

From: Dan Nellis <Dan.Nellis@dole.com>
Sent: Monday, January 8, 2024 3:07 PM
To: Tsuji, Russell Y <Russell.Y.Tsuji@hawaii.gov>
Cc: CAPITOL2023-reptarnas <reptarnas@capitol.hawaii.gov>
Subject: [EXTERNAL] Re: Requesting an amendment to the Kohala Sugar Co. deed restrictions for the old Kohala Armory site

Russell,
this sounds good so far.
Than

Daniel X. Nellis

General Manager

Dole Food Co. Hawaii

1116 Whitmore Ave.

Wahiawa, HI, 96786

office ph. (808)621-3201

E-mail dan.nellis@dole.com

From: Tsuji, Russell Y <Russell.Y.Tsuji@hawaii.gov>
Sent: Monday, January 8, 2024 10:53 AM
To: Dan Nellis <Dan.Nellis@dole.com>
Cc: CAPITOL2023-reptarnas <reptarnas@capitol.hawaii.gov>
Subject: RE: Requesting an amendment to the Kohala Sugar Co. deed restrictions for the old Kohala Armory site

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FYI: I have asked my staff to prepare a Land Board submittal asking the Land Board to approve the waivers and once approved, we will ask the Attorney General's office to prepare the execution documents, and we'll circulate the same for signature.

Let me know if you have any questions. Thanks again.
Russell

From: Tsuji, Russell Y
Sent: Friday, January 5, 2024 10:38 AM
To: Dan Nellis <Dan.Nellis@dole.com>
Cc: CAPITOL2023-reptarnas <reptarnas@capitol.hawaii.gov>
Subject: RE: Requesting an amendment to the Kohala Sugar Co. deed restrictions for the old Kohala Armory site

Mahalo Dan, and Happy New Year to you all.

Russell

From: Dan Nellis <Dan.Nellis@dole.com>
Sent: Friday, January 5, 2024 10:04 AM
To: Tsuji, Russell Y <Russell.Y.Tsuji@hawaii.gov>
Cc: CAPITOL2023-reptarnas <reptarnas@capitol.hawaii.gov>
Subject: [EXTERNAL] Re: Requesting an amendment to the Kohala Sugar Co. deed restrictions for the old Kohala Armory site

Russell,
Happy New Year. Sorry it took me so long to get back to you on this.

The draft waiver agreement is acceptable and approved as is by our VP General Counsel. Please proceed with the board and AG to prepare execution originals and send for signatures.

Thanks,
Dan

Daniel X. Nellis

General Manager

Dole Food Co. Hawaii

1116 Whitmore Ave.

Wahiawa, HI, 96786

office ph. (808)621-3201

E-mail dan.nellis@dole.com

From: Tsuji, Russell Y <Russell.Y.Tsuji@hawaii.gov>
Sent: Friday, December 22, 2023 9:37 AM

To: Dan Nellis <Dan.Nellis@dole.com>

Subject: RE: Requesting an amendment to the Kohala Sugar Co. deed restrictions for the old Kohala Armory site

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Thanks Dan.

Just as a reminder, let me know if the draft waiver is acceptable because I still need to get Land Board approval, fill in the blank dates in the waiver document and get AGs to sign off, etc—I will prepare execution originals and recirculate the same for signature.

Mahalo and best wishes,
Russell

From: Dan Nellis <Dan.Nellis@dole.com>

Sent: Friday, December 22, 2023 9:07 AM

To: Tsuji, Russell Y <Russell.Y.Tsuji@hawaii.gov>

Subject: [EXTERNAL] Re: Requesting an amendment to the Kohala Sugar Co. deed restrictions for the old Kohala Armory site

Russell

Thanks for preparing this for review. We will take a look at this next week.

Merry Christmas

Dan

Sent from my iPhone

On Dec 22, 2023, at 8:39 AM, Tsuji, Russell Y <Russell.Y.Tsuji@hawaii.gov> wrote:

[CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.]

Good morning Dan and Chair Tarnas:

The State is appreciative of Dole's willingness to waive the deed restrictions in the old Kohala Sugar Deed.

I've worked with the AGs and attached hereto is a draft waiver of restrictive covenants; if the draft waiver is acceptable to Dole, then I will ask the AGs to prepare execution originals (i.e., green stamped) and sign off on the same, and I will circulate the execution originals for signature by Dole Food

Company, Inc. and the State. *Accordingly, let me know if the draft waiver or restrictive covenants is acceptable to Dole and I will have execution originals prepared and circulate the same for signature.*

Best, and happy holidays to you and your families.

Russell Y. Tsuji
Administrator

From: Rep. David A. Tarnas <reptarnas@capitol.hawaii.gov>
Sent: Friday, December 1, 2023 12:32 PM
To: Tsuji, Russell Y <Russell.Y.Tsuji@hawaii.gov>
Subject: FW: Requesting an amendment to the Kohala Sugar Co. deed restrictions for the old Kohala Armory site

Hi Russell,

I followed up with Dan Nellis and we had an email exchange I am forwarding to you below.

It appears that Dole is willing to sign the necessary documents to waive the restrictions on the former Kohala Armory site.

Would you be able to work with your deputy AG to prepare the necessary documents for Dole to sign? Please let me know the next steps and I can coordinate with Dan Nellis.

Mahalo for your help with this important project in Kohala!

Aloha, David

Representative David A. Tarnas
House District 8 – North and South Kohala
Chair, Committee on Judiciary & Hawaiian Affairs
Hawaii State Capitol
415 S. Beretania Street, Room 442
Honolulu, HI 96813
808-586-8510

From: Rep. David A. Tarnas
Sent: Friday, December 1, 2023 12:28 PM
To: 'Dan Nellis' <Dan.Nellis@dole.com>
Cc: Jared Gale <Jared.Gale@dole.com>
Subject: RE: Requesting an amendment to the Kohala Sugar Co. deed restrictions for the old Kohala Armory site

Hi Dan,

Thanks very much for your kind response indicating your willingness to amend the deed restrictions on the former Kohala Armory site. I'll ask Russell Tsuji with DLNR Land Division to work with DLNR's deputy AG to prepare the necessary documents and get back to both of us.

Once I hear back from Russell as to the next steps, I'll make sure to get back with you to set up a time to discuss this.

Mahalo, David

Representative David A. Tarnas
House District 8 – North and South Kohala
Chair, Committee on Judiciary & Hawaiian Affairs
Hawaii State Capitol
415 S. Beretania Street, Room 442
Honolulu, HI 96813
808-586-8510

From: Dan Nellis <Dan.Nellis@dole.com>
Sent: Friday, December 1, 2023 12:21 PM
To: Rep. David A. Tarnas <reptarnas@capitol.hawaii.gov>
Cc: Jared Gale <Jared.Gale@dole.com>
Subject: Re: Requesting an amendment to the Kohala Sugar Co. deed restrictions for the old Kohala Armory site

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Aloha David,

I included Jared Gale, Dole Food Co. Vice- President and General Counsel, on the copy line of this reply. You met Jared with me at the legislature last year when we were providing testimony to your committee in favor of SB833 regarding Dole gifting the Wahiawa Irrigation System to the State of Hawaii. Thank you for helping that bill to pass and become Act 218 that was signed into law by Governor Green.

Dole is happy to support your efforts to develop the former Kohala Armory to be repurposed for community benefits. We are willing to forego the rights in the reversionary clause of the deed restrictions, but I ask that you work with the State Attorney General to propose the legal documentation for this change to the deed. If the AG can send us a set of signature ready documents, I will get them signed by Dole.

Dole will be proud to continue the community support for West Hawaii that was started long ago by Kohala Sugar. Please call me (cell is best) or feel free to send out a meeting invite to discuss the next steps as you see necessary.

Happy Holidays.

Aloha,
Dan

Daniel X. Nellis

General Manager

Dole Food Co. Hawaii

1116 Whitmore Ave.

Wahiawa, HI, 96786

office ph. (808)621-3201 cell ph. (808)479-9321

E-mail dan.nellis@dole.com

From: Rep. David A. Tarnas <reptarnas@capitol.hawaii.gov>

Sent: Wednesday, November 29, 2023 11:23 AM

To: Dan Nellis <Dan.Nellis@dole.com>

Subject: Requesting an amendment to the Kohala Sugar Co. deed restrictions for the old Kohala Armory site

[CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.]

Aloha Dan,

Thank you for speaking with Russell Tsuji at DLNR about the parcel of land in North Kohala where the former Kohala Armory is located. As the State Representative for North Kohala on Hawaii Island, I am trying to move the state forward to clean up the site, remediate whatever is in the old building, and prepare it for an alternative use for community benefit. There has been interest expressed by a number of community groups to use the site, but DLNR has informed me that there are deed restrictions limiting its use to National Guard purposes. I understand that these deed restrictions would need to be amended or waived to allow for a different use by these community groups.

Russell Tsuji told me that the former Kohala Sugar Company land on which the former Kohala Armory is sited is now part of your company's portfolio as the successor entity to Kohala Sugar Company. Russell sent me the attached document to review and suggested that I reach out to you to express my intention to ask for legislative appropriations to support the cleanup and adaptive reuse of this site.

Please let me know what you need from me or from DLNR to go about the process of amending or waiving the use restriction and reversionary provision for this parcel.

I would be happy to discuss this with you anytime. We can meet via Zoom to make it easy for scheduling and minimize the inconvenience of having to travel to meet in person. Please let me know what would be a useful next step for you.

Mahalo for your kind assistance.

Aloha, David

Representative David A. Tarnas

District 8 – North and South Kohala

Hawaii State Capitol

415 S. Beretania Street, Room 442

Honolulu, HI 96813

808-586-8510

February 21, 1949," recorded aforesaid in Liber 2209, Page 329, both hereinafter collectively referred to as "the Deeds"; and

WHEREAS, Dole Food Company, Inc., a North Carolina corporation, is the successor-in-interest to Kohala Sugar Company; and

WHEREAS, Deed dated December 23, 1947, more particularly described in Exhibit "A" attached hereto and made a part hereof, contains a restrictive condition, herewith:

"To have and to hold the same unto the Grantee, its successors or assigns, for the use by the Hawaii National Guard from this day on, so long as said parcel of land shall be used by the Hawaii National Guard for National Guard purposes, and when said parcel of land or any portion thereof shall by the Grantee be diverted from the use aforesaid to some other use, or in case of non-user or abandonment thereof over a period of two (2) years, then the title of the Grantee, its successors or assigns, in such shall forthwith cease and determine, and the same shall revert to the Grantor, its successors or assigns[.]"; and

WHEREAS, Deed executed February 21, 1949, more particularly described in Exhibit "B" attached hereto and made a part hereof, contains a restrictive condition herewith:

"THIS CONVEYANCE is made upon the following condition which shall be a condition subsequent, to-wit:

That the lands hereby conveyed shall be used solely by the Hawaii National Guard and for purposes incidental to its functions.

Upon failure of the Grantee to perform the foregoing condition, or other breach or failure thereof, or in the case of non-user or abandonment thereof over a period of two years, the Grantor, at any time while such breach, failure, non-user, or abandonment shall continue, may enter into or upon the lands hereby conveyed or any part thereof in the name of the whole and thereby terminate all estate, right, title or interest of the Grantee therein, and all of the estate, right, title and interest of the Grantee therein shall thereupon revert in the Grantor, and the Grantor may expel and remove from the said premises the Grantee or those claiming under the Grantee and its

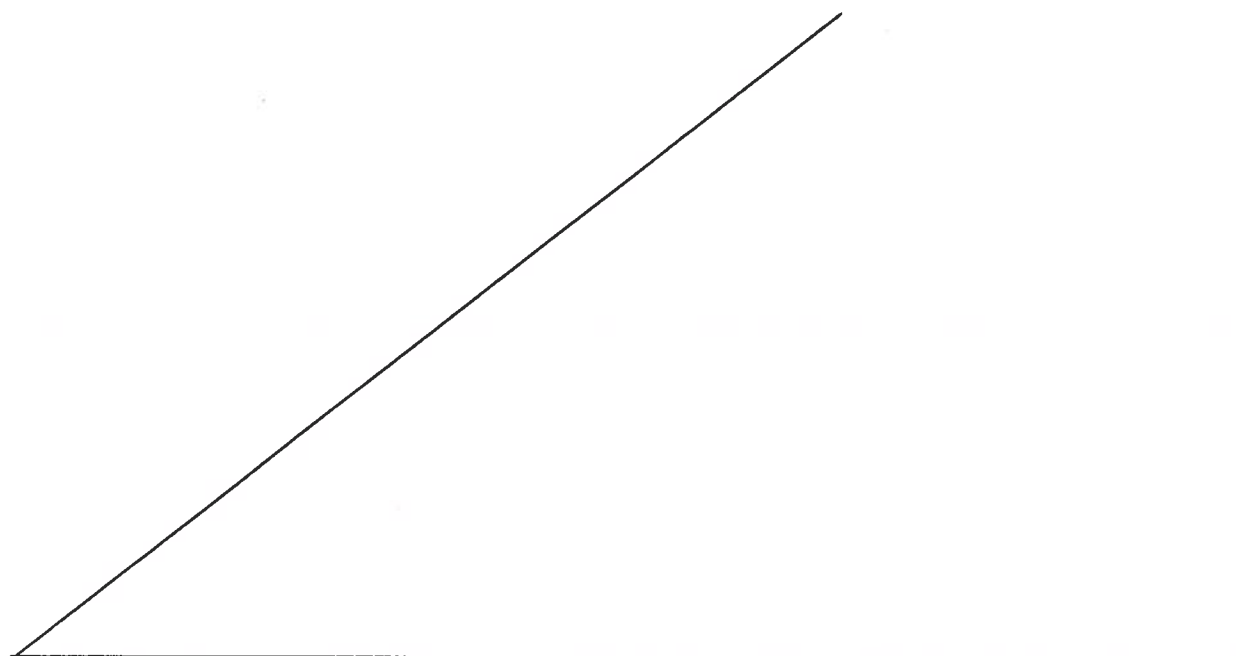
or their effects, all without service of notice or resort to any legal process and without being deemed guilty of any trespass or becoming liable for any loss or damage which may be occasioned thereby and without prejudice to any other remedy or right of action which the Grantor may have for such breach. The foregoing condition shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns[.]”

WHEREAS, the Grantee has requested the Grantor to waive the aforementioned restrictive conditions in the Deeds, and the Grantor agrees to the waiver of the aforementioned restrictive conditions in the Deeds without monetary consideration; and

WHEREAS, the Board of Land and Natural Resources, at its meeting held on _____, finds that the public interest will best be served by this waiver of the aforementioned restrictive conditions in the Deeds.

NOW, THEREFORE, for good and valuable consideration, the receipt whereof is hereby acknowledged, the Grantor does hereby waive the aforementioned restrictive conditions in the Deeds.

EXCEPT as hereinabove waived and amended, all of the terms, covenants and conditions contained in the Deeds shall continue and remain in full force and effect.



IN WITNESS WHEREOF, DOLE FOOD COMPANY, INC., a North Carolina corporation, has caused these presents to be duly executed this _____ day of _____, 20_____, and the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this _____ day of _____, 20_____.

DOLE FOOD COMPANY, INC., a North Carolina corporation

By _____
Its _____

By _____
Its _____

GRANTOR

STATE OF HAWAII

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

By _____
DAWN N.S. CHANG
Chairperson
Board of Land and Natural Resources

GRANTEE

APPROVED AS TO FORM:

DANIEL A. MORRIS
Deputy Attorney General
Dated: _____

STATE OF)
) 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 DOLE FOOD COMPANY, INC., a North Carolina 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

My commission expires:_____

EXHIBIT "A"

Kohala
Sugar Co.
To
Territory
of Hawaii

Deed

This Indenture made by and between Kohala Sugar Company, a Hawaiian corporation, of Hawi, North Kohala, County and Territory of Hawaii, hereinafter referred to as the "Grantor" and the Territory of Hawaii, hereinafter referred to as the "Grantee,"

Whereas, the Grantee is desirous of obtaining a piece of land to be used by the "Hawaii National Guard" for National Guard purposes, and

Whereas, Grantor is willing to give to Grantee for the monetary consideration of One Dollar (\$1.00) a piece of land only upon the condition that it is to be used for such purposes alone, and that when it is no longer used by the Hawaii National Guard it will revert to Grantor,

Now, Therefore, in consideration of the premises and One Dollar (\$1.00) in hand paid, receipt of which is hereby acknowledged, Grantor does hereby grant, bargain, sell and convey unto the Grantee a parcel of land being a portion of Grant 1554 to Hooehua, situate at Honopueo, North Kohala, County and Territory of Hawaii and more particularly described as:

Beginning at the Southeast corner of this parcel of land at a pipe in concrete marked 908, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Kauhola" being 4678.79 feet South and 10055.23 feet West and running by azimuths measured clockwise from true South:

1. 91° 23' 125.00 feet along the boundary of Kamehameha Park, to a pipe; thence
2. 181° 23' 75.00 feet through the remainder of Grant 1554 to Hooehua, to a pipe; thence
3. 271° 23' 164.34 feet through the remainder of Grant 1554 to Hooehua, to a pipe on the boundary of Kamehameha Park, thence
4. 29° 04' 84.70 feet along the boundary of Kamehameha Park to the point of beginning and

containing an area of 0.249 acre more or less.

To have and to hold the same unto the Grantee, its successors or assigns, for the use by the Hawaii National Guard from this day on, so long as said parcel of land shall be used by the Hawaii National Guard for National Guard purposes, and when said parcel of land or any portion thereof shall by the Grantee be diverted from the use aforesaid to

I hereby certify that this is
a true copy from the records
of the Bureau of Conveyances,

Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii



some other use, or in case of non-user or abandonment thereof over a period of two (2) years, then the title of the Grantee, its successors or assigns, in such shall forthwith cease and determine, and the same shall revert to the Grantor, its successors or assigns.

In witness whereof the Grantor and Grantee have caused this indenture to be executed in duplicate this 23rd day of December, 1947.

(Corporate Seal) Kohala Sugar Company, Grantor
Approved By C. J. Henderson Its Vice-President
Contents: L.T.S. By Howard Hubbard Its Asst. Treasurer
A.S.K.
Form: Robertson, Castle & Anthony
By R.L.F.

(Seal) Territory of Hawaii, Grantee
By A. Lester Marks
Commissioner of Public Lands

Territory of Hawaii,)
City and County of Honolulu) ss. On this 31st day of December, A.D. 1947, before me appeared C. J. Henderson and Howard Hubbard to me personally known, who, being by me duly sworn, did say that they are the Vice-President and Asst. Treasurer respectively of Kohala Sugar Company and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said C. J. Henderson and Howard Hubbard acknowledged said instrument to be the free act and deed of said corporation.

(Notarial Seal) Roland B. Reeve, Notary Public,
First Judicial Circuit,
Territory of Hawaii.

My commission expires July 2, 1951.

Entered of record this 6th day of January, A. D. 1948 at 10:44 o'clock A. M. and compared. *J. M. H. H. H. H. H.* Registrar of Conveyances.

DEED

Mary G. Frias (widow) of Honolulu, Territory of Hawaii, Grantor, in consideration of the sum of Seventeen Hundred Dollars (\$1,700.00) to her paid by Ivy Naiwi Nishimoto (married), the receipt whereof is hereby acknowledged, does hereby grant and convey unto the Grantee, all of her right, title and interest in and to:

Mary G. Frias (widow) To Ivy N. Nishimoto Deed U.S. Rev. Stamps \$2.20



EXHIBIT "B"

THIS INDENTURE made by and between KOHALA SUGAR COMPANY, a Hawaiian corporation, of Hawi, North Kohala, County and Territory of Hawaii, hereinafter referred to as the "Grantor" and the TERRITORY OF HAWAII, hereinafter referred to as the "Grantee",

W I T N E S S E T H:

WHEREAS, the Grantee is desirous of obtaining a piece of land to be used by the "Hawaii National Guard" for National Guard purposes; and

WHEREAS, the Grantor is willing to give to Grantee for the monetary consideration of One Dollar (\$1.00) a piece of land only upon the condition that it is to be used for such purposes alone;

NOW, THEREFORE, KOHALA SUGAR COMPANY, Grantor as aforesaid, for and in consideration of One Dollar (\$1.00) to it paid by the Territory of Hawaii, Grantee as aforesaid, receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns, all that certain parcel of land being a portion of Grant 1554 to Hooehua, situated at Honopueo, North Kohala, Island of Hawaii, Territory of Hawaii, which said piece or parcel of land is more particularly described as follows, to-wit:

Beginning at a pipe at the southeast corner of this parcel of land, being also the northeast corner of that certain parcel of land conveyed by Kohala Sugar Company to the Territory of Hawaii under deed dated December 23, 1947, recorded in the Bureau of Conveyances for the Territory of Hawaii in Liber 2100, Pages 288-289, the direct azimuth and distance of said point of beginning being 209° 04' 84.70 feet from a

1.

I hereby certify that this is
a true copy from the records
of the Bureau of Conveyances,



Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii

AGES
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pipe in concrete marked 908, the coordinates of said pipe in concrete referred to Government Survey Triangulation Station "Kauhola" being 4,678.79 feet south and 10,055.23 feet west, and thence running by azimuths measured clockwise from true south as follows:

1. 91° 23' 164.34 feet along the boundary of that parcel of land conveyed by Kohala Sugar Company to Territory of Hawaii by said deed dated December 23, 1947 to a pipe; thence
2. 181° 23' 40.00 feet through the remainder of Grant 1554 to Hoohua to a pipe; thence
3. 271° 23' 185.32 feet through the remainder of said Grant 1554 to a pipe on the boundary of Kamehameha Park; thence
4. 29° 04' 45.18 feet along the boundary of Kamehameha Park to the point of beginning and containing an area of 0.161 Acres, more or less.

With the improvements thereon and the appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, rents, issues and profits thereof, and also all the estate, right, title and interest, both at law and in equity, of the said Grantor, in and to the above granted premises and every part and parcel thereof.

TO HAVE AND TO HOLD the said piece or parcel of land hereinabove described and conveyed, together with all the rights, easements, and appurtenances thereto belonging, to the said Grantee, its successors and assigns, to its and their own use forever.

THIS CONVEYANCE is made upon the following condition which shall be a condition subsequent, to-wit:

That the lands hereby conveyed shall be used solely by the Hawaii National Guard and for purposes incidental to its functions.

NV
3AR
ICE
IA

Upon failure of the Grantee to perform the foregoing condition, or other breach or failure thereof, or in the case of non-user or abandonment thereof over a period of two years, the Grantor, at any time while such breach, failure, non-user, or abandonment shall continue, may enter into or upon the lands hereby conveyed or any part thereof in the name of the whole and thereby terminate all estate, right, title or interest of the Grantee therein, and all of the estate, right, title and interest of the Grantee therein shall thereupon revert in the Grantor, and the Grantor may expel and remove from the said premises the Grantee or those claiming under the Grantee and its or their effects, all without service of notice or resort to any legal process and without being deemed guilty of any trespass or becoming liable for any loss or damage which may be occasioned thereby and without prejudice to any other remedy or right of action which the Grantor may have for such breach. The foregoing condition shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, said KOHALA SUGAR COMPANY and the TERRITORY OF HAWAII have caused this instrument to be executed this 21st day of February, 1949.

KOHALA SUGAR COMPANY

By W. M. Budge
Its President

By John B. Smith
Its Treasurer

TERRITORY OF HAWAII

By A. John Mark
Commissioner of Public Lands

L.T.S.

J. R. R.
Kohala

TERRITORY OF HAWAII }
CITY AND COUNTY OF HONOLULU } ss.

On this 21st day of February, 1949, before me personally appeared A. G. Budge and W. M. Bush to me known, who, being by me duly sworn did say that they are the President and Treasurer, respectively, of KOHALA SUGAR COMPANY, a Hawaiian corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and the said A. G. Budge and W. M. Bush acknowledged said instrument to be the free act and deed of said corporation.

W. S. Milner
Notary Public, First Judicial
Circuit, Territory of Hawaii.

My commission expires July 2, 1951

Entered of Record this 4th day of March A. D. 1949 at 3:41 o'clock P.M. and compared. Mark N. Huckestein, Registrar of Conveyances.

By W. M. Chang Clerk

