the public's enjoyment of trust resources.

The total acquisition includes four parcels totaling 2,822 acres comprised of TMKs: (1) 6-3-001:003 (1,143 acres), 6-4-004:011 (1,248 acres), 7-1-002:011 (59 acres) and 7-2-001:003 (432 acres), and consists of both agricultural and conservation zoned lands. Coined the "Helemano Wilderness Area", these lands will secure high priority watersheds, native forest, and habitat for the endangered state mammal – the Hawaiian Hoary bat – and many other native plants and animals. It will also add significant access and acreage for hunters, hikers, campers, and other outdoor recreationists to explore the Ko'olau Mountains, as well as create a hub for forestry products that will supply woodworkers with locally sourced materials. Should these lands be acquired by the state, the Property is intended to be added to the Poamoho Section of the 'Ewa Forest Reserve and managed by DOFAW.

Currently, there are only two public designated camping areas in Oahu's mountains despite substantial demand. This acquisition would seek to open approximately 3,000 acres of Central O'ahu for public recreation, hunting, camping, educational opportunities, and agroforestry. These newly acquired parcels will secure and increase access to another 4,300 acres – the Poamoho section of the 'Ewa Forest Reserve and the premier trail leading to the summit of the Ko'olau Mountains.

The Helemano Wilderness Area is found in high priority watershed that serves as a recharge area for the Central O'ahu aquifer that supplies communities from Pearl Harbor to the North Shore – a third of Oahu's residents. Conserving this land for restorative, forestry and recreational uses will in turn help secure clean drinking water for generations to come.

On April 22, 2015, Governor David Ige signed into law a bill making the Hawaiian Hoary bat Hawaii's official state land mammal. This elusive, solitary creature is federally listed as an endangered species. Encroachment on its habitat by windmills and other development has led to the need for safe havens in which the bats can survive and reproduce. This acquisition will preserve quality habitat for the Hawaiian Hoary Bat as well as for endangered bird species and over 20 federally listed plant and invertebrate species living in native forested areas. Under management by DOFAW, and with the support of Hawaii's hunting community to control feral animal populations, these native forested areas and their inhabitants can thrive.

Unlike other counties, O'ahu lacks commercial timber areas, despite demand for local source materials by woodworkers and artisans, and a demand for finished local wood products from residents and visitors. Helemano is ideally suited for timber production because of its fertile soils, gentle slopes, and optimal rainfall for tropical timber species, such as *Acacia koa*. In addition, the convenience of an O'ahu location will make forest products accessible to the greatest number of users as well as a distribution network. Cultural practitioners will also benefit through newly created access to forested areas, and new planting of Hawaiian and Polynesian forest products that can be used for lei, garlands, medicinal uses, and other cultural practices.

REMARKS:

Through combined efforts, TPL and DOFAW successfully secured funds to meet the agreed upon purchase price of \$15,163,800.00. Funding sources include:

• State Legacy Land Conservation Fund	\$1,513,800
• U.S. Forest Service Forest Legacy Program	\$5,000,000
• U.S. Fish & Wildlife Service Habitat Conservation Planning Acquisition Fund	\$2,000,000
• U.S. Fish & Wildlife Pittman Robertson	\$400,000
• U.S. Navy REPI (TPL)	\$3,500,000
• <u>Other Private/Public Funds (TPL)</u>	<u>\$2,750,000</u>

Total Funding Secured	\$15,163,800
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Should the Board approve acquisition, DOFAW is committed to developing a community based management plan. A draft warranty deed negotiated for this acquisition is attached as Exhibit B, and details the various funding sources and management requirements that will govern the future management of the Property.

DOFAW was assisted in conducting the due diligence for this property by Land Division and the Attorney General. An appraisal of the Property was conducted by John Child & Company dated June 13, 2017. The appraisal determined the total fair market value of the Property to be \$16,560,000.00. The appraisal was reviewed by the U.S. Forest Service and the U.S. Fish and Wildlife Service. Both agencies accepted the fair market value and determined that the appraisal was compliant with the assignment and both the Uniform Standards for Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA). Additionally, DOFAW and Land Division are working with the State Surveyor to complete maps and descriptions for the Property.

DOFAW obtained title reports for all four parcels for the State's review and approval. Department and TPL staff worked with Dole to remove problematic encumbrances that the State could not accept, as well as provide access to the Property. Additionally, mortgages currently encumbering the Property shall be released at closing. However DOFAW recommends acquiring the Property subject to certain encumbrances which are subsequently discussed.

Prior to the State acquiring the Property, TPL will encumber all parcels of the Property except for parcel (1) 6-3-001:003 with a Restricted Use Easement (RUE), in favor of the U.S. Department of the Navy, Naval Facilities Engineering Command Hawaii (Navy). The RUE, attached as Exhibit C, is a condition of the Navy's funding contribution for this acquisition that was secured by TPL. The purpose of the RUE is to have the Property serve as a buffer for Navy operations on adjacent properties. The RUE places various restrictions on the Property, such as prohibiting unpermitted commercial activities, human habitation other than short term camping, construction of structures above 15 feet in height in certain areas, and the use of firearms except transportation and permitted public hunting in select areas. It is not expected that any of these restrictions will interfere with the management of the Property in a manner that is consistent with the requirements of the various funding sources, as well as DOFAW's regulatory requirements.

In addition to the RUE, Castle & Cooke Properties, Inc. (Castle), a prior fee owner of parcel (1) 6-4-004:011, holds a reservation of rights to designate and use perpetual non-exclusive easements for utility, drainage, access, flowage and other purposes. The reservation is contained in a Deed with Covenants recorded on February 13, 2003, and lasts for a period of twenty years after the recordation of the deed. Poamoho Stream flows through the subject parcel, and there is currently a diversion on the parcel taking water from the stream and irrigating the parcel as well as adjacent parcels. This proved an issue for the State as although the portion of stream and the diversion are currently located on private land, both will become public resources upon the closing of the acquisition.

Once the stream and diversion are public, allowing Castle to designate an easement over the diversion to take water would substantively result in an issuance of a lease of water rights. Any water lease granted by the State must be approved by the Board in an open, sunshine meeting and also must comply with Section 171-58, Hawaii Revised Statutes

(HRS). Allowing Castle to unilaterally designate an easement pursuant to their deed reservation would be violation of statutory as well as public trust requirements. In order to remedy this issue, Castle has agreed to execute a Partial Amendment to Deed with Covenants with the State (Amendment), a draft of which is attached as Exhibit D. Through the Amendment, Castle shall be prohibited from claiming any right, title, or interest to use, control, capture, sell, divert, impound, or take water from the Property unless Castle or its successors or assigns complies with HRS section 171-58, as amended, and HRS chapter 174C, as amended.

Additionally, Dole currently has a tenant on parcel (1) 6-4-004:011, Dustin T. Griffith, dba Poamoho Ranch (Griffith). Griffith is a cattle rancher utilizing a portion of the parcel for pasture purposes. Griffith currently has a license from Dole that is set to expire December 31, 2021. The Division has met with Griffith to review his operations, and support retaining Griffith as a tenant post acquisition. Griffith's tenancy provides DOFAW with assistance in managing the land and is consistent with DOFAW's interim management plans. Therefore, Griffith's license is intended to be assigned from Dole to the Department via the Assignment and Assumption of License attached as Exhibit E, between Dole and the State.

Prior to acquisition, Dole will amend the license with Griffith to extend the term an additional five years to terminate on December 31, 2026, as well as incorporate provisions of a State lease to the license. Upon expiration, DOFAW intends to implement their management plan for that portion of the Property. The extension will provide Griffith with additional time to plan accordingly to vacate the parcel. In addition to the license amendment, the Department will be provided with an estoppel certificate attesting that the license is in full force and effect, the parties are not in default of the license and there are no claims arising out of the license.

DOFAW procured a Phase I Environmental Site Assessment (ESA) from SWCA Environmental Consultants, which was further supplemented by an independent review of the Phase I ESA conducted by Ford Canty & Associates, Inc, (Ford Canty) and contracted for by TPL. The Phase I ESA and review identified several recognized environmental conditions (RECs), including two dumpsites identified as the Old Wahiawa Landfill (OWLF) and the East Gulch Disposal Area (EGDA). Additionally, the Ford Canty review identified as a REC an unauthorized shooting range operated by a prior tenant of Dole that was discovered on parcel (1) 6-4-004:011. The OWLF and the EGDA are located on adjacent properties controlled by the Navy, however, the dumpsites may have encroached into the subject Property.

The OWLF is located within the Naval Computer and Telecommunications Area Master Station Pacific (NCTAMS PAC). The OWLF is a remote, densely vegetated, closed landfill with an area of approximately 4 acres. The OWLF is located on the eastern edge of the JBPHH-WA, adjacent to parcel (1) 7-2-001:003. The OWLF served as the primary disposal area for mostly municipal wastes generated on base from the 1940's to 1973 when the landfill was closed.

The Navy has conducted remedial investigation and action on the site. As a result, both the Environmental Protection Agency (EPA) and the State Department of Health Hazard Evaluation and Emergency Response Office (DOH-HEER) have accepted the clean up as a remedy protective of human health and the environment in a Record of Decision (ROD). As part of remedial actions at the OWLF, the Navy indicates that long-term monitoring and maintenance, and Land Use Controls (LUCs) are required to prevent human health risks from exposure to contaminants. The Navy is responsible for the ongoing management of the OWLF.

The EGDA is located within the Joint Base Pearl Harbor Hickam Wahiawa Annex (JBPHH-WA), a unit within the NCTMAS PAC. The EGDA is located in a gulch approximately 500 feet north of the OWLF. Like the OWLF, the Navy conducted remediation activity on the site. Waste removed from the site included soil and debris waste, excavated drums, a compressed gas cylinder, paint and battery waste. The Navy has completed clean-up of the EGDA and is currently seeking a determination of No Further Action (NFA) from DOH-HEER for the site.

Like the OWLF, the Navy is responsible for obtaining the NFA and future management and maintenance of the EGDA. Given that the NFA determination is still outstanding, the Ford Canty review determined the EGDA to be a REC. The OWLF was determined to be a Controlled REC (C-REC) because even with the remediation and ROD, contamination remains on site and ongoing maintenance of the site is required.

The most significant identified REC on the subject Property is an unauthorized firing range operated by former tenant of Dole, located on the southeastern section of parcel (1) 6-4-004:011. The firing range consists of an area of approximately 1.09 acres, with a larger envelope area of approximately 2.5 acres identified as a potentially affected area. Ford Canty conducted testing of multi-incremental soil samples from the area to determine the extent of any contamination. The soil testing revealed significant lead contamination, with some samples as high as 24 times the DOH Tier 1 Unrestricted Environmental Action Levels (EALs). Antimony was also detected but at lower levels, with the highest concentration being approximately 3.5 times the DOH Tier 1 Unrestricted EALs. Based on the results Ford Canty recommended that the results be reported to DOH-HEER for further action.

Pursuant to the standard Board approved acquisition procedure, under these circumstances a Phase II ESA containing a sampling and analysis plan must be conducted and any and all remediation, abatement and disposal as may be warranted must be completed satisfactory to the standards required by the Federal EPA and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department prior to acquisition. Additionally, the terms of the State's standard form warranty deed requires the Grantor to indemnify defend and hold the State harmless from any damages and claims directly resulting from the release of hazardous materials occurring while Grantor was in possession of the Property.

In this transaction, Dole is unwilling to obtain a Phase II ESA, remediate the contamination

and secure a NFA determination from DOH-HEER. Additionally, Dole is not agreeable to the hazardous materials indemnification in the standard warranty deed. As an alternative, through a Purchase and Sale Agreement (PSA) with the State, TPL will contractually assume the obligation to conduct all required studies and testing, remediation and ultimately secure an unrestricted NFA determination from DOH HEER. The draft PSA is attached as Exhibit F. TPL will contract with Ford Canty for those services. The contract will be funded by proceeds from the sale of the Property, in the amount of \$212,900.00. It is imperative that the unrestricted NFA be obtained, as the fair market value determined by the appraisal did not consider the effects of contamination.

In regards to the hazardous materials indemnification in the warranty deed, Dole has offered a limited scope indemnification. Dole proposes to indemnify the State only for the 2.5 acre affected area, subject to termination upon the issuance of the unrestricted NFA or five years from the date of the warranty deed. Additionally, Dole desires to cap its financial liability obligation at \$425,800.00 (an amount twice the cost of obtaining the unrestricted NFA).

Land Division and the Attorney General have concerns about risk the State would incur by 1) acquiring the Property prior to obtaining the unrestricted NFA from DOH HEER and 2) significantly limiting the indemnification provision in the warranty deed, and have advised DOFAW accordingly. DOFAW believes that due to TPL's obligation to secure an unrestricted NFA, the risk to the State is minimal, and in consideration of the natural and recreational resource values that would be protected by the State's acquisition of the Property, respectfully requests that the Board approve the acquisition pursuant to the foregoing terms and conditions.

In order to further address Land Division's concerns, DOFAW has agreed to the following process to assume management authority over the Property immediately upon acquisition. Upon closing, DOFAW will enter into a management right-of entry for the Property, and an Executive Order setting aside the Property to DOFAW for forestry and wildlife purposes will be transmitted to the Governor for approval. DOFAW will proceed with conducting public hearings to add the Property to the 'Ewa Forest Reserve, Poamoho Section. Upon completion, DOFAW will return to the Board to seek approval to designate the Property as part of the Forest Reserve System, and amend the Executive Order as appropriate. For the period of time the Property is under the management right-of-entry and the Executive Order for forestry and wildlife purposes, DOFAW would like to continue providing access to recreational users for the Poamoho Ridge Trail. As this is a highly used trail and an existing, ongoing use, DOFAW is requesting delegation of authority to the O'ahu Branch Manager to issue access permits for these parcels under Chapter 171, HRS.

RECOMMENDATION:

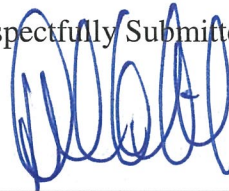
That the Board:

1. Authorize the acquisition of the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:
 - A. The terms and conditions of the attached draft deed document, as may be amended;
 - B. Review and approval by the Department of the Attorney General;
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the issuance of a management right-of-entry permit to the Division of Forestry and Wildlife covering the subject area under the terms and conditions cited above, effective immediately upon acquisition by the State, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Division of Forestry and Wildlife for forestry and wildlife purposes under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Pursuant to Section 183-11, HRS, as amended, authorize the Division of Forestry and Wildlife to conduct a public hearing on the Island of O‘ahu regarding the

proposed addition of the subject lands to the 'Ewa Forest Reserve, Poamoho Section, O'ahu. Further, pursuant to 183-12, HRS, authorize the Chairperson to:

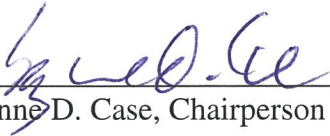
- A. Set the date, location and time of the public hearing; and
 - B. Appoint a hearing master(s) for the public hearing.
5. Delegate authority from the Board to the O'ahu Branch Manager to issue access permits for these parcels under Chapter 171, HRS, to provide access to the lands while the Division of Forestry and Wildlife works to add the lands to the forest reserve system.

Respectfully Submitted,

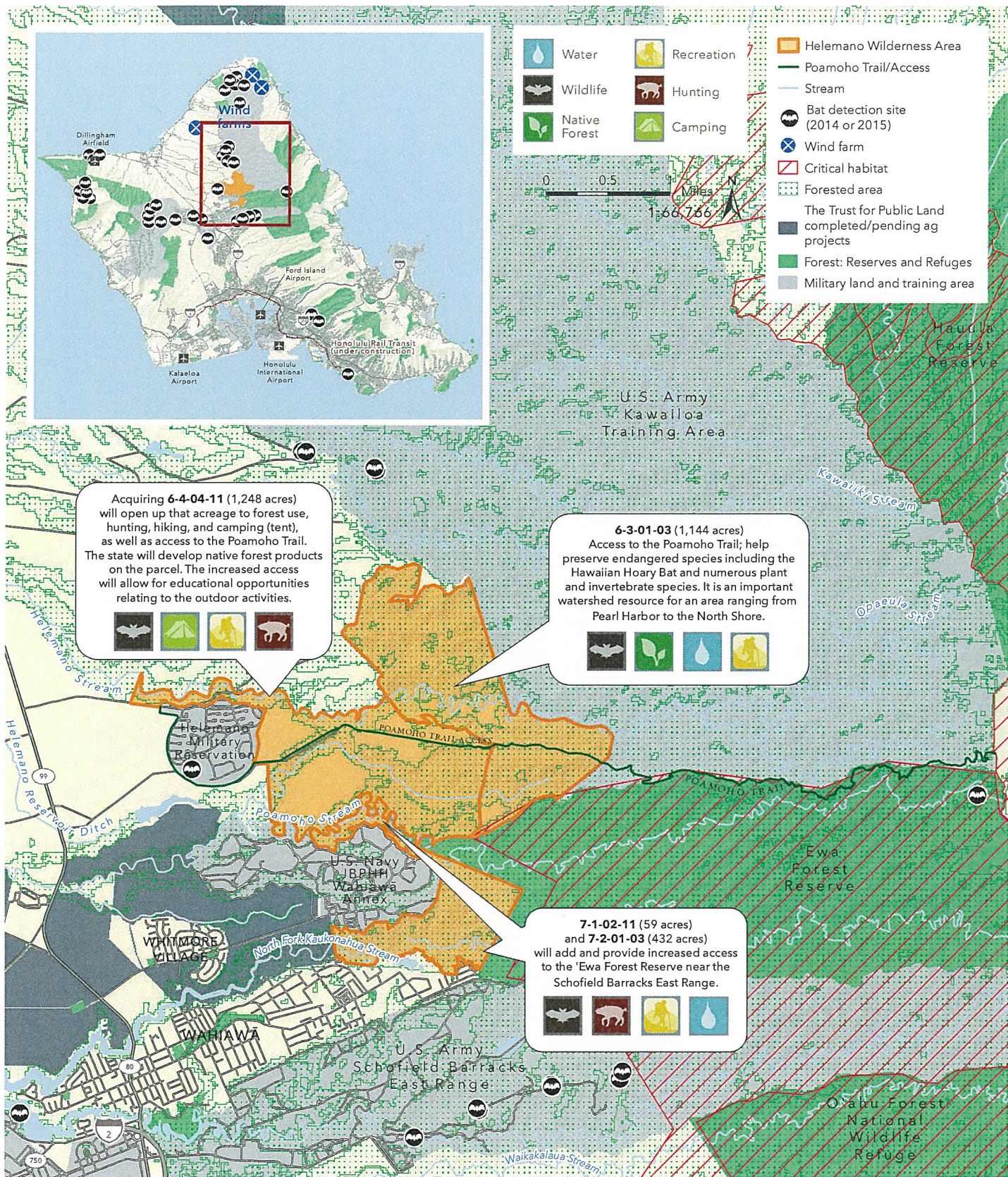


David G. Smith
Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



Helemano Wilderness Area

ISLAND OF O'AHU, HAWAII



TOGETHER WITH the right, in the nature of a nonexclusive easement over and across (i) Parcel K-1 as described in Exhibit "A" to that certain Limited Warranty Deed dated December 29, 1998, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 99-023263 (which contains exceptions and reservations in favor of Grantor over said Parcel K-1), (ii) Road Lot 1 as described and shown in that certain Metes and Bounds Description, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-59530677 (the "Helemano Subdivision Description"), (iii) Easement A-4 as described and shown in the Helemano Subdivision Description, (iv) Easement A-5 as described and shown in the Helemano Subdivision Description, (v) Easement A-6 as described and shown in the Helemano Subdivision Description, and (vi) Easement A-7 as described and shown in the Helemano Subdivision Description, to be exercised and enjoyed by Grantee, successors and assigns, as the owner of the Property, and by Grantee's permitted users, for vehicular and pedestrian access and utility purposes.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in anyways appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever.

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

Ford & Associates, Inc. ("Ford") conducted a site investigation of a portion of the Property as described in that certain report dated May 21, 2018, addressed to Mr. Steve Rafferty, The Trust for Public Land, regarding Project No. 18-1330 (the "Report"). The Report identified one of two firing ranges located on the Property, in the northeast portion of Tax Map Key No. (1) 6-4-004:011 (the "Affected Area"). The Affected Area, depicted in Exhibit D attached hereto and incorporated herein by this reference, includes the firing range and adjoining land which could have reasonably been impacted by firing range activities as indicated in the Report. The Affected Area contains a concentration of lead and antimony above State of Hawaii Department of Health ("HDOH") Commercial / Industrial Environmental Action Levels that will require remedial work (the "Remediation Work"). The scope and cost of the Remediation Work is set forth in that certain Proposal No. 18P-2433 (Rev) issued by Ford dated July 2, 2018 for a fixed sum of \$212,900.00 (the "Proposal") to complete the Remediation Work described in the Proposal and obtain an unrestricted no further action letter ("NFA") from the HDOH relating thereto. In connection with the Remediation Work, Grantee, as the owner of the Affected Area, will reasonably cooperate to execute applications and other agreements required by the HDOH, the City and County of Honolulu, and any other governmental authority with jurisdiction over the Property to facilitate the completion of the Remediation Work and receipt of the NFA.

An amount equal to Two Hundred Twelve Thousand Nine Hundred and 00/100 Dollars

(\$212,900.00) will be retained in escrow by Title Guaranty Escrow Services, Inc. and shall be used by The Trust for Public Land to pay Ford for the Remediation Work under the Proposal.

The Grantor agrees to indemnify, defend, and hold Grantee harmless, from any damages and claims directly resulting from the release of Hazardous Materials within the Affected Area occurring while Grantor was in possession of the Affected Area ("Grantor's Indemnity Obligation"); provided, however, that (a) Grantor's Indemnity Obligation shall terminate on the earlier of (i) the fifth (5th) anniversary of the date of execution of this Warranty Deed and (ii) the date of issuance of the NFA by the HDOH, and (b) provided, further that the Grantor's liability under the Grantor's Indemnity Obligation shall be limited to the sum of Four Hundred Twenty-Five Thousand Eight Hundred and 00/100 Dollars (\$425,800.00).

Other than as identified in the Report, the Grantor has no knowledge of other Hazardous Materials existing in the Affected Area.

For the purpose of this Warranty Deed "Hazardous Materials" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, as amended, Chapter 128D, Hawaii Revised Statutes, as amended, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

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

NOTICE OF STATE PARTICIPATION

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. Whenever the Property is sold, that portion of the net proceeds (sale price less actual expenses of sale) of such sale, equal to the proportion that the grant by the State bears to the original cost of the Property, shall be paid to the State of Hawaii and redeposited in or credited to the Land Conservation Fund or its successor. In the event the Property is leased, rented, or otherwise disposed of, other than by sale, that portion of the gross proceeds of such disposition, equal to the proportion that the grant by the State bears to the original cost of the Property, shall be paid to the State of Hawaii and redeposited in or credited to the Land Conservation Fund or its successor.

NOTICE OF FEDERAL PARTICIPATION

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

The purpose of this acquisition is to effect the Forest Legacy Program in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16

U.S.C. 2103c *et seq*) on the herein described land, which purposes include protecting environmentally important forest areas that are threatened by conversion to nonforest uses and for promoting forest land protection and other conservation opportunities. The purposes also include the protection of important scenic, cultural, fish, wildlife and recreational resources, riparian area, and other ecological values, and to ensure that the Property is available for the sustainable and cost-effective harvesting of forest products in a silviculturally sound manner, all of which meet the objectives of the Forest Legacy Program. The purposes also include encouragement of management for and the production of economically sustainable and commercially viable forest products consistent with the other purposes of this acquisition and also include the long-term protection of the Property's capacity to produce economically valuable forestry products, and the encouragement of management of the property for industrial or commercial forestry only if consistent with the other purposes of this acquisition.

The STATE OF HAWAII, by its Board of Land and Natural Resources, the grantee under this Deed, pursuant to the grant agreement "Helemano Wilderness Area" Grant Number 16-DG-11052021-207 awarded by the United States Department of Agriculture (USDA) Forest Service on April 20, 2016 to the Grantee, the STATE OF HAWAII, by its Board of Land and Natural Resources, acknowledges that the USDA Forest Service Forest Legacy Program funding for this acquisition is authorized by Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (P.L. 101-624; 104 Stat. 3359), as amended, and that the interest acquired cannot be sold, exchanged, or otherwise disposed. Except, however, the USDA Secretary of Agriculture (Secretary) may exercise discretion to consent to such sale, exchange, or disposition upon the Grantee's tender of equal valued consideration acceptable to the Secretary and under the requirement that the United States is reimbursed the market value of the interest, proportional to its contribution in the original acquisition, at the time of disposal. The grant agreement is housed in the USDA Forest Service Regional/Area Office at the Forest Service Pacific Southwest Region Office at 1323 Club Drive, Vallejo, California, 94592, or in an archival facility per Agency policy.

The Property will be managed in a manner consistent with the Forest Legacy to ensure long-term sustainability and protection of the forest resources and other conservation values for which the Property was acquired. Management activities will support and maintain at least 75% forest cover across the Property and be compatible with long-term forest health and sustainability. There will be no surface disturbance of the property other than what is necessary for management activities which are needed for long-term forest health and sustainability. Disturbance must be limited but could include construction of new recreational or forest management roads or trails, construction or replacement of culverts or construction of structures that are necessary to meet the purposes of the acquisition including public access and forest-based recreation. There may be limited extraction of sand or gravel for onsite management activities. Such construction will be outlined in the Multi-Resource Management Plan. There will be no conveyance or subdivision of the subject property except that limited portions may be conveyed as part of bona fide boundary dispute resolutions in consultation with the appropriate Court. The Grantee shall not enter into long term contracts, agreement, leases or easements that could impact the long-term title of this property or the purposes for which the property entered the Forest Legacy Program.

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

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

The State of Hawai'i, Department of Land and Natural Resources, and its successors and assigns ("DLNR") acknowledge that the Helemano Wilderness Area Acquisition, located in Honolulu County, State of Hawai'i (the "Property"), was acquired, in part, with funds awarded by the U.S. Department of the Interior, Fish and Wildlife Service (the "Service") including: (1) grant funds received from the Cooperative Endangered Species Conservation Fund Habitat Conservation Plan Land Acquisition Grant Program (CFDA #15.615) established under Section 6 of the Endangered Species Act, 16 U.S.C. § 1535 (the "Program"). The Program is administered by the U.S. Fish and Wildlife Service, Division of Wildlife and Sport Fish Restoration, and its successors and assigns (the "Service"). The Property is subject to all the terms and conditions of Grant Number F16AP01105, dated September 12, 2016; and (2) grant funds received from and administered by the Service's Wildlife Restoration Grant Program (CFDA #15.611), established under the authority of the Pittman-Robertson Wildlife Restoration Act 16 U.S.C. 699, grant award number F17AF00910, effective July 5, 2017. The property is subject to all the terms and conditions of Grant Award F17AF00910, the purpose of which is to increase conservation of native terrestrial and aquatic species and habitats and to increase wildlife recreational opportunities, including providing public access to the Poamoho section of the Ewa Forest Reserve (collectively, the "Awards"). A copy of the Awards is kept on file at the offices of the Service, 911 NE 11th Avenue, Portland, Oregon 97232 and DLNR, Division of Forestry and Wildlife, 1151 Punchbowl Street, Room 325, Honolulu, Hawaii 96813.

DLNR acknowledges that the Property was acquired in part for the Service-approved purpose of protecting in perpetuity 2,880 acres for the benefit of endangered species and other wildlife habitat and to provide for conservation and wildlife-based recreation. The Property shall be managed in perpetuity for the protection of habitat and conservation of listed endangered species including the Hawaiian hoary bat, twenty species of listed plants and other rare species as per the Awards. The Service will be consulted during the development of the multi-resource management plan to ensure the forest management activities including but not limited to the harvesting of forest products will consider impacts to listed species. The Property possesses significant natural and open space values associated with habitat for fish and wildlife, and associated wildlife-based recreation. The perpetual protection of these values in accordance with the Awards will yield a significant public benefit. The acquisition is consistent with the Pittman-Robertson Wildlife Restoration Act, and will provide public benefits including habitat for fish and wildlife, public access and wildlife-based recreation. DLNR's responsibilities and the federal interest shall last in perpetuity and pass to any successors unless provided for otherwise through disposal pursuant to 2 C.F.R. §200.311.

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

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

Contributing Partner	Amount	% of total
U.S. Forest Service - Forest Legacy Program/DLNR	\$5,000,000	32.97%
U.S. Fish and Wildlife Service- HCP /DLNR	\$2,000,000	13.19%
U.S. Fish and Wildlife Service - Pittman-Robertson/DLNR	\$400,000	2.64%
State of Hawai'i Legacy Lands Program/DLNR	\$1,513,800	9.98%
<i>Subtotal DLNR</i>	<i>\$8,913,800</i>	
Trust for Public Land	\$2,750,000	18.14%
U.S. Navy REPI/Trust for Public Land	\$3,500,000	23.08%
Total	\$15,163,800	100.00%

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

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

DLNR, as grant recipient of the Awards, hereby confirms its obligations and responsibilities with regard to the Property pursuant to the terms and conditions associated with the Awards.

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

IN WITNESS WHEREOF, Dole Food Company, Inc., a North Carolina corporation, the Grantor herein, has caused these presents to be executed this _____ day of _____, 2018, and the STATE OF HAWAII, by its Board of Land and Natural Resources, the Grantee herein, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be executed this _____ day of _____, 2018, both effective as of the day, month, and year first above written.

GRANTOR

GRANTEE

DOLE FOOD COMPANY, INC.,
a North Carolina corporation

STATE OF HAWAII

By: _____
Name: _____
Its _____

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

By: _____
Name: _____
Its _____

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

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

Name: JULIE H. CHINA
Deputy Attorney General

STATE OF _____

)

) ss.:

COUNTY OF _____)

On this _____ day of _____, 2018, before me personally appeared _____, 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.

(Print or Type Name of Notary)

(Signature of Notary)

Notary Public, State of _____
My Commission Expires:

STATE OF _____

)

) ss.:

COUNTY OF _____)

On this _____ day of _____, 2018, before me personally appeared _____, 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.

(Print or Type Name of Notary)

(Signature of Notary)

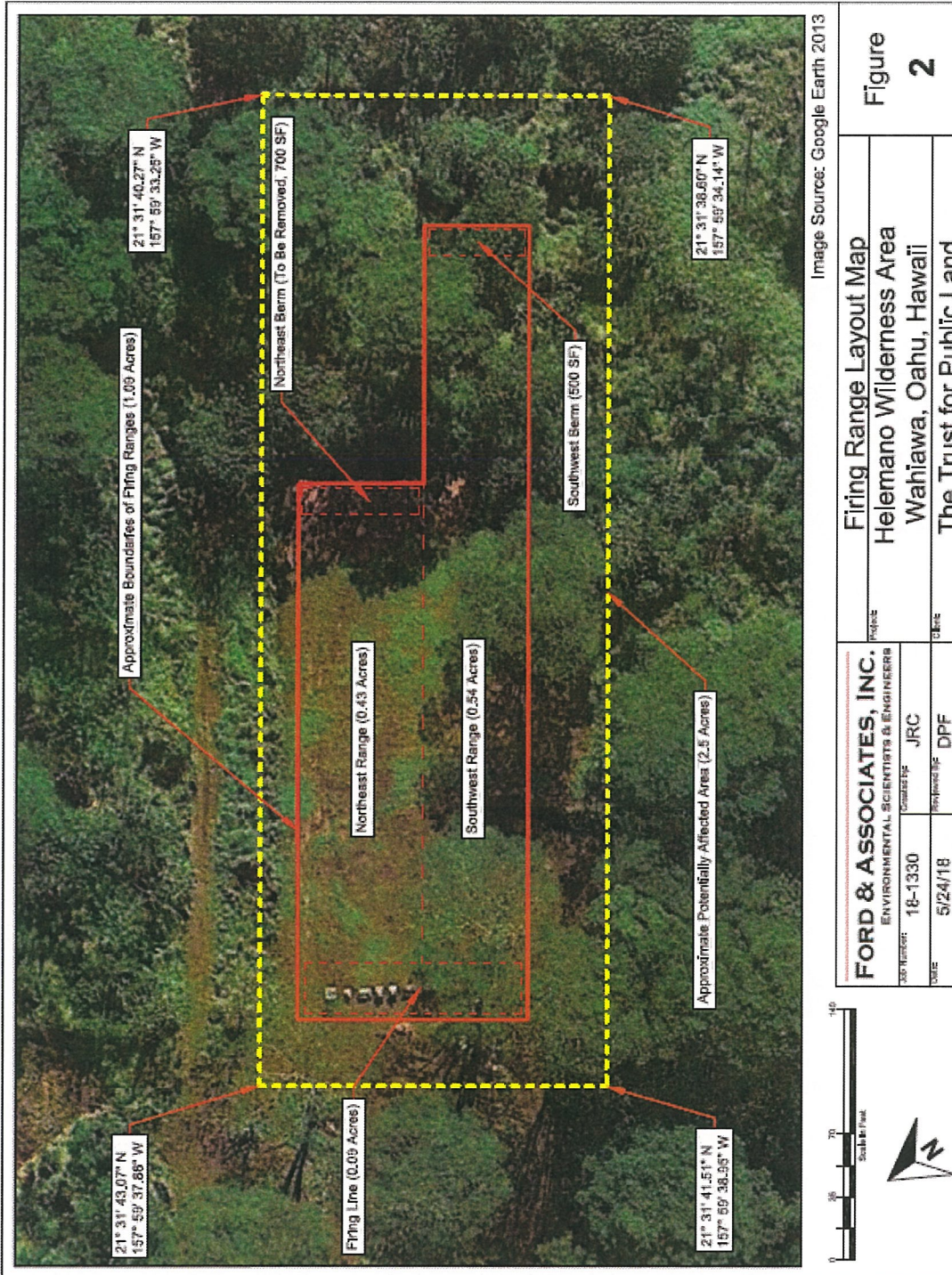
Notary Public, State of _____
My Commission Expires:

**EXHIBIT A
TO
WARRANTY DEED
LEGAL DESCRIPTION**

**EXHIBIT B
TO
WARRANTY DEED**

**EXHIBIT C
TO
WARRANTY DEED**

**EXHIBIT D
TO
WARRANTY DEED
AFFECTED AREA**



LAND COURT

REGULAR SYSTEM

Return by Mail () Pick up () To:

Prepared by & Return to:
 Naval Facilities Engineering Command, Hawaii
 Director of Real Estate
 400 Marshall Road, Building X-11
 JBPHH, HI 96860-3139

Total number of Pages: 28

TMK Nos. (1)6-4-004:011, (1)7-1-002:011, (1)7-2-001:003

**RESTRICTIVE
USE EASEMENT**

THIS GRANT OF RESTRICTIVE USE EASEMENT (the "Easement") made this _____ day of _____, 2018, by and between Dole Food Company, Inc., a North Carolina corporation, and having an address at 1116 Whitmore Avenue, Wahiawa, Hawai'i 96786, as grantor ("**Grantor**"), and The Trust for Public Land, a California nonprofit public benefit corporation, ("TPL"), having an address of 101 Montgomery Street, Suite 900, San Francisco, CA 94104, as grantee, and its successors and assigns ("**Grantee**").

WHEREAS, the **Grantor** owns in fee simple approximately 1,738 acres, more or less, of certain real property in Wahiawa, Hawai'i, and more particularly described in Exhibit "A", attached hereto and made a part hereof (the "Property"). The Property is located in Wahiawa, Hawai'i 96786 and includes TMK (1) 6-4-004:011 consisting of approximately 1,247.7 acres, TMK (1) 7-2-001:003 consisting of approximately 431.9 acres, and TMK (1) 7-1-002:011 consisting of approximately 58.54 acres.

WHEREAS, the **Grantee** has an interest in conserving lands and has the authority to acquire and transfer its interest in restrictive and other easements;

WHEREAS, the UNITED STATES OF AMERICA, acting by and through the Department of the Navy ("**Navy**"), Naval Facilities Engineering Command Hawaii ("NAVFAC HI") JBPHH 96860, has an interest in preventing incompatible development of adjacent lands by preserving natural resources and the rural character of undeveloped and forested lands, supporting agricultural, recreational and other low intensity land uses and restricting or prohibiting uses or development, including imposition of height limits, to protect operational capabilities in support of the mission of the Installation, as defined below;

WHEREAS, the **Navy** operates out of Joint Base Pearl Harbor-Hickam (JBPHH) (the "Installation"), and assists the supported commands at the Wahiawa Annex;

WHEREAS, the **Grantee** intends to immediately assign all of its right, title and interest in this Easement to the **Navy**;

WHEREAS, the Navy is a branch of the United States Department of Defense and under 10 U.S.C. §2684a may enter into agreements with eligible entities to address the use or development of real property in the vicinity of, or ecologically related to, a military installation or military airspace for purposes of limiting any development or use of the property that would be incompatible with the mission of the installation or for preserving habitat on the property in a manner that is compatible with environmental requirements and may eliminate or relieve current or anticipated environmental restrictions that would or might otherwise restrict, impede, or otherwise interfere, whether directly or indirectly, with current or anticipated military training, testing, or operations on the installation;

WHEREAS, this instrument is based upon a form that sometimes assumes there are multiple grantors and multiple grantees. In the event that this assumption is wrong for this instrument, then, as appropriate, any provision assuming multiple grantors or grantees shall be interpreted to mean only one grantor or grantee, as the case may be;

WHEREAS, in furtherance of their respective interests, the **Grantee** and the Navy entered into that certain Multi-Year Encroachment Protection Agreement Between the United States of America and The Trust for Public Land, Navy Contract No. N62478-14-RP-00012, dated September 29, 2014, as amended by amendments dated November 17, 2016 and April 27, 2017 and September 12, 2017 (together the "MYEP Agreement"). Furthermore, the **Grantor** and the **Grantee** entered into an Escrow Agreement with Title Guaranty Escrow Services, Inc. pursuant to Navy Contract No. N62478-17-RP-00002, dated October 12, 2016, as amended by amendments dated November 17, 2016 and April 26, 2017 and May 30, 2018;

NOW, THEREFORE, in consideration of the facts stated in the above recitations and the covenants, terms, conditions and restrictions hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged by the parties, the **Grantor** unconditionally and irrevocably grants and conveys unto the **Grantee**, its successors and assigns, forever and in perpetuity, a Restrictive Use Easement of the nature and character and to the extent hereinafter set forth, with respect to the Property described herein.

A. Purpose and Definitions.

1. **Purpose.** The **Grantor** hereby grants in favor of the **Grantee** a permanent easement described herein to restrict use and development of the Property as legally described and depicted in Exhibit "A", attached hereto and made a part hereof, to ensure for the benefit of the Navy, as successor in interest of the **Grantee**, compatibility with the military mission and operations of the Installation, while preserving the undeveloped, rural character and natural resources of the Property, supporting agricultural and recreational uses of the land, and preventing uses and development that may adversely impact military mission and operations at the Wahiawa Annex (together, the Easement's "Purpose"). Use restrictions include imposition of height limits on portions of the Property designated herein.

2. **Definitions.** The **Grantor** and the **Grantee** agree that the following terms used throughout this Easement shall be defined as and have the following meanings:

(A) **“Agricultural Production”** shall be defined as the production of food, forage, timber crops, fiber crops and horticultural plants, including crops for bioenergy and raising of animals. The term includes operations for the planting, raising, growing and harvesting of crops and animals.

(B) **“Accessory Agricultural Functions”** shall be defined as those functions incidental to Agricultural Production, being minimal agricultural products processing, centralized storage of agricultural products and supplies for Agricultural Production, related minor composting, incidental sales of products made from crops similar to those grown on the Property, transporting crops, seed, and feed.

(C) **“Commercial Uses and Activities”** shall be defined as any use or activity, other than Recreational Uses and Activities, Agricultural Production and Accessory Agricultural Functions, conducted by the **Grantor** or a third party for the purpose of realizing a profit or other benefit to the **Grantor**, their designees, or such third party from the exchange of goods or services by sale, barter, or trade.

(D) **“Dwelling Units”** shall be defined as one or more rooms in a building for eating, living, sleeping, cooking, sanitation, or occupation as a shelter for persons or personal property. **“Employee Dwelling Units”** shall be defined as Dwelling Units used by the **Grantor** or a third party to manage or provide security for the Property.

(E) **“Recreational Uses and Activities”** shall be defined as outdoor activities with a focus on the natural environment and compatible with conservation purposes, with minimal or low impact on the natural environment, including, by way of example and not by way of limitation, nature study, orienteering, hunting, fishing, hiking, mountain biking, educational activities, and camping. Commercial recreational use of facilities and cabins shall be an authorized Recreational Use and Activity.

(F) **“Grantor”** shall be defined as Dole Food Company and its representatives, or upon assignment or other transfer of its interest in the Property, then subsequently as its successors, assigns, or transferees of the Property.

(G) **“Grantee”** shall be defined as The Trust for Public Land, or upon assignment or other transfer of the interests described in this instrument, then subsequently as its successors or assigns.

B. Rights of the Grantor and the Grantee.

1. **Rights of the Grantee: Restricted Uses and Development Rights.** Any activity in or use of the Property inconsistent with the Purpose of this Easement, as set forth in Section A.1., is prohibited. Without limiting the generality of the foregoing, and except as specifically and expressly permitted by the **Grantee**, the following activities and uses are prohibited or restricted on the Property:

(A) Commercial Activities. Commercial Uses and Activities, as defined in Section A.2, are generally prohibited, unless such activities are specifically permitted and described herein.

(B) Human Habitation. The Property may not be used for human habitation, except for Employee Dwelling Units in the areas depicted on Exhibit "B," attached hereto and made a part hereof, and short-term camping or similar use, including habitation in temporary accommodations such as cabins provided by the **Grantor** and tents in areas designated by the **Grantor**, which are permitted and the construction of which shall be subject to the requirements of Section B.1.D and E below. Short-term camping or similar use is defined as no more than seven consecutive days. Employee Dwelling Units shall not be limited to any specific number of days. Facilities and structures in support of camping activities, including but not limited to composting toilet bathrooms, multipurpose buildings, cabins, and designated tent camping areas are permitted subject to the requirements of Section B.1.D. and E. Dwelling Units and recreational camping vehicles (RVs) are prohibited.

(C) Firearms. Possession and use of any and all firearms on the Property by non-government persons or the general public is prohibited, except: (1) when transporting firearms across the property via the Poamoho Hele Loa Road to access state land where use of firearms is permitted; and (2) for public hunting which is permitted on the Property north of Upper Helemano Ditch identified in Exhibit "C," attached hereto and made a part hereof. Public hunting shall be limited to licensed hunters using 12, 16, and 20 gauge shotguns with birdshot. Possession and use of firearms is permitted for active duty military personnel, state or federal law enforcement and wildlife management personnel in the performance of their duty. Wildlife management operations may not be conducted within 500 feet of the Wahiawa Annex boundary.

(D) Picnic and Camp Sites. Non-residential accessory structures designed, constructed and utilized for the purpose of serving the Recreational Uses and Activities, including, but not limited to, pavilions, picnic areas, and playgrounds are permitted subject to the requirements of Section B.1.B. and B.1.E. and shall be sited to limit population density to a level of less than 50 people per acre. The density restriction may be waived for community events or restoration activities of the **Grantor**, provided that written waiver request is given to the **Grantee** at least thirty (30) days prior to the event or activity, which notice will provide the estimated number of participants, the location of the event on the Property, and event description and purpose. The **Grantee** may approve, deny or condition consent in the sole discretion of the **Grantee**. Picnic and camp sites shall not be located within 500 feet of the Wahiawa Annex boundary.

(E) Construction. The erection, construction, or installation, whether public or private, of any structure, facility, building, antenna, tower, wire, lighting, frame, rack, renewable energy equipment or other man-made obstruction is prohibited within 500 feet of the Wahiawa Annex boundary. Proposed erection, construction or installation of such structures, fixtures, equipment or devices between 500 and 1000 feet from the Wahiawa Annex boundary shall comply with the height restrictions identified in Section B.1.F. herein. Plans for new construction or installation of structures, equipment or devices

more than 500 feet from the Wahiawa Annex boundary that require the construction of a new impervious surface shall be provided to the **Grantee** for Approval as set forth in Section M.1, prior to construction or installation. Plans shall be reviewed for potential adverse impacts such as, but not limited to electromagnetic interference or radiation, glint, glare, Doppler radar interference and frequency spectrum interference, and physical obstructions.

(F) Height. The erection, construction, installation, maintenance, cultivation, or alteration, whether public or private, of any structures, facilities, buildings, fencing, fences, gates, antenna, tower, wire, light, frame, rack, renewable energy equipment, or other man-made obstructions, located within 1,000 feet of the Wahiawa Annex boundary, and exceeding fifteen (15) feet in height is prohibited without the Approval of the **Grantee**. Landscaping including trees, shrubs, or other vegetation of any nature, located within 1,000 feet of the Wahiawa Annex boundary, greater than fifteen (15) feet in height and found to cause interference with military operations or equipment may be removed by the **Grantee**. Upon at least seven (7) days' prior written notice to the **Grantor**, the **Grantee**, at the **Grantee's** expense, reserves the right to enter upon the Property to remove, cut down, top or trim all trees, plants, vines, and like obstructions existing on the Property prior to and from the date of this Easement that are not in conformance with the height limits described herein and determined to adversely impact military mission and operations at the Wahiawa Annex and the Installation. Upon sixty (60) days' prior written notice to the **Grantor**, the **Grantee**, at the **Grantee's** cost and expense, and free from any consequential damages, may enter upon the Property to alter or remove all structures, facilities, buildings, antennas, towers, lights, frames, rack, renewable energy equipment, trees, or other structural or vegetative obstructions of any nature, that exceeds the height limits described herein, which were erected, constructed, installed, maintained, and/or cultivated on the Property; provided that, in the event of an emergency, the **Grantee** may, without advance notice, enter upon the Property and remove structures or any other obstructions which exceed said height limits. In the event of an emergency, the **Grantee** shall make a good faith effort to notify the **Grantor** prior to entering the Property and removing any structures or obstructions that exceed the height restrictions. If prior notice cannot be given, then the **Grantee** shall notify the **Grantor** at the earliest opportunity following the emergency to explain the nature of the emergency and to identify with particularity what was altered or removed from the Property.

(G) Lighting. No direct or indirect lighting shall be emitted above the horizontal plane. All lighting equipment, to include floodlights and searchlights, and all protective lighting, shall have positive optical control to ensure this.

(H) Renewable Energy and Communication Systems and Technology. In accordance with Section B.1.E. above, plans for new construction or installation of renewable energy generating facilities, structures, equipment or transmission lines and telecommunication facilities, structures, transmission lines, equipment, or devices shall be provided to the **Grantee** for approval prior to commencement of construction or installation. Proposed construction and installation shall comply with the height restrictions identified herein and shall be reviewed for potential adverse impacts such as, but not limited to

electromagnetic interference or radiation, glint, glare, Doppler radar interference and frequency spectrum interference, and physical obstructions.

(I) Electromagnetic or Other Interference. Any electromagnetic fields used on the Property shall be subject to regulation by the Federal Communications Commission (FCC) and shall not interfere with the **Grantee's** operations and equipment. Equipment or devices used on the Property shall not interfere with **Grantee's** operations and communications by creating electromagnetic interference or radiation, glint, glare, Doppler radar interference, frequency spectrum interference, and physical obstructions.

(J) Dumping, Stockpiling and Storage. Dumping, stockpiling, storage, or other placement of trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, hazardous or toxic substances, dredge spoils, industrial and commercial byproducts, effluent, and other materials on the Property is prohibited, whether by the **Grantor** or third parties. Soil, rock, other earth materials, vegetative matter, or compost may not be placed except when reasonably necessary for Employee Dwelling Units, Agricultural Production, Accessory Agricultural Functions, or Recreational Uses and Activities. The **Grantor** shall, at the **Grantor's** expense, remove any such items or material placed on the Property. This Easement is not intended nor does it permit or require the **Grantee** to become an operator or to control any use of the Property that may result in the treatment, storage, disposal, or release of hazardous materials within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(K) Subdivision. The division, subdivision, or de facto subdivision of the Property is prohibited; provided, however that any division, subdivision, or de facto subdivision of the Property that may be required for the **Grantor** to enter into leases, licenses and permits, including, but not limited to, Agricultural Production leases, licenses, and permits, and all Accessory Agricultural Functions, Recreational Uses and Activities, and improvements as permitted under Easement, is expressly permitted.

(L) Mining. Surface mining, extraction, and recovery of any oil, gas, natural gas or minerals by the **Grantor** on the Property are permitted subject to the requirements of Section B.1.E and B.1.F.

(M) Drones. The use of drones on the Property is prohibited, except by state personnel in the performance of their duty.

(N) Reserved Rights Exercised to Minimize Damage. All rights reserved by the **Grantor** or activities not prohibited by this Easement shall be exercised so as to prevent or to minimize damage to the water quality, air quality, land/soil stability and productivity, wildlife habitat, scenic and cultural values, and the natural topographic and open space character of the Property.

2. **Rights of the Grantor.** The following uses of the Property by the **Grantor** are expressly permitted or allowed:

(A) **Expressly Permitted Uses.** Recreational Uses and Activities, Agricultural Production, Employee Dwelling Units in the areas depicted on Exhibit "B," and Accessory Agricultural Functions, as defined in Section A.2., above are permitted; provided, however, that if the Grantee reasonably determines that any Recreational Uses and Activities, Agricultural Production and Accessory Agricultural Functions are being carried out in a manner that encumbers, impedes, limits or otherwise incompatible with the military mission and operations of the Wahiawa Annex, the **Grantee** may invoke the provisions of paragraph B 4. **Grantee's Remedies Upon Breach.**

(B) **Fences, Signs, and Other Non-Structural Improvements and Alterations.** Construction of fencing, the posting of signs, and other non-structural improvements and alterations reasonably necessary for the permitted uses hereunder in accordance with the provisions of Section B.1.E. and F., above.

(C) **Wildlife Management.** Wildlife management, including controlling predatory and problem animals on the Property is permitted subject to the requirements of Section B.1.C. Firearms are allowed for purposes of wildlife management by state or federal wildlife management staff, but shall not be permitted within 500 feet of the Wahiawa Annex boundary.

(D) **Fires.** The burning of vegetation for agricultural purposes, habitat improvement, and mitigation of fire hazards on the Property is permitted, subject to the **Grantee's** Approval as set forth in Section M.1.

(E) **Surface Water Flows.** The establishment of retention or detention ponds or impoundments to ameliorate storm water runoff on or affecting the Property, subject to the **Grantee's** Approval as set forth in Section M.1., provided they are not enhanced for the attraction of waterfowl. However, should the impoundments or other improvements that have been approved under Section M.1 attract such a concentration of birds to the extent that they cause a training or operational hazard, the **Grantor**, upon the request of the **Grantee**, shall make modifications to the improvements to the extent required to ameliorate the training or operational hazard created. Such modifications shall be at the sole cost of the **Grantee**.

(F) **Other Uses.** The personal use and enjoyment of the Property, including without limitation the right to undertake activities reasonably necessary to carry out and enjoy the rights reserved to the **Grantor** under this Easement; provided such actions are not specifically and expressly prohibited by the terms and conditions of this Easement. If the **Grantee** reasonably determines that any such actions are being carried out in a manner that encumbers, impedes, limits or otherwise incompatible with the military mission and operations of the Installation and the Wahiawa Annex, the **Grantee** will notify the **Grantor** of the issue, and propose a reasonable time and date to meet to discuss the problem in good faith in order to resolve any issues related to such activity. If either party does not proceed in good faith, or the issues cannot be resolved cooperatively, then

the parties may proceed with the dispute resolution procedures provided in this Section B below.

(G) Emergency Action. Notwithstanding the general requirement to take no action that would be inconsistent with the Purpose of this Easement, the **Grantor** shall have the right to take any emergency action that the **Grantor** reasonably believes necessary to protect human, animal or plant life, or other important economic interests that the **Grantor** reasonably believes are threatened on the Property or off the Property, but in danger from circumstances or events originating on or crossing over the Property, or to prevent damage to the Property, or any improvements permitted by this Easement on the Property. Nothing in this Section B.2.G. shall be interpreted as creating an affirmative obligation of the **Grantor** to take any such protective action.

(H) Trails. Constructing, repairing, replacing, maintaining, and using new and existing trails or paths. Trails shall not be located within 500 feet of the Wahiawa Annex boundary.

(I) Transfer of Interest in the Property. Selling, leasing, licensing and otherwise devising all or a portion of the Property to any agency, entity, or individual.

(J) Improvements. Constructing, repairing, and maintaining enclosed, temporary or permanent structures on the Property for Employee Dwelling Units or in support of Recreational Uses and Activities, Agricultural Production, and Accessory Agricultural Functions. New structures shall be constructed in accordance with the provisions of Section B.1.E. and F.

(K) Infrastructure. Constructing, installing, repairing, maintaining and replacing roads, wires, lines, pipes, cables or other facilities providing or delivering electrical, gas, water, sewer, communications, lighting or other utility services to the improvements permitted herein, subject to the provisions of B.1.E and F. Septic or other underground sanitary systems serving the improvements permitted by this Easement may be installed, maintained, repaired or improved.

(L) Vehicles and Equipment. The **Grantor**, its contractors, and invitees may use motorized vehicles and equipment anywhere on the Property, except within 1,000 feet of the Wahiawa Annex Boundary. Motorized vehicles and equipment include, but are not limited to, tractors, mowers, ATVs, cars, trucks, helicopters, excavators, bulldozers, loaders, graders, harvesting equipment, chainsaws, chippers, "weed eaters", and cranes. If land management, enhancement, maintenance, and restoration activities are proposed within 1,000 feet of the Wahiawa Annex boundary, the **Grantee's** approval under Section M.1. is required, and the **Grantor** shall provide the description, location, duration, height of the activity, and type and height of vehicle(s) to be used.

3. Enforcement by Grantee. Enforcement rights over the Property may be exercised by the **Grantee** to accomplish the purpose of this Grant of Easement, including but not limited to the following:

- (A) The right to require the termination and removal of any non-complying development or use of the Property.
- (B) The right to regulate or prohibit the release into the air of any substance which would impair the visibility or otherwise interfere with the operations, such as, but not limited to, steam, dust, and smoke.
- (C) The right to regulate or prohibit light emissions, either direct or indirect (reflective), which might interfere with the mission or operation of the Installation or the Wahiawa Annex.
- (D) The right to regulate or prohibit electromagnetic and radio frequency emissions. This right does not apply to the **Grantor's** use of radios for Property maintenance, fire suppression, and helicopter operations. The **Grantor** and the **Grantee** will cooperate to ensure the use of non-interfering frequencies.
- (E) The right to disapprove and/or prohibit any development or use of the Property which is not in accordance with the purpose of this Grant of Easement as set forth herein.
- (F) The right to enter upon and over the Property in a reasonable manner and at reasonable times in order to monitor the **Grantor's** compliance with the terms of this Easement granted under this Section B.1.; provided that the **Grantee** provides at least three (3) days' notice of such entry to the **Grantor**, except that the **Grantee** may enter upon and over the Property at any time when there is a threat of imminent harm to persons, property or national security. The **Grantee** shall not unreasonably interfere with the **Grantor's** use and quiet enjoyment of the Property. The **Grantee** may enter upon and over the Property to enforce the terms of this Easement, as described in Section B.4. below.
- (G) The right to erect and maintain signs or other appropriate markers in prominent locations on the Property, visible from a public road, bearing information indicating the restricted uses of the Property, subject to approval by the **Grantor**, which approval shall not be unreasonably withheld.

4. **Grantee's Remedies Upon Breach.** In the event of breach by the **Grantor** of any terms, conditions, or obligations created by this Grant of Easement with respect to the Property, the **Grantor** shall be afforded sixty (60) days from the receipt of the **Grantee's** notice of non-compliance to cure the subject breach, except where irreparable harm to the **Grantee's** Installation and/or Wahiawa Annex operations will result from any delay in curing a breach. In this case, the **Grantee** may require that the breach be cured immediately. The **Grantee** may grant a reasonable extension of time to complete the cure if it is determined by the **Grantee** to be necessary. In the event that the non-compliance is not cured within the sixty (60) day time frame, or extension of time if granted by the **Grantee**, the **Grantee** may:

- (A) Without further notice, enter upon and over the Property to take necessary actions to correct the non-compliance; and/or

- (B) Institute mediation or other alternative dispute resolution strategy that is agreed to by the parties; or
- (C) Institute legal action to cure any breach or enforce any term of this Grant of Easement to the extent permitted by law.

The **Grantee's** remedies shall be cumulative and shall be in addition to any other rights and remedies available to the **Grantee** at law or equity. Enforcement of the terms of this Easement granted under this Section A shall be at the discretion of the **Grantee**. No failure on the part of the **Grantee** to enforce any term hereof shall discharge or invalidate such term or any other term hereof or affect the right of the **Grantee** to enforce the same in the event of a subsequent breach or default.

5. **Enforcement Costs.** Either party may institute legal action to recover reasonable costs incurred to enforce compliance with this agreement, including but not limited to reasonable attorney's fees, to the extent ordered by a court of law to correct non-compliance with this agreement and subject to appropriation pursuant to Section J.

C. **Parcel Documentation.** The parties acknowledge that Exhibits "A", "B", and "C" (collectively, the "Parcel Documentation") reflect the legal description of the Property and locations. The **Grantor** and the **Grantee** jointly certify that the attached Parcel Documentation is sufficient to identify the Property at the time of the granting of the Easement. The following exhibits are hereby made a part of this Grant of Easement:

Exhibit "A": The Boundary Description and Property Reference is attached hereto and made a part hereof, and consists of nine (9) pages.

Exhibit "B": The Map Showing Locations Where Employee Dwelling Units May Be Located is attached hereto and made a part hereof, and consists of one (1) page.

Exhibit "C": The Map Showing Locations Where Public Hunting is Not Allowed is attached hereto and made a part hereof, and consists of one (1) page.

D. **Costs and Liabilities.** The **Grantor** retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership and maintenance of the Property.

E. **Transfer by the Grantor.** The **Grantor** and the **Grantee** acknowledge that the **Grantor** intends to transfer fee title to the Property to the State of Hawai'i Department of Land and Natural Resources after conveying the Easement to the **Grantee**. Accordingly, the **Grantor** may transfer the Property to DLNR, without prior written notice to the **Grantee**. The **Grantor** shall state in any deed or other legal instrument by which the **Grantor** divests itself of any interest in the Property that such grant or transfer of the Property is subject to the terms and conditions of this Easement. The **Grantor** further agrees to give written notice to the **Grantee** of any assignment or other transfer at least thirty (30) days prior to the date of transfer.

F. **Transfer by the Grantee.** The **Grantor** and the **Grantee** acknowledge that the **Grantee** is acquiring this Easement, with the intention to transfer this Easement to the Navy, for the Navy's

purpose as set forth in 10 U.S.C. section 2684a as written on the Effective Date, to address the use or development of the Property. The Property is in the vicinity of, or ecologically related to, the Installation, the Wahiawa Annex or military airspace. The Navy is acquiring the Easement for purposes of (1) limiting any development or use of the property that would be incompatible with the mission of the Installation and the Wahiawa Annex; (2) preserving habitat on the property in a manner that (A) is compatible with environmental requirements; and (B) may eliminate or relieve current or anticipated environmental restrictions that would or might otherwise restrict, impede, or otherwise interfere, whether directly or indirectly, with current or anticipated military training, testing, or operations on the Installation and the Wahiawa Annex; or (3) protecting Clear Zone Areas from use or encroachment that is incompatible with the mission of the Installation and the Wahiawa Annex. The term "Clear Zone Area" means an area immediately beyond the end of the runway of an airfield that is needed to ensure the safe and unrestricted passage of aircraft in and over the area. Accordingly, the **Grantee** may transfer or assign this Easement to any federal agency or department of the United States of America for the purposes set forth above, without prior written notice to the **Grantor**. The **Grantee** agrees to give written notice to the **Grantor** of any transfer or assignment to a non-federal entity at least thirty (30) days prior to the date of transfer. No grant or assignment may enlarge the rights of the **Grantee** or impose any additional limitations on the **Grantor**.

G. **Notices.** Except as otherwise specified, any notice, approval or communication that either party is required to give in writing may be served personally or mailed to:

To Grantor: Dole Food Company
 1116 Whitmore Avenue
 Wahiawa, HI 96786

Copy To: Department of Land and Natural Resources
 Division of Forestry and Wildlife
 ATTN: DOFAW Administrator
 1151 Punchbowl Street, #325
 Honolulu, HI 96813

To Grantee: The Trust for Public Land
 1003 Bishop Street, Suite 740
 Honolulu, HI 96813

To Navy: Commanding Officer
 Naval Facilities Engineering Command, Hawaii
 ATTN: Real Estate Contracting Officer
 400 Marshall Road, Building X-11
 JBPHH, HI 96860-3139

or to such other address as either party may designate by written notice to the other.

H. **Grantee Acceptance.** TO HAVE AND TO HOLD unto the **Grantee** forever. By execution of this Easement, the **Grantee** accepts this Grant of Easement and the rights and obligations recited herein.

I. **Grantor Warranty.** The **Grantor** HEREBY WARRANTS and represents that the **Grantor** owns and holds fee to the Property and has good right and title to grant and convey this Easement; that the Property is free and clear of any and all encumbrances, except existing easements of record, prescriptive easements, if any, and other encumbrances of record; and that the **Grantee** shall have the use of and enjoy all of the benefits derived from and arising out of this Easement.

J. **Availability of Funds.** All payments by the government of the United States of America, including but not limited to the Navy, or by the **Grantee** or the State of Hawai'i due under this instrument are contingent upon and may not exceed the amount of appropriations available at the time such payments are due hereunder. Additionally, nothing contained in this instrument shall be interpreted as implying that either the Congress of the United States of America, or the Hawai'i State Legislature, will, at any later date, appropriate sufficient funds to meet any deficiencies hereunder. No legal liability on the part of the United States of America or the State of Hawai'i for any payment may arise under this instrument until funds are made available to the real estate contracting officer for the United States of America or to the State of Hawai'i.

K. **Binding Servitude.** The restrictions, reservations, and conditions set forth in this Easement, unless subsequently terminated, released or expressly limited or conditioned, constitute a binding servitude on the Property, shall inure to the benefit of and be binding upon the **Grantor** and the **Grantee**, their successors and assigns, and will be deemed to run with the Property in perpetuity.

L. **Reserved.**

M. **Approval; Breach.**

1. **Approval by the Grantee.** Whenever this Easement requires the **Grantor** to obtain the **Grantee's** approval before taking an action, the **Grantor** shall follow the procedures set forth in this Section M.1.

(A) **Approval Procedures.** The **Grantor** shall request approval from the **Grantee** in writing. The request for approval shall describe the nature, scope, location, and any other material aspect of the proposed activity. Delivery of the request shall conform to the service methods set forth in Section G. The **Grantee** shall have thirty (30) days from receipt of the request in which to approve, disapprove, or approve subject to modification, the request. In the case of withholding of approval, the **Grantee** shall notify the **Grantor** in writing with reasonable specificity of the reasons for withholding of approval, and the conditions, if any, on which approval might otherwise be given. If the **Grantee** fails to post its response to **Grantor's** request within thirty (30) days of receipt of said request, the proposed enterprise, use or activity shall automatically be deemed approved.

(B) Standard for Approval. The **Grantee** shall not unreasonably withhold approval of a proposed use or activity requiring approval under this Easement where the proposed activity will not be inconsistent with the Purpose of this Easement.

2. Breach of Approval Provisions. If the **Grantor** undertakes any action for which the **Grantee's** Approval is required under this Grant of Easement, but without first obtaining such Approval, the **Grantor** shall be deemed to be in material breach of this Easement and the **Grantee** shall be entitled to such rights or remedies as may be available under Section B.3. Notwithstanding the foregoing, the **Grantee** may, at its sole option, permit the **Grantor** to cure the breach by submitting after-the-fact communications and documents showing the conformity of such activity with this Easement, or by showing, despite a lack of conformity with this Easement, that the action was justified because of an emergency.

SIGNATURE ON FOLLOWING PAGES

IN WITNESS WHEREOF, Grantor has caused this instrument to be effective the day and year first written above.

WITNESSES:

GRANTOR:

(Sign)

Dole Food Company, Inc.

(Print Name)

By: _____

(Sign)

Date: _____

(Print Name)

IN WITNESS WHEREOF, Grantee has caused this instrument to be effective the day and year first written above.

WITNESSES:

GRANTEE:

(Print Name)

The Trust for Public Land

(Print Name)

By: _____
Gilman Miller, Senior Counsel

Date: _____

STATE OF _____)
) ss.:
COUNTY OF _____)

On this _____ day of _____, _____, before me personally appeared _____, to me personally known, who, being by me duly sworn, 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.

(Print or Type Name of Notary)

(Signature of Notary)

Notary Public, State of _____

My Commission Expires:

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA }

COUNTY OF _____ }

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

OPTIONAL

Description of Attached Document

Title or Type of Document: _____ Number of Pages: _____

Document Date: _____ Other: _____

Exhibit A
Legal Description of the Property

Exhibit B
Map Showing Locations Where Employee Dwelling Units May Be Locate

Exhibit C
Map Showing Locations Where Public Hunting Is Not Allowed

Exhibit A
Legal Description of the Property

TMK: (1) 6-4-004: 011

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 4475, Land Commission Award Number 7713, Apana 34 to V. Kamamalu (Certificate of Boundaries No. 201)) situate, lying and being at Paalaa-Uka, District of Waialua, City and County of Honolulu, State of Hawaii, being LOT 2-E, as shown on Subdivision Map approved by City and County of Honolulu on March 24, 2016, DPP File No. 2015/SUB-85, and thus bounded and described as per survey dated March 15, 2016, to-wit:

Beginning at the northwest corner of this parcel of land, being also the southeast corner of Lot 2-F, being a portion of Royal Patent 4475, Land Commission Award 7713, Apana 34 to V. Kamamalu (Certificate of Boundaries No. 201), the coordinates of said point of beginning referred to Government Survey Triangulation Station "O'REILLY" being 6,145.30 feet south and 14,163.53 feet east and thence running by azimuths measured clockwise from true South:

1. 187° 28' 30" 638.66 feet along Lot 2-F, being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
2. Thence boundary follows along the south bank of stream, the direct chord azimuth and distance along said south bank of stream being:

 271° 20' 04.5" 9,875.18 feet;
3. 323° 02' 790.61 feet along Lot 14-C, being portions of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201) and Kawaihoa Forest Reserve;
4. Thence boundary follows along top edge of gulch, the direct chord azimuth and distance along said top edge of gulch being:

 289° 00' 4,267.50 feet;
5. 17° 31' 933.80 feet along Lot 14-C, being portions of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201) and Kawaihoa Forest Reserve;
6. 9° 39' 30" 1,683.50 feet along Lot 14-C, being portions of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201) and Kawaihoa Forest Reserve;

- | | | | |
|-----|----------|----------|--|
| 7. | 356° 24' | 978.30 | feet along Lot 14-C, being portions of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201) and Kawaihoa Forest Reserve; |
| 8. | 44° 32' | 685.80 | feet along Lot 14-C, being portions of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201) and Kawaihoa Forest Reserve; |
| 9. | 115° 02' | 3,550.20 | feet along the Ewa Forest Reserve; |
| 10. | 20° 35' | 408.80 | feet along the Ewa Forest Reserve; |

Thence boundary follows along the south bank of Poamoho Stream for the next two (2) courses, the direct chord azimuths and distances along said south bank of Poamoho Stream being:

- | | | | |
|-----|--|----------|--|
| 11. | 130° 53' 20" | 754.79 | feet; |
| 12. | 77° 54' | 4,634.83 | feet; |
| 13. | 175° 00' 33" | 1,624.00 | feet along Lot C, being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201); |
| 14. | 175° 00' | 990.00 | feet along Lot 2-C, being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201); |
| 15. | 85° 00' | 552.45 | feet along Lot 2-C, being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201); |
| 16. | Thence along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201), on a curve to the left with a radius of 1671.30 feet, the chord azimuth and distance being: | | |
| | 184° 16' 35" | 1,214.40 | feet; |

17.	200° 21' 42"	690.01	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
18.	143° 52' 42"	593.91	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
19.	96° 03' 32"	647.85	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
20.	179° 00' 12"	119.01	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
21.	90° 14' 52"	181.86	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
22.	126° 44' 02"	351.57	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
23.	128° 02' 02"	219.78	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
24.	61° 20' 02"	342.12	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
25.	43° 16' 12"	230.58	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);

26.	76° 18' 42"	229.14	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
27.	95° 27' 22"	163.83	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
28.	120° 25' 22"	134.91	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
29.	88° 52' 22"	124.74	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
30.	59° 28' 52"	83.82	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
31.	110° 31' 52"	57.66	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
32.	86° 02' 22"	106.38	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
33.	55° 14' 22"	211.86	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
34.	73° 28' 52"	171.33	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);

35.	103° 56' 22"	98.79	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
36.	50° 52' 12"	141.66	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
37.	130° 43' 02"	127.43	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
38.	96° 54' 52"	197.31	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
39.	146° 24' 52"	131.34	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
40.	74° 49' 52"	105.93	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
41.	139° 44' 22"	197.46	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
42.	107° 58' 22"	88.05	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);
43.	78° 46' 22"	80.60	feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201);

- | | | | |
|-----|-------------|--------|---|
| 44. | 7° 28' 22" | 246.87 | feet along the U.S. Military Reservation (Civil 702), being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201); |
| 45. | 97° 14' 30" | 200.00 | feet along Road Lot 1, being a portion of R.P. 4475, L.C.Aw. 7713, Ap. 34 to V. Kamamalu (Certificate of Boundaries No. 201) to the point of beginning and containing an area of 1,247.697 acres, more or less. |

BEING THE PREMISES ACQUIRED BY DEED WITH COVENANTS

GRANTOR : CASTLE & COOKE PROPERTIES, INC., a Hawaii corporation

GRANTEE : DOLE FOOD COMPANY, INC., a Delaware corporation

DATED : February 12, 2003

RECORDED : Document No. 2003-031664

TMK: (1) 7-2-001: 003

-PARCEL FIRST:-

All of that certain parcel of land (being portion of the land described in and covered by Royal Patent Grant Number 973 to James Robinson, Robert Lawrence and Robert W. Holt) situate, lying and being at Wahiawa, District of Wahiawa, City and County of Honolulu, State of Hawaii, bearing Tax Key designation (1) 7-2-001-portion 003 and containing an area of 334.33 acres and 97.537 acres, comprising a total area of 431.867 acres, more or less.

-Note:- The remaining portion of Tax Key (1) 7-2-001-003 comprises of Lot 2 (area: 452 square feet or 0.010 acre) and Lot 19 (area: 947 square feet or 0.022 acre) of the "Grand View Tract", File Plan Number 666, and described below as Item I, Second.

Said above described parcel of land having been acquired by HELEMANO COMPANY, LIMITED, a Hawaiian corporation, as follows:

1. By TRANSFER AND AGREEMENT of WAIALUA WATER COMPANY, LIMITED, a Hawaii corporation, dated December 18, 1953, recorded in Liber 2772 at Page 103;
2. By TRANSFER AND AGREEMENT of WAHIAWA WATER COMPANY, LIMITED, a Hawaii corporation, dated December 23, 1953, recorded in Liber 2773 at Page 448; and
3. By DEED of WAIALUA LIQUIDATING COMPANY, LIMITED, a Hawaiian corporation, dated July 5, 1949, recorded in Liber 2242 at Page 156.

-PARCEL SECOND:-

A) All of that certain parcel of land situate at Wahiawa, City and County of Honolulu, State of Hawaii, being LOT 2 of the "GRAND VIEW TRACT", as shown on File Plan Number 666, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 452 square feet, more or less.

B) All of that certain parcel of land situate at Wahiawa, City and County of Honolulu, State of Hawaii, being LOT 19 of the "GRAND VIEW TRACT", as shown on File Plan Number 666, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 347 square feet, more or less.

The above two parcels are currently assessed under Tax Map Key (1) 7-2-001-003.

Said above parcels of land having been acquired by CASTLE & COOKE, INC., a Hawaii corporation, by DEED of KOJI TSUJIMURA and GRACE YUKIE TSUJIMURA, husband and wife, dated April 27, 1960, recorded in Liber 3849 at Page 125.








All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Grant Number 973 to James Robinson, Robert Lawrence and Robert W. Holt) situate, lying and being at Wahiawa, District of Wahiawa, City and County of Honolulu, State of Hawaii, bearing Tax Key designation [\(1\) 7-1-002-011](#), and containing an area of 58.540 acres, more or less.

Said above described parcel of land having been acquired by HELEMANO COMPANY, LIMITED, a Hawaiian corporation, as follows:

1. By TRANSFER AND AGREEMENT of WAIALUA WATER COMPANY, LIMITED, a Hawaii corporation, dated December 18, 1953, recorded in Liber [2772](#) at Page [103](#);
2. By TRANSFER AND AGREEMENT of WAHIAWA WATER COMPANY, LIMITED, a Hawaii corporation, dated December 23, 1953, recorded in Liber [2773](#) at Page [448](#); and
3. By DEED of WAIALUA LIQUIDATING COMPANY, LIMITED, a Hawaiian corporation, dated July 5, 1949, recorded in Liber [2242](#) at Page [156](#).

Exhibit B

Legend

-  Wahiawa Annex
-  Wahiawa Annex Buffer (500, 1000 ft)
-  Poamoho Hele Loa Rd.
-  Ewa Forest Reserve Poamoho Section
- RUE Parcels (3 total)**
-  Human Habitation Allowed
-  Human Habitation Allowed
-  Human Habitation Restricted

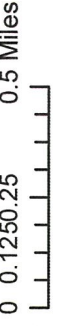
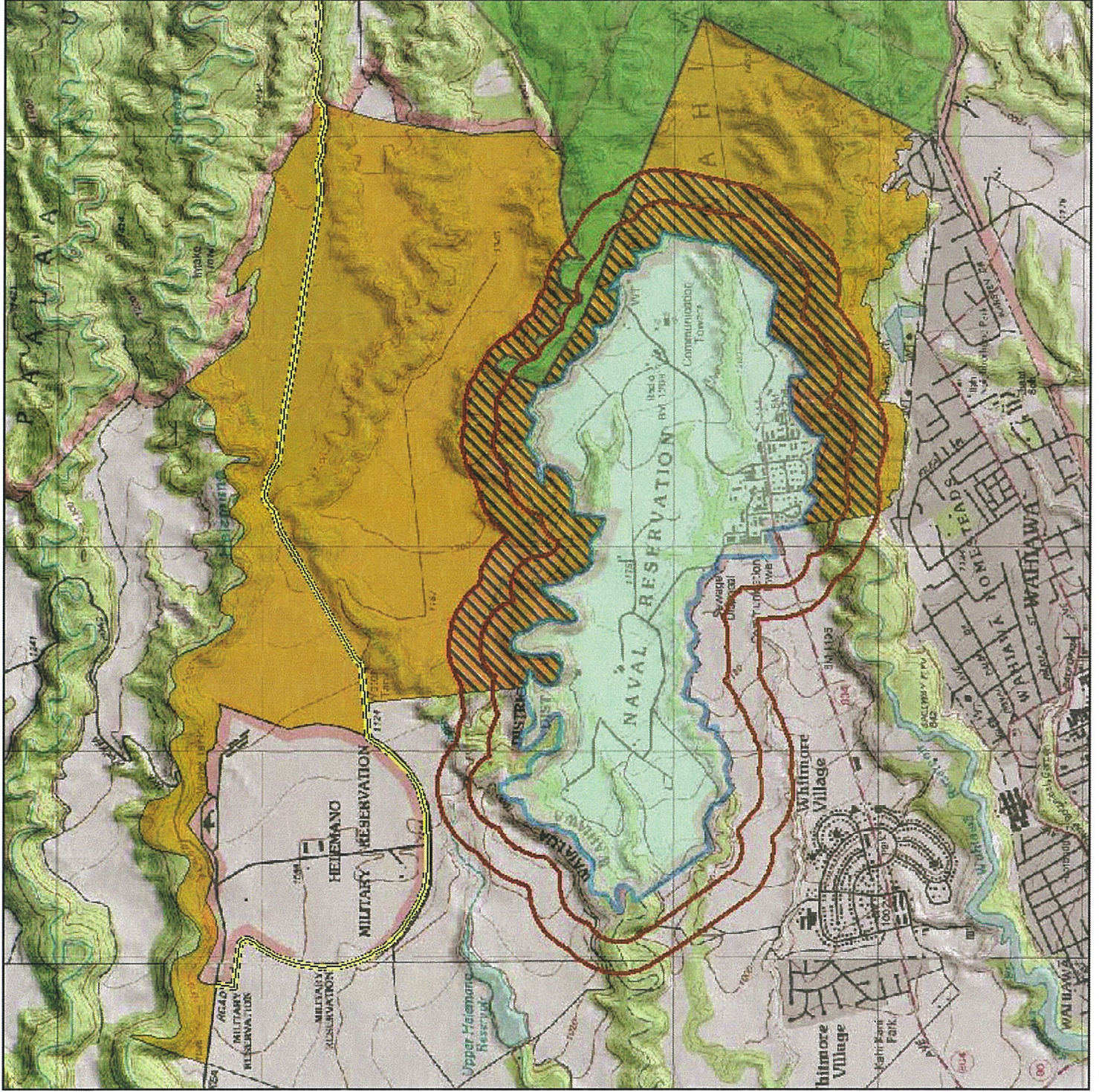
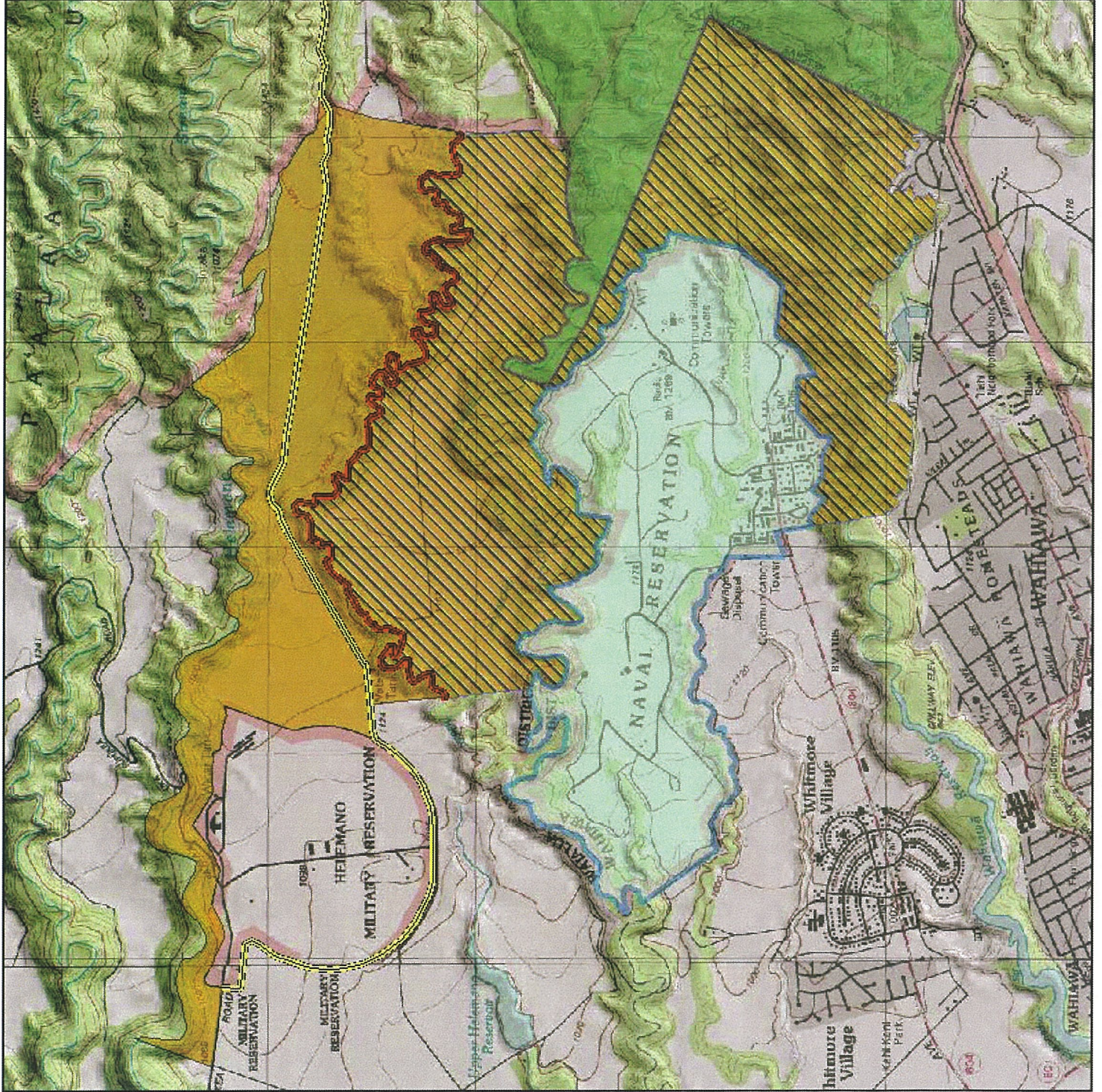


Exhibit C

Legend

-  Wahiawa Annex
-  Poamoho Hele Loa Rd.
-  Upper Helemano Ditch
-  Ewa Forest Reserve Poamoho Section
- RUE Parcels (3 total)**
-  Licensed Hunting with Firearms Allowed
-  No Public Use of Firearms



0 0.1250.25 0.5 Miles

LAND COURT
REGULAR SYSTEM
AFTER RECORDATION, RETURN BY: () MAIL () PICK UP

Tax Map Key No: (1) 6-4-004:011

Total Pages: _____

PARTIAL AMENDMENT TO DEED WITH COVENANTS

This PARTIAL AMENDMENT TO DEED WITH COVENANTS (the “**Amendment**”) is made this ____ day of _____, 20 ____, by and between CASTLE & COOKE PROPERTIES, INC., a Hawaii corporation, whose address is 680 Iwilei Road, Suite 510, Honolulu, Hawaii 96817 (“**Castle**”), and STATE OF HAWAII, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813 (“**State**”).

RECITALS:

A. State is the owner of the parcel more particularly described in Exhibit A attached hereto, made a part hereof, and incorporated herein by this reference (the “**Parcel**”).

B. By Deed with Covenants (Lots 4, 1 & 2), by and between Castle, as Grantor therein, and Dole Food Company, Inc., a Delaware corporation (predecessor in interest to Dole Food Company, Inc., a North Carolina corporation), as Grantee therein, dated February 12, 2003, and recorded in the Bureau of Conveyances of the State of

Hawaii as Document No. 2003-031664, the “**Deed (Lots 4, 1 & 2)**”), Castle excepted and reserved unto itself certain rights, to-wit (the “**Reservation**”), more particularly set forth in the Deed (Lots 4, 1 & 2) as:

EXCEPTING AND RESERVING all rights acquired by Grantor under that certain Deed with Covenants (Lot 3) (the “**Lot 3 Deed**”) dated the same date as this Deed, including but not limited to rights to designate and use perpetual nonexclusive easements and facilities affecting the Property and “Other Property” as defined in the Lot 3 Deed.

C. The Lot 3 Deed was recorded aforesaid as Document No. 2003-031657.

D. The State requested that the Reservation (Lots 4, 1 & 2) be amended with respect to the Parcel only and Castle agrees to amend in the Deed with respect to the Parcel only on the terms and conditions set forth below.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Partial Amendment. With respect to the Parcel only, the Deed (Lots 4, 1 & 2) is hereby amended to include the following sentence at the end of the Reservation:

Notwithstanding the foregoing, all easements designated after _____, 2018, shall be consistent with the terms of the Restrictive Use Easement dated _____, 2018, between Dole Food Company, Inc., a North Carolina corporation, and The Trust for Public Land, a California nonprofit public benefit corporation, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. _____, and the Warranty Deed dated _____, 2018, between Dole Food Company, Inc., a North Carolina corporation, and the State of Hawaii, Board of Land and Natural Resources, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. _____, and no right, title, or interest to use, control, capture, sell, divert, impound, or take water from the Property shall be granted unless Castle or Dole complies with Hawaii Revised Statutes (“**HRS**”) section 171-58, as amended, and HRS chapter 174C, as amended, as applicable.

2. Effectiveness and Limitations. This Amendment shall not be effective unless Castle and State have duly executed and delivered this Amendment and this Amendment is duly recorded in the Bureau of Conveyances of the State of Hawaii. This Amendment shall be limited precisely as written and shall not otherwise be deemed to constitute a consent to any waiver or modification of any other terms or provisions of the Deeds.

3. Covenants Running with the Land; Duration. Except as otherwise expressly provided herein and modified hereby, the Reservation in favor of Castle as contained in the Deed (Lots 4, 1 & 2), and each and all of Grantee's covenants, agreements, conditions and restrictions contained in the Deed (Lots 4, 1 & 2) are intended to continue to run with the land in favor of Castle, its successors and assigns, and are expressly binding upon the Parcel, and each portion thereof, and each successive owner of the Parcel, and each portion thereof, and each successive owner of the Parcel and each person having any right, title or interest in the Parcel or any portion thereof, unless and until Castle shall relinquish and permanently waive any of its rights, but only with respect to the specific rights waived, as evidenced by the filing of a written notice of such waiver in the Bureau of Conveyances of the State of Hawaii.

4. Ratification. Except as otherwise amended by this Amendment, all provisions of the Deed (Lots 4, 1 & 2) and Reservation are ratified, confirmed and shall remain in full force and effect.

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

[SIGNATURES APPEAR ON THE FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, Castle and State have executed these presents as of the day and year first above written.

CASTLE:

CASTLE & COOKE PROPERTIES, INC.
a Hawaii corporation

By _____
Name: _____
Title: _____

By _____
Name: _____
Title: _____

STATE:

STATE OF HAWAII

By _____
Name: SUZANNE D. CASE
Title: Chairperson, Board of Land and
Natural Resources

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

Name: JULIE H. CHINA
Deputy Attorney General

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

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 2018, before me personally appeared _____, to me personally known, who being by me duly sworn or affirmed, did say that such person executed this _____-page PARTIAL AMENDMENT OF DEED WITH COVENANTS dated _____, as the free act and deed of such persons, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Type Name: _____
Notary Public, State of Hawaii
First Judicial Circuit

My commission expires: _____

EXHIBIT A
(Description of Parcel)

(Tax Map Key No. (1) 6-4-004:011)

ASSIGNMENT AND ASSUMPTION OF LICENSE

THIS INDENTURE, executed this _____ day of _____, 2018, by and between DOLE FOOD COMPANY, INC., a North Carolina corporation, whose address is One Dole Drive, Westlake Village, California 91362 ("**Assignor**"), and STATE OF HAWAII, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813 ("**Assignee**");

WITNESSETH:

That the Assignor, in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to it paid, and in consideration of the covenants and agreements of the Assignee hereinafter set forth, does hereby sell, assign, transfer, set over and deliver unto the Assignee:

All of the right, title and interest of the Assignor as landlord in and under that certain License Agreement (the "**License**") more particularly described in **Exhibit "A"** attached hereto and hereby made a part hereof for all purposes, in and to all security deposits and other deposits held by Assignor with respect to said License, and in and to any guarantees executed in connection with said License. All License payments, prepayments, and other fees or charges, and all security deposits paid by the tenants under such License, if any, for the period of time after the date hereof shall be adjusted, prorated, credited and/or refunded, as the case may be, between Assignor and Assignee as of the date hereof.

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns, together with the rents, issues, profits, revenues and benefits of and from said License arising or accruing after the date hereof, together with the right to enforce the covenants of said License.

AND THE ASSIGNOR hereby agrees to indemnify and hold the Assignee harmless from and against any and all obligations, liabilities, claims, accounts and demands (including, without limitation, reasonable attorneys' fees) arising out of the Assignor's failure to observe and perform the covenants in said License required to be observed and performed by the landlord named therein prior to the date hereof.

AND THE ASSIGNEE does hereby promise, covenant and agree to and with the Assignor that the Assignee will observe and perform all of the covenants in said License contained and on the part of the landlord therein named to be observed and performed from and after the date hereof and will hold Assignor harmless from and against any and all obligations, liabilities, claims, accounts and demands arising out of Assignee's failure to observe and perform

DRAFT

EXHIBIT "E"

such covenants under said Lease from and after the date hereof to the extent that Assignee's liability has been determined by a court or otherwise agreed to by Assignee. Assignee's obligation to pay shall only extend to funds have been authorized and appropriated by the Legislature for such purpose, and the funds have been allocated by the executive budget process.

This Assignment may be executed in several counterparts. In addition, this Assignment may contain more than one counterpart of the signature page and this Assignment may be executed by the affixing of the signatures of each of the parties to one of such counterpart signature pages and the assembly of such signature pages with this Assignment as one document; and all of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page. For all purposes, including, without limitation, recordation, filing and delivery of this Assignment, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IT IS MUTUALLY AGREED that the term "Assignor" and "Assignee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporations, and their and each of their respective heirs, legal representatives, successors and permitted assigns, according to the context thereof, and that if these presents shall be signed by two (2) or more Assignors and/or Assignees, all covenants of such parties shall be and for all purposes deemed to be joint and several.

- The remainder of this page is intentionally left blank; the next page is the signature page -

IN WITNESS WHEREOF, the parties have executed these presents as of the day and year first above written.

DOLE FOOD COMPANY, INC.,
a North Carolina corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Assignor

STATE OF HAWAII

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

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

APPROVED AS TO FORM,:

Name: JULIE H. CHINA
Deputy Attorney General

Assignee

EXHIBIT A

Unrecorded License Agreement indexed as DLR-205, effective January 1, 2001, up to and including December 31, 2006, by and between Dole Food Company, Inc., as Licensor, and Erwin M. Soares, dba Poamoho Ranch, as Licensee, assigned to Dustin T. Griffith, married, dba Poamoho Ranch, amended by that certain unrecorded First Amendment of License executed October 15, 2007, and further amended by Second Amendment of License executed _____, 2018.

**AGREEMENT OF SALE
(Helemano Property)**

This is an Agreement of Sale ("Agreement") dated _____, 2018, between **The Trust for Public Land**, a California nonprofit public benefit corporation, authorized to do business in the State of Hawai'i ("Seller"), and the **State of Hawaii**, by its Board of Land and Natural Resources ("Buyer").

RECITALS

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

SELLER:

The Trust for Public Land
101 Montgomery St., Ste. 900
San Francisco, CA 94104
Attn: Gilman Miller
gilman.miller@tpl.org
Tel: (415) 800-5295
FAX: (415) 495-0541

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

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

BUYER:

State of Hawaii
Board of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809-0621
Attn: Suzanne D. Case, Chairperson
suzanne.case@hawaii.com
Tel: (808) 808-587-0405
FAX: (808) 808-587-0390

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

State of Hawaii
Dept. of Land and Natural Resources
Land Division
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813
Attn: Ian C. Hirokawa
ian.c.hirokawa@hawaii.gov
Tel: (808) 808-587-0385
FAX: (808) 808-587-0455

B. Before the Close of Escrow, the parties expect that Seller will purchase certain real property commonly called the Helemano Wilderness Area located on the Island of Oahu, Hawaii, Tax Map Key Nos. (1) 6-3-001:003, (1) 6-4-004:011, (1) 7-1-002:011, and (1) 7-2-001:003, described in Exhibit A and depicted in Exhibit B both attached to this Agreement and incorporated herein by this reference, together with Seller's interest in all improvements, fixtures, timber, water, oil, gas and mineral and metallic mines of every kind or description, if any, and all rights appurtenant to the Property, including but not limited to timber rights, water rights, grazing rights, access rights, and geothermal rights, if any will be referred to in this Agreement as the "Property."

C. Buyer wishes to purchase the Property from Seller and Seller wishes to sell the Property to Buyer on the terms and conditions set forth in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. **Purchase and Sale.** Seller agrees to sell the Property to Buyer and Buyer agrees to buy the Property from Seller on the terms and conditions set forth herein.

2. **Purchase Price.** The purchase price for the Property is Fifteen Million One Hundred Sixty Three Thousand Eight Hundred Dollars (\$15,163,800.00) (the "Purchase Price"). The Purchase Price will be payable on Close of Escrow, as defined in Section 7.

3. **Effective Date.** This Agreement will be effective on the date that it is signed by both parties hereto and approved as to form, legality, exceptions and reservations by the Attorney General, as shown on the signature pages to this Agreement (the "Effective Date").

4. **Conditions Precedent to Closing.** The parties' respective obligations to close the purchase and sale of the Property are conditioned upon all of the following happening at the time set forth below, or if not set forth below, then at least one (1) business day before the Close of Escrow or _____, whichever is sooner:

(a) Seller receives approval of the transaction which is the subject of this Agreement by the Seller's Board of Directors which approval is subject to said Board's sole discretion;

(b) Buyer's approval of the title, physical, and structural condition of the Property not later than March 15, 2018 (the "Review Deadline");

(c) Buyer has approved the environmental condition of the Property, subject to Seller's remediation of one firing range on Tax Map Key No. (1) 6-4-004:011 as described herein;

(d) Seller has directed the current owner of the Property, Dole Food Company, Inc. ("Dole"), a North Carolina corporation, to deed the Property directly to Buyer by Warranty Deed;

(e) Buyer receives approval by the State of Hawaii, Board of Land and Natural Resources to enter into this Agreement and to acquire the Property, which approval is subject to the Board's sole discretion;

(f) Buyer receives confirmation from all sources of grant funding that they are compatible with each other and may be used together to purchase the Property;

(g) Seller has provided Buyer with copies of the Property Information (as defined in Section 5(b) below) provided to Seller by the former

landowner and the results of Seller's due diligence. To the best of Seller's knowledge the Property Information contains all encumbrances, restrictions, and obligations, both recorded and unrecorded, pertaining to the Property;

(h) Dole and Dustin T. Griffith ("Griffith") execute a Second Amendment to License Agreement for Tax Map Key No. (1) 6-4-004:0011 (Portion), and it is delivered to Escrow;

(i) Griffith executes an estoppel certificate for Tax Map Key No. (1) 6-4-004:0011 (Portion), and it is delivered to Escrow;

(j) Dole and Buyer execute an Assignment and Assumption of License for Tax Map Key No. (1) 6-4-004:011 (Portion), and it is delivered to Escrow;

(k) Buyer and Castle & Cooke Properties, Inc., a Hawaii corporation, execute a Partial Amendment to Deed with Covenants for Tax Map Key No. (1) 6-4-004:0011, and it is delivered to Escrow for recordation by Close of Escrow; and

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

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

5. **Condition of the Property.**

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

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

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

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

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

(b) Except as otherwise expressly provided in this Agreement, Buyer hereby acknowledges and agrees that the sale of the Property hereunder is and will be made on an "as is, where is" basis and that neither Seller, nor any attorney, representative, agent, or employee of Seller has made, or will make, and except for Seller's representations and express warranties set forth in this Agreement, Seller specifically negates and disclaims, any representations, warranties, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, future, or otherwise, of, as to, concerning or with respect to the Property.

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

7. **Escrow and Closing.**

(a) Seller has opened an escrow (the "Escrow") with Title Guaranty of Hawaii, Inc., 235 Queen Street, Honolulu, Hawaii, 96813 Attn: Jeremy Trueblood (the "Escrow Holder") for the purpose of consummating the purchase and sale of the Property. Buyer and Seller will approve and submit joint escrow closing instructions. Escrow will close on or before _____, unless extended by agreement of the parties.

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

(c) Seller will pay all escrow fees. Any documentary tax or real property transfer tax arising out of the conveyance of the Property will be borne by Seller, if applicable. The cost of title insurance will be borne as provided in Section 0 below. Any other closing expenses, fees, and charges will be paid for by Seller.

8. **Title.** Seller will cause the Property to be conveyed to Buyer by Warranty Deed (the "Deed") in the form attached hereto as Exhibit C, incorporated herein by this reference, a fee simple interest in the Property, free and clear of all monetary liens and encumbrances, except for the Restricted Use Easement conveyed to the United States, Department of Defense, Department of the Navy, immediately before the recordation of the Deed, and excepted further as shown in Exhibit C to the Deed:

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

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

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

11. **Seller's Promise to Remediate Affected Area.** Ford & Associates, Inc. ("Ford") conducted a site investigation of a portion of the Property as described in that certain report dated May 21, 2018, addressed to Mr. Steve Rafferty, The Trust for Public Land, regarding Project No. 18-1330 (the "Report"). The Report identified one of two firing ranges located on the Property, in the northeast portion of Tax Map Key No. (1) 6-4-004:011 (the "Affected Area"). The Affected Area, depicted in Exhibit D attached hereto and incorporated herein by this reference, includes the firing range and adjoining land which could have reasonably been impacted by firing range activities as indicated in the Report. The Affected Area contains a concentration of lead and antimony above State of Hawaii Department of Health ("HDOH") Commercial / Industrial Environmental Action Levels that will require remedial work (the "Remediation Work"). The scope and cost of the Remediation Work is set forth in that certain Proposal No. 18P-2433 (Rev) issued by Ford dated July 2, 2018 for a fixed sum of \$212,900.00 (the "Proposal") to complete the Remediation Work described in the Proposal and obtain an unrestricted no further action letter ("NFA") from the HDOH relating thereto. In connection with the Remediation Work, Buyer, as the owner of the Affected Area, will reasonably cooperate to execute applications and other agreements required by the HDOH, the City and County of Honolulu, and any other governmental authority with jurisdiction over the Property to facilitate the completion of the Remediation Work and receipt of the NFA. The Remediation Work shall be done at no cost to Buyer and completed within one year of the Close of Escrow.

An amount equal to Two Hundred Twelve Thousand Nine Hundred and 00/100 Dollars (\$212,900.00) will be retained in Escrow and shall be used by Seller to pay Ford for the Remediation Work under the Proposal.

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

(a) Subject to the conditions precedent set forth in Section 4, Seller will, before the Close of Escrow, will have the power to sell, transfer and convey all right, title and interest in and to the Property;

(b) To Seller's actual knowledge, there is no action, suit, litigation, arbitration, or other proceeding pending or threatened that in any manner affects the Property;

(c) Subject to the conditions precedent set forth in Section 4, Seller has full power and authority to execute and deliver this Agreement and to consummate the transactions provided herein. The persons signing this Agreement for Seller have full power and authority to sign for Seller and to bind it to this Agreement;

(d) Seller has no actual knowledge of any violations of any law, order, ordinance, or regulation affecting the Property;

(e) Seller has not received notice and has no knowledge of, any pending or threatened condemnation of all or part of the Property;

(f) This Agreement and the other documents to be executed by Seller hereunder, upon execution and delivery thereof by Seller, will have been duly entered into by Seller, and will constitute legal, valid and binding obligations of Seller, subject to the conditions precedent set forth in Section 4, and subject to applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws or equitable principles affecting or limiting the rights of contracting parties generally. Neither this Agreement nor anything provided to be done under this Agreement violates or will violate any contract, document, understanding, agreement, or instrument to which Seller is a party or by which it is bound;

(g) Seller has no actual knowledge of any unrecorded agreements affecting the Property other than as described in Section 8;

(h) Seller represents and warrants that it is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code. Seller's United States Taxpayer Identification Number is 23-7222333;

(i) Seller represents and warrants that it is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California;

(j) Seller represents and warrants, to Seller's actual knowledge that the Property is not subject to any investigation by any governmental authority or any judicial or administrative proceedings alleging the material violation of or liability under any hazardous materials law, or any outstanding written order or agreement with any governmental authority or private party relating to any hazardous materials laws or hazardous materials claims;

(k) Seller agrees to disclose to Buyer all material findings regarding the condition of the Property that Seller may discover and are not contained in the preliminary title report delivered to Buyer.

13. **Buyer's Representation.** Buyer represents and warrants that subject to approval by the Board of Land and Natural Resources which approval is at the Board's sole discretion, Buyer has all the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

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

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

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

17. **No Broker's Commission.** Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. Each party further represents that it has not and will not pay or receive a broker's commission or finders' fee for this transaction. If any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, then the party on account of whose conduct the claim is asserted will hold the other party harmless from said claim.

18. **Time of the Essence; Dates.** Time is of the essence to this Agreement. If any date specified in this Agreement falls on Saturday, Sunday or a public holiday, then such date will be deemed to be the succeeding day on which the public agencies and major banks are open for business.

19. **Binding on Successors.** Subject to approval by the Board of Land and Natural Resources and the Seller's Board of Directors, which approvals are at each Board's sole discretion, this Agreement will be binding not only upon the parties but also upon their heirs, personal representatives, assigns, and other successors in interest.

20. **Additional Documents.** Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

21. **Additional Documents to be Provided by Seller to Buyer.** Seller agrees to provide to Buyer or Escrow Holder before the close of Escrow a resolution of the Board of Directors of Seller authorizing the transaction contemplated by this Agreement, the execution, delivery, and performance of this Agreement, any other obligation of Seller contemplated by this Agreement, and authorizing the person who will sign this Agreement to do so on behalf of Seller.

22. **Assignment.** Buyer may not assign its interests under this Agreement without the written consent of Seller.

23. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by all parties. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver and agreeable to both parties.

24. **Counterparts.** This Agreement may be executed in counterparts; each of which will be deemed an original and which together will constitute one and the same agreement.

25. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance will nonetheless be of full force and effect.

26. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Hawai'i.

27. **Survival of Close of Escrow.** All representations, warranties, covenants, conditions, agreements, and other obligations set forth in this Agreement will survive the Close of Escrow and the recordation of the Deed and will not merge therein unless specifically stated otherwise in this Agreement.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

SELLER:

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

By: _____
Gilman Miller, Senior Counsel

Date: _____, 2018

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

STATE OF HAWAII

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

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

Name: JULIE H. CHINA
Deputy Attorney General

Exhibit A

Legal Description of Property

Exhibit B

Map of Property

Exhibit C

Warranty Deed

Exhibit D

Affected Area