

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

March 8, 2019

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

MAUI

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

AND

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

AND

DECLARE THAT, AFTER CONSIDERING THE POTENTIAL EFFECTS OF THE PROPOSED PROJECT AS PROVIDED BY CHAPTER 343, HRS, AND CHAPTER 11-200, HAR, THIS PROJECT WILL PROBABLY HAVE MINIMAL OR NO SIGNIFICANT EFFECT ON THE ENVIRONMENT AND IS THEREFORE EXEMPT FROM THE PREPARATION OF AN ENVIRONMENTAL ASSESSMENT.

PRIVATE LANDOWNER:

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

LEGAL REFERENCE:

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

LOCATION:

**ITEM C-1**

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

AREA:

2-3-005:002: 3276.656 acres, more or less

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

TOTAL: 3276.684 acres, more or less

ZONING:

State Land Use District: Agriculture/Conservation

County of Maui Zoning: Agriculture

CURRENT USE:

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

Parcel 2-3-005:014 is vacant.

CONSIDERATION:

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

PURPOSE:

Forest Reserve purposes.

CHAPTER 343- ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 343-5(a)(1), HRS, an environmental assessment (EA) is not required where State or county funds are being used for the acquisition of unimproved real property. As the subject lands are unimproved, an EA is not required. However, in an abundance of caution, to the extent that minor improvements, such as fencing and ranching equipment, are currently on the property, we have prepared an Exemption Notification, attached hereto as Exhibit E. Inasmuch as the Chapter 343 environmental requirements apply to Division's future management of the property, the Division will be responsible for compliance with Chapter 343, HRS, as amended.

REQUIREMENTS:

- 1) Obtain an appraisal report to determine the value of the properties to be acquired;
- 2) Process and obtain subdivision approval, as appropriate;

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

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

#### BACKGROUND:

Kamehamehenui Forest Property, on the north slopes of Haleakalā, in the Kula District of Maui, was listed for sale in 2016. The Property is the site of the historic Von Tempsky's Erehwon Ranch founded in 1875 and immortalized in bestselling novels about the family's adventures on the ranch. In an effort to protect this iconic landscape of Haleakala, the Division of Forestry and Wildlife in close partnership with the Trust for Public Lands (TPL) and the National Park Service began fundraising to acquire the Property for its public purposes. Acquisition of the Kamehamehenui Forest Property will permanently protect over 3,276 acres of forest, native sub-alpine ecosystems and formerly forested grasslands. The Property includes two parcels, TMKs (2) 2-3-005:002 and 014, and consists of both agricultural and conservation zoned lands. Acquisition will secure high priority watersheds and native ecosystems that provide habitat for endangered wildlife. It will also add significant access and acreage for public outdoor recreation, as well as create opportunities for forest restoration, climate change mitigation and sustainable forestry. If acquired by the State, the intent is to add the Property to the Forest Reserve System. The Division will develop a comprehensive multi-use management plan, guided by community and stakeholder input.

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

The County of Maui estimates the demand for water on the NW slopes of Haleakalā and Wailuku will increase by 46.5% by 2030. Kamehamehenui Forest contributes to the groundwater recharge of the Makawao aquifer which has been identified as a potential source to meet this demand.

According to the USGS groundwater recharge modeling dataset, the Property currently contributes approximately 3.37 million gallons of water per day. The Division estimates that habitat management and reforestation efforts could increase water production to 4.19 MGD, which translates into an additional 296 million gallons of water per year.

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

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

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

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

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

REMARKS:

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

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

The Division has also agreed to pay closing costs, including document preparation, recording fees and title insurance estimated at approximately \$20,000, and will be using U.S. Forest Service Legacy Program grant funding for the project to cover those allowable grant costs. A draft warranty deed that has been negotiated for this acquisition is attached as **Exhibit B** and details the various funding sources and management requirements that will govern the future management of the Property.

The Division was assisted in conducting due diligence for this acquisition by Land Division and the Attorney General. An appraisal of the Property was prepared by CBRE, Inc dated November 6, 2018. The appraisal determined the total fair market value of the property to be \$10,200,000.00. The appraisal was reviewed and accepted by both the U.S. Fish and Wildlife Service and U.S. Forest Service; both agencies accepted the fair market value and determined that the appraisal was compliant with the assignment and both the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA). A survey map and description has been prepared for the Property and will be submitted to the State Surveyor for review and approval.

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

The Division believes that the certain use of the Property for grazing provided under this existing Lease can support the Division's long-term management objectives and funding requirements. With the overall wildfire threat in the region and to the Property, the Division plans to establish a network of managed fuel breaks, which may be maintained using prescribed grazing practices. Additionally, the Division anticipates restoring the forest over the course of several years and will need to manage the fuel loads during this period. The Lease provides the lessor the right to withdraw a portion or all of the leased premises at the lessor's discretion for any purpose. The Division's management plan may be compatible with a withdrawal of limited areas of the Property, phased over a period of time, rather the withdrawal the entire Property at once from the Lease. This may reduce the impacts to the Lessee's business operations, as well as provide for continued

management of portions of the Property by the Lessee until the Division is prepared to assume management at the point of withdrawal. Prescribed grazing over the short-term in portions of the property may also support management of threats from encroachment by invasive weed species. Any hunting activities conducted pursuant to the Lease shall be subject to all applicable laws and rules regarding hunting on State lands. To support the ongoing management of the Property and Lease, the Division is requesting delegation to the Chairperson to negotiate and amend the Lease, as may be necessary, appropriate, and agreed upon by the Department and Lessee.

TPL retained Ford & Associates, Inc. (Ford) to conduct a Phase I Environmental Assessment (ESA) for the Property. The Phase I ESA identified a recognized environmental condition (REC), described as potential substance spills or leaks from containers at two locations on the western portion of the Property. Conditions observed included surface staining that appeared as oil, as well as distressed vegetation in the immediately surrounding area. To address the REC, Ford developed a remediation plan to remove and dispose of the containers and contaminated soil. TPL, through their Purchase and Sale Agreement (PSA) with the State (attached as **Exhibit D**), shall be obligated to complete the clean-up (which has already commenced) prior to the close of escrow.

Although not considered a REC, the Phase I ESA identified a dumpsite in a gulch on the Property. However, from observations of the site it appears that the dump consists of household refuse, with no evidence of hazardous substances or petroleum products. Ford, at TPL and the Division's request, surveyed the area and did not observe any hazardous materials present on the site. The Phase I ESA does note that portions of the Property are inaccessible due to terrain and heavy vegetation, preventing a thorough assessment of conditions in those areas.

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

Furthermore, the Division believes that the proposed transaction sufficiently protects the State from potential liability. First, the Lease contains a general indemnity provision. As the Lessee has had possession and control of parcel 2-3-005:002 (which constitutes almost the entire Property) for a longer period of time than the Seller, the Division believes that this is an acceptable substitute for the warranty deed indemnity. Second, even if the warranty deed indemnity is removed, the

State shall retain all rights to pursue potential claims against any appropriate party under law. The Division notes that in the PSA, TPL has represented that the Seller has committed up to \$20,000 towards the cost of completing the remediation plan. However, acknowledgment of this representation by the State does not serve as a waiver of any right to pursue potential claims against any appropriate party under law.

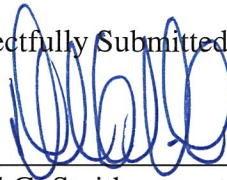
Upon closing, the Division will enter into a management right-of entry for the Property. The Division will then proceed with conducting public hearings to add the Property to the Forest Reserve System. Upon completion, the Division will return to the Board to seek approval to designate the Property as part of the Forest Reserve System and obtain an Executive Order as appropriate.

**RECOMMENDATION:** That the Board:

1. Authorize the acquisition of the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:
  - A. The terms and conditions of the attached draft deed document and the purchase and sale agreement, as may be amended;
  - B. Review and approval by the Department of the Attorney General;
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
  
2. Authorize the issuance of a management right-of-entry permit to the Division of Forestry and Wildlife covering the subject area under the terms and conditions cited above, effective immediately upon acquisition by the State, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
  - C. Delegate authority from the Chairperson to the Maui Branch Manager to issue access permits for these parcels under Chapter 171, HRS.
  
3. Pursuant to Section 183-11, HRS, as amended, authorize the Division of Forestry and Wildlife to conduct a public hearing on the Island of Maui regarding the proposed addition of the Property to the Forest Reserve System, Maui. Further, pursuant to 183-12, HRS, authorize the Chairperson to:
  - A. Set the date, location and time of the public hearing; and

- B. Appoint a hearing master(s) for the public hearing.
4. Delegate authority to the Chairperson to administer all aspects of the Amended and Restated Grazing Lease and Hunting License Agreement, dated January 1, 2006, with Brendan Balthazar.
5. Declare that, after considering the potential effects of the proposed project as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environmental and is therefore exempt from the preparation of an environmental assessment.

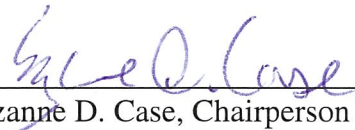
Respectfully Submitted,



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David G. Smith  
Administrator

APPROVED FOR SUBMITTAL:



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Suzanne D. Case, Chairperson

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



# EXHIBIT A

**PRELIMINARY  
KEKAUKE MAUKA SUBDIVISION**

CONSOLIDATION OF REMNANT LOTS 17, 19,  
ISOLATED PORTION OF PARCEL 2 OF  
TAX MAP KEY (2) 2-3-005 AND THE REMAINDER OF  
PARCEL 2 OF TAX MAP KEY (2) 2-3-005 AND  
RESUBDIVISION OF SAID CONSOLIDATION  
INTO LOT 1 AND LOT 2 AND  
DESIGNATION OF EASEMENT W-3

BENIC PORTIONS OF ROYAL PATENT 4388, LAND COMMISSION AWARD 8452,  
APANA 6 TO A KAWA, LAND COMMISSION AWARD 8452,  
APANA 6 TO A KAWA, LAND COMMISSION AWARD 8452,  
APANA 6 TO A KAWA, LAND COMMISSION AWARD 8452,  
MAMAHANUI, KEALAHOU 3 & 4, MAKAWAO, MAUI, HAWAII

SCALE: 1" = 4,000 FT.  
DATE: FEBRUARY 16, 2011

PREPARED FOR OWNER:  
STATE OF HAWAII  
LAND COMMISSION  
FOUNDRY, OAHU, HI 96813

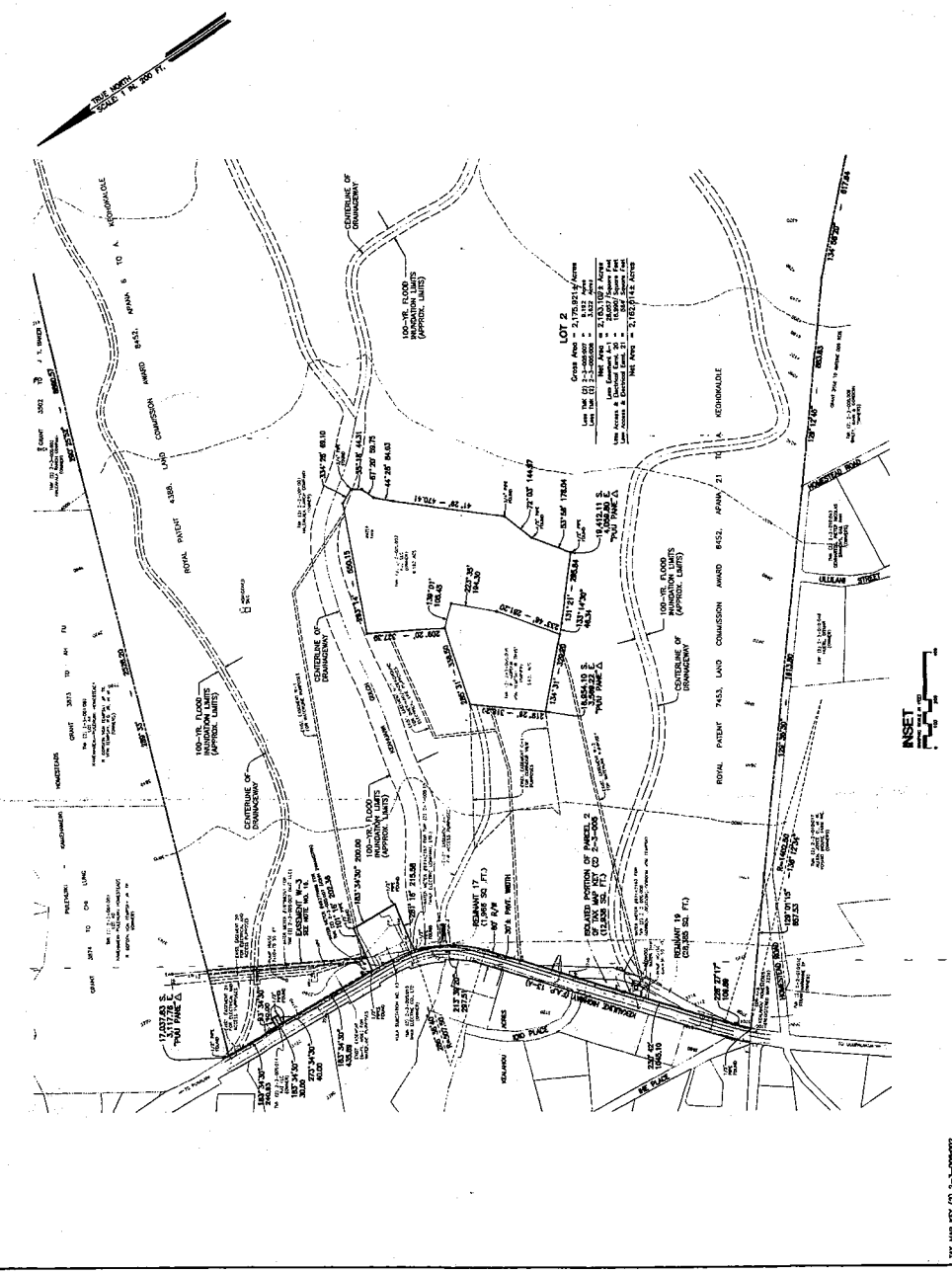
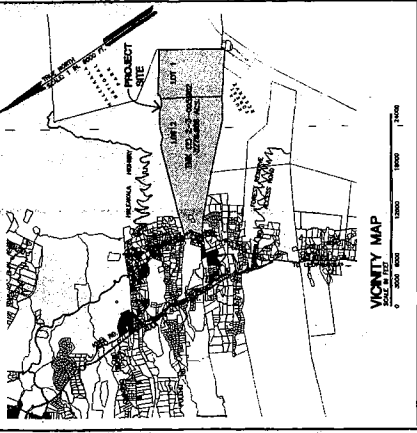
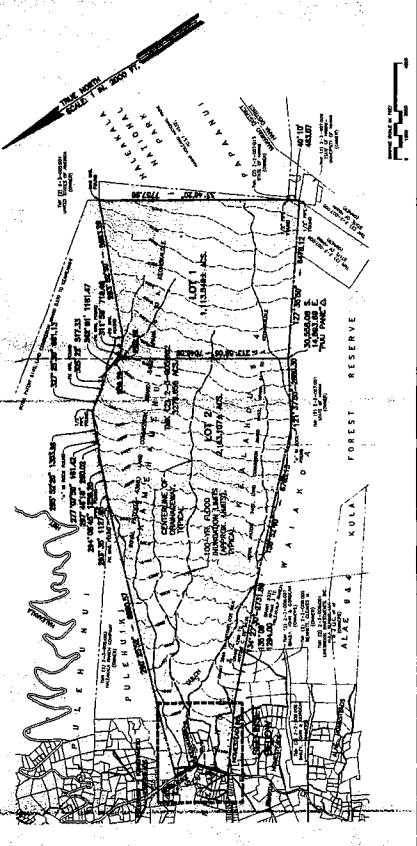
DESIGNED BY:  
ROBERT A. MORGAN ENGINEERING, INC.  
1215 ALI'OLE DRIVE, SUITE 200  
LAIE, HAWAII 96761  
PHONE: (808) 782-5611  
FAX: (808) 782-5611  
WWW.ORGANICENGINEERING.COM

DESIGNED BY:  
*Robert A. Morgan*  
REGISTERED PROFESSIONAL LAND SURVEYOR  
STATE OF HAWAII  
LICENSE NUMBER 47070

DATE: FEBRUARY 16, 2011

**NOTES:**

1. ALL EXISTING RECORDS, ENCUMBRANCES REFER TO GOVERNMENT CHARGE.
2. ALL EXISTING RECORDS, ENCUMBRANCES REFER TO THE COUNTY TAX MAP.
3. ALL EXISTING RECORDS, ENCUMBRANCES REFER TO THE COUNTY TAX MAP.
4. CONVEYANCE TO THE STATE OF HAWAII, LAND COMMISSION, INC. AND UCEC, KAWA, HAWAII.
5. THIS MAP IS THE RESULT OF A SURVEY CONDUCTED BY ROBERT A. MORGAN ENGINEERING, INC. ON BEHALF OF THE LAND COMMISSION, INC. AND UCEC, KAWA, HAWAII. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEYING ACTS OF 1913 AND 1967.
6. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEYING ACTS OF 1913 AND 1967.
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16. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEYING ACTS OF 1913 AND 1967.
17. ALL ENCUMBRANCES ARE SHOWN AS PER RECORDS.
18. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEYING ACTS OF 1913 AND 1967.
19. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEYING ACTS OF 1913 AND 1967.
20. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEYING ACTS OF 1913 AND 1967.





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

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

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

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

#### NOTICE OF FEDERAL PARTICIPATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, The Trust for Public Land, aforesaid, the Grantor herein, has caused these presents to be executed this \_\_\_\_ day of \_\_\_\_\_, 201\_, and the STATE OF HAWAII, by its Board of Land and Natural Resources, the Grantee herein, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, both effective as of the day, month, and year first above written.

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

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

\_\_\_\_\_

\_\_\_\_\_  
Tily Shue, Senior Counsel

GRANTOR

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

\_\_\_\_\_

\_\_\_\_\_  
Deputy Attorney General

**STATE OF HAWAII**

By \_\_\_\_\_

SUZANNE D. CASE

Chairperson

Board of Land and Natural Resources

Dated: \_\_\_\_\_

GRANTEE

**CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT**

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

STATE OF CALIFORNIA }  
COUNTY OF \_\_\_\_\_ }

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_(Seal)

*OPTIONAL*

Description of Attached Document

Title or Type of Document: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Document Date: \_\_\_\_\_ Other: \_\_\_\_\_



STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF                            )

On this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that they are the \_\_\_\_\_ and \_\_\_\_\_, respectively, of \_\_\_\_\_, a corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said \_\_\_\_\_ and \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public, State of Hawaii

My commission expires:

**EXHIBIT "A"**

**Legal Description of the Real Property**

**-ITEM I:-**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Numbers 4388 and 7453, Land Commission Award Number 8452, Apanas 6 and 21 to A. Keohokalole) situate, lying and being at Kamehamenui and Kealahou 3 & 4, Makawao, Island and County of Maui, State of Hawaii, being PARCEL 2, and thus bounded and described, to-wit:

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

1. 289° 33' 00" 2,528.20 feet along Lots 40 and 44 of the Kamehameiki - Pulehuiki Homesteads, being also along Grant 3874 to Chi Lung and Grant 3873 to Ah Fu;
2. 290° 25' 52" 8,890.57 feet along Grant 3502 to J. T. Baker;

Thence along centerline of gulch, along Royal Patent 8140, Land Commission Award Number 5230 to Keaweamaahi, for the next nine (9) courses, the direct azimuths and distances between points being:

3. 293° 35' 00" 1,127.65 feet;
4. 294° 08' 45" 1,258.20 feet;
5. 297° 46' 10' 260.02 feet;
6. 277° 07' 50" 161.42 feet;
7. 295° 52' 20" 1,303.98 feet;
8. 327° 25' 30" 991.13 feet;
9. 305° 22' 00" 517.33 feet;
10. 342° 01' 00" 1,181.47 feet;
11. 311° 58' 00" 719.46 feet;
12. 293° 52' 50" 5,693.29 feet along Royal Patent 8140, Land Commission Award Number 5230 to Keaweamaahi;

- |     |      |     |     |          |   |
|-----|------|-----|-----|----------|---|
| 13. | 33°  | 46' | 20" | 7,757.96 | feet along the Hawaii Volcano National Park (CSF 4532), being also along the remainder of R.P. 4388, L.C. Aw. 8452, Ap. 6 to A. Keohokalole and R.P. 7453, L.C. Aw. 8452, Ap. 21 to A. Keohokalole; |
| 14. | 40°  | 10' | 00" | 463.07   | feet along Government Land being also along former Kahikinui Forest Reserve;  |
| 15. | 127° | 35' | 50" | 6,478.12 | feet along Government Land being also along Kula Forest Reserve;  |
| 16. | 121° | 37' | 50" | 2,880.30 | feet along same;  |
| 17. | 135° | 52' | 40" | 6,765.15 | feet along same;  |
| 18. | 134° | 27' | 30" | 2,731.80 | feet along Grant 9325 Apana 3 to Haleakala Ranch Company;   |
| 19. | 135° | 09' | 00" | 1,294.00 | feet along Grant 4289 to Antone C. de Silva;  |
| 20. | 134° | 56' | 20" | 617.84   | feet along Grant 3868 to Antone dos Reis;   |
| 21. | 129° | 12' | 45" | 883.83   | feet along same;  |
| 22. | 129° | 35' | 30" | 1,613.80 | feet along Homestead Road;  |
| 23. | 129° | 01' | 15" | 657.53   | feet along portion of Lot 1-A of the Kealahou Homesteads (Reg. Map 2239);   |

Thence along the east side of Kekaulike Highway (F.A.P. 13-A) on a curve to the right with a radius of 1,402.50 feet, the chord azimuth and distance being:

- |     |      |     |     |          |  |
|-----|------|-----|-----|----------|--|
| 24. | 228° | 27' | 17" | 109.89   | feet;  |
| 25. | 230° | 42' | 00" | 1,045.10 | feet along the east side of Kekaulike Highway (F.A.P. 13-A); |

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

- |     |      |     |     |        |  |
|-----|------|-----|-----|--------|--|
| 26. | 213° | 39' | 20" | 297.51 | feet;  |
| 27. | 281° | 16' | 00" | 215.58 | feet along Maui Electric Co. Ltd. Kula Substation No. 13, being also along the remainder of R.P. 4388, L.C. Aw. 8452, Ap. 6 to A. Keohokalole; |
| 28. | 183° | 34' | 30" | 200.00 | feet along same;   |

- |     |      |     |     |        |   |
|-----|------|-----|-----|--------|---|
| 29. | 101° | 16' | 00" | 202.36 | feet along same;  |
| 30. | 183° | 34' | 30" | 435.89 | feet along the east side of Kekaulike Highway (F.A.P. 13-A);  |
| 31. | 273° | 34' | 30" | 40.00  | feet along the remainder of R.P. 4388, L.C. Aw. 8452, Ap. 6 to A. Keohokalole;  |
| 32. | 183° | 34' | 30" | 30.00  | feet along same;  |
| 33. | 93°  | 34' | 30" | 40.00  | feet along same;  |
| 34. | 183° | 34' | 30" | 240.93 | feet along the east side of Kekaulike Highway (F.A.P. 13-A), to the point of beginning and containing a gross area of 3,289.47 acres, more or less, and a net area of 3,276.66 acres, more or less. |

Exclusions:

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

**BEING THE PREMISES ACQUIRED BY WARRANTY DEED**

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

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

**DATED:**

**RECORDED:**

**-ITEM II:-**

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

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

- 35. 273° 34' 30" 40.00 feet along the remainder of R.P. 4388, L.C. Aw. 8452, Ap. 6 to A. Keohokalole;
- 36. 3° 34' 30" 30.00 feet along same;
- 37. 93° 34' 30" 40.00 feet along same;
- 38. 183° 34' 30" 30.00 feet along the east side of Kekaulike Highway (F.A.P. 13-A), to the point of beginning and containing an area of 1,200 square feet, more or less.

**BEING THE PREMISES ACQUIRED BY WARRANTY DEED**

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

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

**DATED:**

**RECORDED:**

**EXHIBIT "B"**

Survey Map, C.S.F. No.

## EXHIBIT "C"

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

1. Mineral and water rights of any nature.
2. Any and all existing roadways, trails, easements, rights of way, flumes and irrigation ditches.

3. -AS TO ITEM I:-

(A) GRANT

TO: MAUI ELECTRIC COMPANY, LIMITED AND HAWAIIAN  
TELEPHONE COMPANY, now known as HAWAIIAN TELCOM,  
INC.

DATED: May 27, 1983  
RECORDED: Liber 17179 Page 535  
GRANTING: a right and easement for utility purposes

(B) GRANT

TO: MAUI ELECTRIC COMPANY, LIMITED

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

(C) GRANT

TO: MAUI ELECTRIC COMPANY, LIMITED

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

(D) GRANT

TO: MAUI ELECTRIC COMPANY, LIMITED and HAWAIIAN  
TELEPHONE COMPANY, now known as HAWAIIAN  
TELCOM, INC.

DATED: May 27, 1983  
RECORDED: Liber 17264 Page 478  
GRANTING: a right and easement for utility purposes

(E) GRANT

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

DATED: November 26, 2001

RECORDED: Document No. 2001-195576

GRANTING: a nonexclusive easement in favor of Tax Key (2) 2-3-005-007 for access purposes over Easement "A-1", more particularly described therein

(F) GRANT

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

DATED: November 26, 2001

RECORDED: Document No. 2001-195578

GRANTING: a nonexclusive right and easement in favor of Tax Key (2) 2-3-005-007 for utility purposes over Easement "U-1", more particularly described therein

(G) GRANT

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

DATED: November 26, 2001

RECORDED: Document No. 2001-195580

GRANTING: a nonexclusive easement for waterline purposes over Easement "W-1", more particularly described therein

(H) GRANT

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

DATED: November 26, 2001

RECORDED: Document No. 2002-021609



GRANTING: a nonexclusive easement for waterline purposes over Easement "W-2", more particularly described therein

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

INSTRUMENT: DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

DATED: November 26, 2001

RECORDED: Document No. 2002-021610

(J) GRANT

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

DATED: November 26, 2001

RECORDED: Document No. 2002-021611

GRANTING: a nonexclusive easement for access purposes over Easement "A-1", more particularly described therein

(K) GRANT

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

DATED: November 26, 2001

RECORDED: Document No. 2002-021612

GRANTING: a nonexclusive right and easement for utility purposes over Easement "U-1", more particularly described therein

(L) GRANT

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

DATED: May 13, 2014

RECORDED: Document No. A-52910750

GRANTING: an easement for utility purposes

(M) GRANT

TO: STATE OF HAWAII, DEPARTMENT OF AGRICULTURE

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

(N) GRANT

TO: STATE OF HAWAII, DEPARTMENT OF AGRICULTURE

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

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

4. GRANT

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

DATED: January 9, 2009, September 2, 2009 and September 3, 2009  
RECORDED: Document No. 2009-162580  
GRANTING: an easement for the transmission of water purposes, being more particularly described therein

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

ESTOPPEL CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That, as of this \_\_\_\_ day of \_\_\_\_\_, 2019, BRENDAN BALTHAZAR, whose address is \_\_\_\_\_, hereinafter referred to as the "Lessee," certifies to the STATE OF HAWAII, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, that:

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

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

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

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

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

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

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

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

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

AMENDED AND RESTATED GRAZING LEASE AND HUNTING LICENSE

AGREEMENT

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

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

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

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

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

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

Reserving, however, unto the Lessor, the following:

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

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

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

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

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

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

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

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

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

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

14. Indemnity. The Lessee will indemnify, defend and hold the Lessor harmless from and against any claim or demand for loss, liability or damage, including claims for property damage, personal injury or death, arising out of any accident on the Premises or occasioned by any act or nuisance made or suffered on the Premises, or by any fire thereon, or growing out of or caused by any failure on the part of the Lessee to maintain the Premises in a safe condition, or by any act or omission of the Lessee, including aerial drift or the use of chemicals, pesticides, herbicides, fungicides, mematicides and plant growth regulations (hormones), and from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

15. Costs of Litigation. In case the Lessor shall, without any fault on its part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall and will pay all costs and expenses incurred by or imposed on the Lessor including reasonable attorney's fees; furthermore, the Lessee shall and will pay all costs and expenses including reasonable attorney's fees that may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this Lease, in recovering possession of the Premises or in the collection of delinquent rent, taxes and any and all other charges.

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

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

19. Breach. Time is of the essence of this agreement and if the Lessee shall fail to yield to pay any rent or any part thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of the Lessee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and such failure shall continue for a period of more than thirty (30) days after delivery by the Lessor of a written notice of such breach or default by personal service, registered mail or certified mail to the Lessee at its last known address, the Lessor may, at once re-enter the Premises or any part thereof, and upon or without such entry, at its option, terminate this Lease without prejudice to any other remedy or right of action for arrears of rent for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of the Lessor.

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

21. Condemnation. If at any time, during the term of this Lease, any portion of the Premises should be condemned, or required for public

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

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

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

26. Good Husbandry, Conservation Program and Hazardous Materials.

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



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

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

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

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

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

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

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

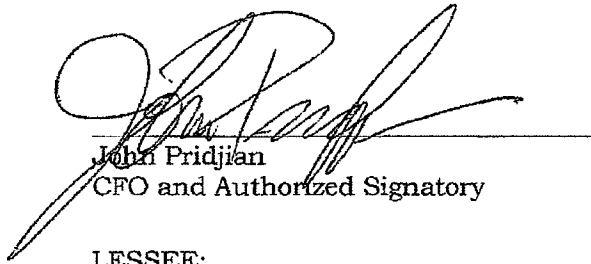
39. Option to Extend Term. The Lessee shall have the option to extend the term of this Lease for one (1) additional ten (10) year period upon the condition that there is no default in performance or observance of any covenant or condition of this Lease of which a notice of default has been given to the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

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

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

LESSOR:

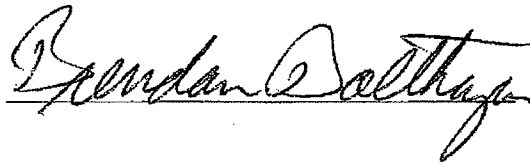
KJZ LLC, a Hawaii limited liability company



John Pridjian  
CFO and Authorized Signatory

LESSEE:

BRENDAN BALTHAZAR



**AGREEMENT OF SALE  
(Kamehamehenui Property)**

This is an Agreement of Sale (“Agreement”) dated \_\_\_\_\_, 2019, between **The Trust for Public Land**, a California nonprofit public benefit corporation, authorized to do business in the State of Hawai’i (“Seller”), and the **State of Hawaii**, by its Board of Land and Natural Resources (“Buyer”).

RECITALS

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

**SELLER:**

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

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

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

**BUYER:**

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

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

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

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

EXHIBIT D

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

THE PARTIES AGREE AS FOLLOWS:

1. **Purchase and Sale.** Seller agrees to sell the Property to Buyer and Buyer agrees to buy the Property from Seller on the terms and conditions set forth herein.
2. **Purchase Price.** The purchase price for the Property is Nine Million Eight Hundred Thirty Thousand Dollars (\$9,830,000.00) (the “Purchase Price”). The Purchase Price will be payable, in cash or immediately available funds, on Deed Recordation, as defined in Section 7.
3. **Effective Date.** This Agreement will be effective on the date that it is signed by both parties hereto and approved as to form, legality, exceptions and reservations by the Attorney General on behalf of Buyer, as shown on the signature pages to this Agreement (the “Effective Date”).
4. **Conditions Precedent to Closing.** The parties’ respective obligations to close the purchase and sale of the Property are conditioned upon all of the following happening at least one (1) business day before the Closing (as defined in Section 7(a) below):
  - (a) Seller receives approval of the transaction which is the subject of this Agreement by the Seller’s Board of Directors which approval is subject to said Board’s sole discretion;
  - (b) Buyer has approved the title, physical, and structural condition of the Property not later than March 8, 2019 (the “Review Deadline”);
  - (c) Buyer has approved the environmental condition of the Property;
  - (d) Buyer receives approval by the State of Hawaii, Board of Land and Natural Resources (“BLNR”) to enter into this Agreement and to acquire the Property, which approval is subject to the Board’s sole discretion;
  - (e) Buyer receives all sources of grant funding which are to be used together to purchase the Property;
  - (f) Seller has provided Buyer with copies of the Property Information (as defined in Section 5(a)(ii) below) provided to Seller by the current landowner and the results of Seller’s due diligence. To the best of Seller’s knowledge the Property Information contains all encumbrances, restrictions, and obligations, both recorded and unrecorded, pertaining to the Property;

## EXHIBIT D

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

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

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

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

### 5. **Condition of the Property.**

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

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

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

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

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

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

## EXHIBIT D

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

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

(d) Buyer acknowledges that Seller has provided to Buyer (i) that certain Phase I Environmental Assessment Report dated June 8, 2018 (“Phase I ESA”) prepared by Ford Associates, Inc. (“Ford”), (ii) that certain updated Phase I ESA, prepared by Ford and dated as of February 13, 2019 (the “Phase I Update”), and (iii) that certain Proposal to Conduct Removal and Disposal of Containers and Associated Petroleum Contaminated Soil (PCS) Located on the Western Portion of the Kamehamenui Property, in Kula, Maui, Hawaii, dated January 31, prepared by Ford, to perform cleanup on the Property of materials and soils identified in the Phase I ESA/Phase I Update (the “Remediation Plan”). Buyer further acknowledges that Seller has represented to Buyer that Seller has commenced cleanup pursuant to the Remediation Plan, and such cleanup will be completed no later than the close of escrow.

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

7. **Escrow and Closing.**

(a) Seller has opened an escrow (the "Escrow") with Title Guaranty of Hawaii, Inc., 235 Queen Street, Honolulu, Hawaii, 96813 Attn: Jeremy Trueblood (the "Escrow Holder") for the purpose of consummating the purchase and sale of the Property (the "Closing"). Buyer and Seller will approve and submit joint escrow closing instructions. "Deed Recordation" which is defined as the date on which the Warranty Deed is recorded and the Purchase Price paid will occur on or before March 29, 2019, 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 Deed Recordation.

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

8. **Title.** Seller will cause the Property to be conveyed to Buyer by a Warranty Deed in the form attached hereto as Exhibit D, incorporated herein by this reference (the "Deed"), a fee simple interest in the Property, free and clear of all monetary liens and encumbrances, except as shown in Exhibit A 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 Deed Recordation subject only to the exceptions noted in Section 8. Buyer will pay for the cost of standard coverage. If Buyer elects to obtain any endorsements and/or an extended coverage policy, Buyer will pay the difference between ALTA standard coverage and the increased premium for the endorsements and/or extended coverage. If Buyer or the Title Company requires a survey, the cost of the survey will be at Buyer's expense and such survey must be completed at least two (2) business days before the Deed Recordation.

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

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



## EXHIBIT D

- (a) Subject to the conditions precedent set forth in Section 4, Seller will, before the Deed Recordation, have the power to sell, transfer and convey all right, title and interest in and to the Property;
- (b) To Seller's actual knowledge, there is no action, suit, litigation, arbitration, or other proceeding pending or threatened that in any manner affects the Property;
- (c) Subject to the conditions precedent set forth in Section 4, Seller has full power and authority to execute and deliver this Agreement and to consummate the transactions provided herein. The persons signing this Agreement for Seller have full power and authority to sign for Seller and to bind it to this Agreement;
- (d) Seller has no actual knowledge of any violations of any law, order, ordinance, or regulation affecting the Property;
- (e) Seller has not received notice and has no knowledge of, any pending or threatened condemnation of all or part of the Property;
- (f) This Agreement and the other documents to be executed by Seller hereunder, upon execution and delivery thereof by Seller, will have been duly entered into by Seller, and will constitute legal, valid and binding obligations of Seller, subject to the conditions precedent set forth in Section 4, and subject to applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws or equitable principles affecting or limiting the rights of contracting parties generally. Neither this Agreement nor anything provided to be done under this Agreement violates or will violate any contract, document, understanding, agreement, or instrument to which Seller is a party or by which it is bound;
- (g) Except for the Grazing Lease, Seller has no actual knowledge of any unrecorded agreements affecting the Property ;
- (h) Seller represents and warrants that it is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code. Seller's United States Taxpayer Identification Number is 23-7222333;
- (i) Seller represents and warrants that it is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California;
- (j) Seller represents and warrants, to Seller's actual knowledge that the Property is not subject to any investigation by any governmental authority or any judicial or administrative proceedings alleging the material violation of or liability under any hazardous materials law, or any outstanding written order or

## EXHIBIT D

agreement with any governmental authority or private party relating to any hazardous materials laws or hazardous materials claims;

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

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

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

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

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

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

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

18. **Binding on Successors.** Subject to approval by the Board of Land and Natural Resources and the Seller's Board of Directors, which approvals are at each

## EXHIBIT D

Board's sole discretion, this Agreement will be binding not only upon the parties but also upon their heirs, personal representatives, assigns, and other successors in interest.

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

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

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

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

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

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

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

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

EXHIBIT D

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

SELLER:

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

By: \_\_\_\_\_  
Tily Shue  
Senior Counsel and Legal Director

Date: \_\_\_\_\_, 2019

BUYER:

**STATE OF HAWAII**

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

Approved by the Board of Land and Natural  
Resources at its meeting held  
on \_\_\_\_\_, 2019.

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

\_\_\_\_\_  
Name: DAVID D. DAY  
Deputy Attorney General

# EXHIBIT E

## EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Kamehamenui Forest Property Acquisition

Project / Reference No.: N/A

Project Location: Tax Map Key (2) 2-3-005:002 and 014; Kula, Maui County

Project Description: The Division of Forestry and Wildlife in partnership with the Trust for Public Lands is acquiring the Kamehamenui Forest Property (pending approval by the Board of Land and Natural Resources). The property is located on the north slopes of Haleakalā, in the Kula District of Maui. Acquisition of the Kamehamenui Forest Property will permanently protect over 3,276 acres of forest, native sub-alpine ecosystems and formerly forested grasslands for public purposes. The Property consists of both agricultural and conservation zoned lands. Parcel (2) 2-3-005:002 is currently encumbered by a grazing lease and portions of the parcel contain ranching infrastructure (fencing, water tanks, corrals). Higher elevation portions of the property are undeveloped land. Acquisition will secure high priority watersheds and native ecosystems that provide habitat for endangered wildlife. It will also add significant access and acreage for public outdoor recreation, as well as create opportunities for forest restoration, climate change mitigation and sustainable forestry.

Chap. 343 Trigger(s): Use of State Funds

Exemption Class No(s): Class 1; Action Type 45. Acquisition of land or interests in land.

Cumulative Impact of Planned Successive Actions in Same Place Significant?: No.  
The proposed action is a stand-alone, one-time use of funds for land acquisition that does not involve cumulative impacts from planned, successive actions of the same kind, in the same place, over time.

Action May Have Significant Impact on Particularly Sensitive Environment?: No.  
Portions of the project area, particularly the upper elevation portions are environmentally sensitive because endangered species

and native ecosystems are present. There will be no impact, however, because the use of funds to purchase the land will not change the environment.

**Analysis:** This land-acquisition action will not have a significant effect on the environment. The Division believes that the use of state funds for land acquisition will probably have minimal or no significant negative effects on the environment; does not fund an activity that causes any material change of use of land or resources beyond that previously existing; and is exempt from the preparation of an environmental assessment in accordance with Sections 343-5 and 343-6, HRS; Section 11-200-8, HAR; and Exemption Class 1, Action Type 45 on the Exemption List for the Department of Land and Natural Resources, reviewed and concurred on by the Environmental Council on June 5, 2015.

**Consulted Parties:** DLNR Land Division: Advises that the exemption is proper.  
DLNR Office of Conservation and Coastal Lands: Concurs with exemption.

**Declaration:** The Board finds that this project will probably have minimal or no significant effect on the environment and declares that this project is exempt from the preparation of an environmental assessment.