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JANET LIM WON

DEPT. OF LAND AND NATURAL RESOURCES
LAND DIVISION

Tax Map Key No.: (3)8-2-012:001

Total No. of Pages: 38

DEED OF CONSERVATION EASEMENT AND RESTRICTION OF DEVELOPMENT RIGHTS

THIS DEED OF CONSERVATION EASEMENT AND RESTRICTION OF DEVELOPMENT RIGHTS ("Easement") is made this ___ day of _____, 2011, by KEALAKEKUA HERITAGE RANCH, LLC, a Hawaii limited liability company, having the physical address of 81-6580 Mamalahoa Highway, Kealahou, HI 96750 ("Grantor"), in favor of THE STATE OF HAWAII by its BOARD OF LAND AND NATURAL RESOURCES ("Grantee").

RECITALS

A. Grantor is the sole owner in fee simple of that certain real property situate at Kealahou, District of South Kona, County of Hawaii, State of Hawaii, consisting of 2 contiguous parcels totaling 11,470 acres, more or less, and bearing tax map key ("TMK") number: (3)8-2-012:001 all as more particularly described in Exhibit A (the "Protected Property") and shown on Exhibit B (site maps), which are attached to and incorporated into this Easement by this reference.

B. The Protected Property. The Protected Property is 9,017.97 acres of the approximately 11,470 acre parcel owned by Grantor located on the western slope of Mauna Loa in the South Kona District, County of Hawaii. Grantor's 11,470 acres (the "Larger Parcel") constitutes the mauka portion of the Kealahou ahupua'a beginning at approximately the 2,200 foot elevation to approximately the 6,100 foot elevation. The terrain is undulating and contains many different forest types including mixed open forest, closed 'ohi'a lehua mesic forest, open

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EXHIBIT A

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koa forest with mamane, and open koa forest. The Larger Parcel also contains acres of forestland that were converted many decades ago to pastureland.

The following land use designations relate to the Protected Property:

1. State District Boundary. The Protected Property is classified as "Agriculture," as defined by Hawaii Revised Statutes (HRS) Chapter 205. Use of the Protected Property is limited as set forth in HRS Chapter 205.

2. County Zoning. The Protected Property is zoned "Agriculture," as defined by Chapter 25-5-70 of the Hawaii County Code, and is limited to the uses prescribed therein.

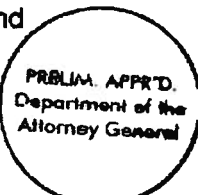
C. Development. The above land designations permit subdivision of the Protected Property and construction of dwellings or other structures. The locations for possible future structures shall be approved in writing by Grantee. No permanent dwellings shall be permitted on the Protected Property.

D. Conservation Values. The Protected Property possesses important forest ecosystems, forest resources and products including, but not limited to, commercial forest product values and pharmacopeia, as well as open space, recreational, and research/educational values collectively, the "Conservation Values". These specific Conservation Values are of interest for protection through this Easement:

1. Forest Ecosystems – The Protected Property contains ecologically significant forest ecosystem values including, but not limited to, overall watershed health, forest health protection, and biodiversity. The Protected Property contributes to the overall watershed health of Kealakekua ahupua'a/watershed and larger Kona region through contribution to groundwater and aquifers recharge that supply the island with fresh water, capture of cloud drip and condensation by vegetative cover, more specifically canopy trees and shrubs, and reduction of soil loss due to erosion. Continued management focusing on water quality and quantity improvement and coral reef protection through forest health protection and corresponding reductions in soil erosion are essential to the overall health of the property and the State. Forest health protection by means of suppression of invasive vegetation and feral animals is further described in the required multi-Resource Forest Management Plan or Forest Stewardship Plan (the "Plan"). The Protected Property contains and contributes to Hawaii's overall biodiversity including threatened and endangered plant and animal species.

2. Forest Resources and Products – The Protected Property is comprised of a significant amount of forest resources and products including, but limited to carbon (woody biomass, trees, shrubs, grass, and soil carbon), timber resources (living, dead and dying trees), cultural gathering material, pharmacopeia, as well as other forest products. The parties agree that commercial and non-commercial vegetative management can also promote forest health. Preservation of the Protected Property's forest resources and products is not only important to conserve natural characteristics of the region, but also for management and to continue to promote Hawaiian industries and cultural practices. The preservation of the Protected Property as a working forest enables the Property to continue to provide the public and society with a wide-range of goods and services (i.e., high-quality jobs, local/sustainable industry, a diversity of forest based commercial goods, pharmacopeia, etc.).

3. Open Space – Preservation of the Protected Property's conservation and



agricultural values including the property's forests and timberland resources contribute to the scenic and greenbelt qualities of the larger Kona region. Preservation of these scenic qualities provides a significant public benefit and will preserve the Protected Property's scenic value and existing natural resources including, but not limited to, native species populations; ohia, koa, mamane, sandalwood and mamaki and various other mixed forest types; ecosystem habitat for threatened and endangered species; as well as important geological features found on the property. Removal of development rights from the Protected Property preserves the open space values including reducing potential congestion on local roads and highways that would result from residential development of the property.

4. Recreational, Research and Educational Values – The Protected Property's recreational and research values contribute to the overall access to recreational opportunities in the State and to the availability of locations and land types needed to expand the knowledge base on Hawaiian ecosystems, geologic features, historic ranching practices and restoration practices. The Protected Property's roads and trails, camping areas, archeological and culturally important features, and unique research opportunities, including, but not limited to human, animal and ecosystem perspectives are an important public benefit for the State and the Protected Property. The parties recognize that access to the Protected Property for these values is best achieved through facilitated and controlled means, in order to facilitate the protection of the other Conservation Values.

The Conservation Values of the Protected Property are further documented in an inventory of relevant features of the Protected Property "Baseline Documentation." The Baseline Documentation, which has been reviewed and accepted by Grantor and Grantee, consists of reports, maps, photographs, and other documentation that collectively provide an accurate representation of the Protected Property at the time of the execution of this Easement and which is intended to serve as an objective informational baseline for monitoring compliance with the terms of this Easement.

E. Furthermore, the clearly delineated open space conservation goals and objectives as stated in the Forest Legacy Program pursuant to Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. § 2103C), which was created "to protect environmentally important private forest lands threatened with conversion to non-forest uses" are represented by the Conservation Values and Purpose (as defined in Section 1 below) protected by this Easement. This project ranked high in the national selection process for the Forest Legacy Program when it was funded by the U.S. Forest Service. Given that this Easement and its purpose represent the advancement of the goals, objectives and purposes of the Hawaii Forest Legacy Program, that Program has awarded a grant for the partial purchase of this Easement through the U.S. Forest Service Forest Legacy Program. The grant was made available in two phases, the first phase including 3,882.79 acres, the second phase including 5,135.18 acres. For convenience in future monitoring and simplicity of documentation, the parties have chosen to incorporate both phases in this single easement.

HRS Chapter 198 provides that any public body and any organization which qualifies for and holds an income tax exemption under section 501(c)(3) of the Federal Internal Revenue Code of 1986, as amended, and whose organizational purposes are designed to facilitate the purposes of HRS Chapter 198, may acquire and hold conservation easements by purchase, agreement, donation, devise, or bequest.

F. Grantee is a public body qualified to hold a conservation easement under HRS chapter 198.

G. Grantor desires that the Conservation Values of the Protected Property be preserved and maintained in perpetuity by permitting only those uses of the Protected Property that do not significantly impair or interfere with the Conservation Values. And Grantee desires to accept this Easement to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation, and the generations to come.

NOW THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Easement, Grantor hereby voluntarily grants, conveys and warrants to Grantee a conservation easement in perpetuity over the Protected Property, as defined in this Easement, subject only to the mutual covenants, terms, conditions and restrictions contained in this Easement and title matters of record as of the date of this Easement.

COVENANTS AND RESTRICTIONS

1. **Purpose.** The purpose of this Easement is to preserve the traditional forest values of the Protected Property (defined as the Conservation Values), subject to the limited use rights set forth herein (the "Purpose"), which Conservation Values include, but are not limited to, the capacity of the Protected Property to sustainably produce commercial wood products and other agricultural or agroforestry products consistent with the establishment and maintenance of a productive and healthy forestland provided by, or anticipated to be restored on the Protected Property; and (to the extent it is consistent with the sustainable resource production values of the Protected Property), the relatively natural habitat provided by the Protected Property, the historically and culturally sensitive features of the Protected Property, and the open space characteristics of the Protected Property.

2. **Rights Conveyed to Grantee.** To accomplish the Purpose of this Easement the following rights are conveyed to Grantee:

(a) **Protection:** Grantee has the right to enforce the provisions of this Easement so as to: (i) preserve and protect the Protected Property in perpetuity; (ii) prevent any use of or activity on the Protected Property that will significantly impair or interfere with the Conservation Values; and (iii) enhance the Conservation Values of the Protected Property.

(b) **Access:** Grantee has the right to reasonable access to the Protected Property to carry out the Purpose of this Easement as described below:

(i) To enter the Protected Property at least annually, at a reasonable time and upon prior written notice to Grantor, for the purpose of making inspections to monitor compliance with this Easement or to make a determination regarding the appropriateness of a requested use or activity.

(ii) To enter the Protected Property at such other times as are necessary if Grantee, in its sole discretion, has reason to believe a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement. Such entry shall be upon prior reasonable notice to Grantor of not less than 24 hours, and Grantee shall not in any case unreasonably interfere with Grantor's allowed uses and quiet enjoyment of the Protected Property.

(c) **Enforcement:** Grantee has the right to enforce this Easement and the covenants and restrictions herein, including, but not limited to, the right to enjoin any use of, or activity on, the Protected Property that is inconsistent with the terms and Purpose of this

Easement, and to require the restoration of such areas or features of the Protected Property as may be damaged by uses or activities inconsistent with the provisions of this Easement.

3. Grantor's Reserved Uses and Activities Consistent With the Purpose of the Easement. Grantor reserves for itself all rights accruing from ownership of the Protected Property that are not expressly prohibited by this Easement and are not inconsistent with the Purpose of this Easement. Grantor expressly and specifically reserves the following rights:

(a) Forest Management: Forest management and timber harvesting is permitted on the Protected Property for commercial purposes in accordance with applicable Federal, State, and local laws and regulations and the provisions of the Plan (as may be amended from time to time); prepared by Grantor and approved in writing by Grantee. This Plan shall be consistent with the provisions of section 5(f) of the Cooperative Forestry Assistance Act of 1978, as amended, 16 U.S. C. 2103a (f), and shall be subject to revision in order to incorporate forest management practices that are prescribed under federal or state law. Any amendment or material modification of the Plan must be approved by Grantee in accordance with Section 6, below. Approval shall not be unreasonably withheld by Grantee and proposed forest management activities presented in the Plan will be permitted unless they are expressly prohibited by this Easement or inconsistent with the Purpose of this Easement or the provisions of applicable federal or state law. In the event of any inconsistency or conflict between the provisions of this Easement and the Plan, terms of this Easement shall prevail. Grantee acknowledges that the Plan may, at Grantor's discretion, provide for commercial forest management and agrees that commercial management when conducted sustainably and pursuant to the terms of the approved Plan furthers the Purpose of this Easement. The parties agree that the annual removal of 250,000 board feet or less of live timber (as measured in International ¼ Inch Rule board foot volume or similar system) and the salvage of dead trees is considered to be de minimus commercial management and shall be permitted, if included in the Plan, without restriction unless it is directly inconsistent with express restrictions contained within this Easement or the provisions of applicable federal or state law. Any anticipated annual live tree harvest amount exceeding 250,000 board feet shall be subject to the following requirements and restrictions according to Professional Forestry standards:

(i) Prior to the first annual live tree harvest exceeding 250,000 board feet following the execution of this Easement, Grantor shall conduct a timber cruise of the merchantable forest inventory (which shall be defined to include trees greater than or equal to eight inches (8") diameter at breast height (dbh) or greater) on the Protected Property. The timber cruise volume estimates shall have a sampling error objective of ten percent (10%) at a ninety percent (90%) level of confidence unless otherwise approved in writing and in advance by Grantee. Grantor shall provide the timber cruise to Grantee within sixty (60) days following completion. Additionally, Grantor shall conduct an inventory of the Protected Property no later than every ten (10) years following the initial cruise, and every ten (10) year period thereafter. Grantor shall provide each inventory to Grantee within sixty (60) days following completion.

(ii) The Plan shall contain a description of each forest stand or forest type with a relatively uniform and similar forest conditions. Forest stand and associated forest type maps shall be provided at a level of detail necessary to support professional forest planning and forest type timber operations pursuant to this Easement and shall include, at a minimum, tree numbers and stand volume by species (i.e. stand tables). Additionally, the Plan shall specify silvicultural harvest methods, schedules and equipment.

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(iii) Timber harvests will not remove more than twenty-five (25) percent of the net merchantable inventory on the Protected Property in any ten (10) year period.

(iv) Grantor is permitted to use any silvicultural harvest method provided that forest openings created through timber harvest may not exceed five (5) acres in size. For purposes of this Easement, an Opening is an area in which post-harvest stand stocking levels are less than an average of twenty (20) trees (greater than or equal to eight (8) inches dbh), per acre and/or an equivalent volume within the area where actual tree harvesting occurred.

(b) Agriculture. Agricultural activities that comply with federal, state and local regulations and do not significantly impact or degrade the Conservation Values, including, but not limited to, the raising and managing of livestock, are permitted. Notwithstanding the foregoing, under no circumstances shall there be permitted any activity that imports raw material(s) (commodities or livestock not produced as a result of the harvest of forage or agricultural crops on the Property) onto the Protected Property for the purpose of fattening livestock for commercial slaughter (i.e., a feed lot) unless otherwise permitted through consultation and written approval of Grantee. Areas throughout the Protected Property undergoing native forest restoration, as detailed in the Plan, shall exclude managed livestock through the use of livestock proof fencing, until such time the planted vegetation is not susceptible to grazing pressure.

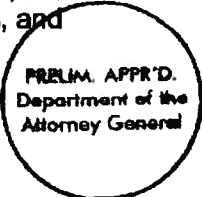
(c) Hunting. Grantor may use the Protected Property for hunting of game animals and for management purposes.

(d) Public and Private Access. This Easement allows Grantor to authorize public and/or private access to any part or all of the Protected Property for permitted uses, on such terms and conditions as Grantor deems appropriate in its sole discretion. In the event that public access is authorized, that access shall be subject to terms and conditions established by Grantor, after consultation with Grantee, that are intended to limit the extent and intensity of the permitted use, in a manner consistent with preservation and protection of the Conservation Values on the Protected Property.

(e) Recreational Uses. This Easement allows Grantor to authorize low impact, passive recreational uses including, but not limited to, horseback riding, bird watching, hiking, camping, photography, mountain biking, picnicking, and hunting, within the Protected Property. In the event that any broader recreational use is contemplated, that use shall be subject to terms and conditions established by Grantor, after consultation and written approval by Grantee, that are intended to limit the extent and intensity of the permitted use, in a manner consistent with preservation and protection of the Conservation Values on the Protected Property, and in no event shall recreational uses that significantly impact or degrade the Conservation Values be allowed.

(f) Construction of Improvements. The construction or reconstruction of any improvement within the Protected Property is permitted only as authorized in or pursuant to this Easement, provided that the improvement does not impair the Conservation Values and then only on the condition that Grantor obtains all required permits and approvals from the state and county. No permanent residences shall be permitted on the Protected Property.

(i) Maintenance or Replacement. Grantor may maintain, repair, remodel, and make limited additions to any existing or subsequently constructed structures, and



improvements expressly permitted by this Easement. In the event of removal or destruction of any or all of said structures and improvements, or future structures and improvements (as permitted by herein), to replace them with structures and improvements of a similar function and use, in the same general locations. Additions to existing structures shall not exceed more than ten percent (10%) of its footprint at the time this easement is executed or, if it is constructed subsequent to the execution of this easement, its original footprint.

(ii) Educational or Recreational Improvements. Grantor may construct, maintain, repair, enlarge, and replace a reasonable number of nonpermanent enclosed or unenclosed recreational improvements (such as trails, campgrounds, monitoring stations, or other research facilities), as part of a plan to provide educational access, recreational access or facilitated public access within the Protected Property, provided, however, that Grantor shall consult with and obtain Grantee's written approval before constructing any such improvements.

(iii) Hunting and Recreational Structures. After consultation with and written approval of Grantee with regard to location and design, Grantor may construct, maintain, repair, enlarge, and replace one (1) hunting structure and one (1) recreational structure within the Protected Property. These structures may not exceed two thousand five hundred (2,500) square feet of floor area each. Reasonable accessory structures, including but not limited to restrooms, may also be constructed to be used in conjunction with the hunting and recreational structures. The area associated with a structure shall not exceed one (1) acre (or a total area for both structures less than .0002% of the Protected Property). No permanent residences shall be permitted on the Protected Property.

(iv) Roads. Existing roads within the Protected Property are identified in the Baseline Documentation to the best of Grantor's knowledge. Grantor may repair or maintain existing roads. After consultation with Grantee, Grantor may: (A) relocate existing roads for the purpose of improving or protecting habitat, accessing or repairing fences for management purposes, reducing soil erosion or improving the driving surface and conditions or (B) construct unimproved roads necessary or appropriate for property management and sustainable resource production as permitted in this Easement. Construction of any new improved road for any purpose requires Grantee's written approval.

(v) Utilities. Grantor may repair, modernize and replace such utilities as may exist on the Protected Property. After consultation with and written approval of Grantee, Grantor may also install new utilities within the Protected Property to serve authorized improvements and uses in the Protected Property and/or to establish a water supply for such improvements or uses. Limited utilities may be installed for development on the Larger Parcel provided that alternative placement is not feasible or possible within excluded envelopes. Grantor must consult with and obtain written approval of Grantee for plans for utilities within the Protected Property prior to construction of the utility. The term "utilities" includes, without limitation, electric power lines and facilities, sanitary facilities (provided that any such facility is connected to a wastewater collection and disposal system which does not entail any discharge within the Protected Property or utilizes a no-discharge waste system (e.g. self-composting toilets)), storm sewer facilities as required by local or state government, telephone and communications cable systems, and their respective appurtenant facilities. Any utility lines installed in the Protected Property shall be installed underground and any utility shall be designed to minimize its visual impact.

(vi) Fences. Grantor may repair and replace or remove existing fences and, after consultation with Grantee, may build new fences anywhere on the Protected

Property for purposes of reasonable and customary management not inconsistent with the preservation and protection of the Conservation Values. The use of fences may also be utilized in conjunction with the establishment of introduced vegetation as detailed in the Plan.

(vii) Water Resources. Grantor may maintain, enhance and develop water resources on the Property in accordance with applicable state and federal regulations, for permitted agricultural uses, fish and wildlife uses, domestic needs, educational and recreational uses. Permitted uses include the following: the right to restore, enhance and develop water resources, including ponds; to locate, construct, repair, and maintain irrigation systems; to develop wells, water storage and delivery systems including, but not limited to water pipelines, and to develop stock watering capture and delivery facilities. Grantor agrees that water uses are for the Larger Parcel and that exportation of water is not permitted except with written approval of Grantee.

(viii) Cultural, Historical and Archaeological Sites. Grantor may maintain, preserve and protect, and may establish appropriate buffers and walls around, any cultural, historical or archaeological sites located within the Protected Property provided that all work is conducted in accordance with federal, state, and county laws and regulations.

(g) Access by Native Hawaiians. Nothing herein shall prevent the exercise of any rights of Native Hawaiians for traditional and customary practices as may be required by Hawaii law.

4. Uses and Activities Inconsistent With the Purpose of the Easement. Any use of, or activity on, the Protected Property not authorized under Section 3 or inconsistent with the Purpose of this Easement is prohibited ("Prohibited Activity"), and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Protected Property are inconsistent with the Purpose of this Easement and shall be prohibited, except as expressly provided in Section 3 above:

(a) Subdivision. The legal or "de facto" division, subdivision or partitioning of the Protected Property.

(b) Structures. The placement or construction on the Protected Property of any permanent or temporary buildings, structures, or other improvements of any kind including, without limitation, buildings, barns, dwellings, sheds, roads, parking lots, antennas, and satellite dishes.

(c) Alteration of Land. The alteration of the surface of the Protected Property, including, without limitation, the excavation or removal of soil, sand, gravel, rock, lava, peat, or sod.

(d) Erosion or Water Pollution. Any use or activity of or on the Protected Property that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.

(e) Alteration of Water Courses. The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses on the Protected Property.

(f) Waste Disposal. The disposal or storage on the Protected Property of rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material.

(g) Utilities. The installation on the Protected Property of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities.

(h) Signs. The placement of commercial signs, billboards, or other advertising material on the Protected Property.

(i) Mining. The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property.

(j) Introduced Vegetation. Grantor will not introduce or release nonnative invasive species (as listed in the State of Hawaii's Weed Risk Assessment list) or non-naturalized plant or animal species, with the exception of species as described in the Plan or as needed to maintain Conservation Values, and approved by Grantee. Desirable nonnative plant species needed to improve and stabilize soils or improve habitat for native birds may be introduced, but should comply with recommendations in the Plan and must be approved by Grantee.

(k) Environmental Laws. The violation of, knowing allowance, or knowing continuation of any violation of any applicable federal, state, or local law, regulation, or requirement relating to protection of the air, water, or soil, human health and the environment ("Environmental Law") by Grantor, Grantor's agents, employees, or third party whom Grantor has the right and ability to reasonably control.

5. Invasive Non-Native Species. Grantor agrees to implement methods of controlling invasive non-native species on the Protected Property, and to encourage the establishment of appropriate native species on the Protected Property as described in the Plan.

6. Notice and Approval.

(a) Notice. To afford Grantee an opportunity to ensure that any use or activity proposed by Grantor is designed and carried out in a manner consistent with the terms and Purpose of this Easement, Grantor shall notify Grantee and receive Grantee's written approval prior to undertaking certain activities permitted only after prior approval by Grantee as identified in this Easement, in Section 3 and Section 4. Grantor shall notify Grantee in writing not less than seventy-five (75) days prior to the date Grantor intends to undertake the use or activity for which approval is required. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the terms and Purpose of this Easement.

(b) Approval. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's written request for approval. If at any time during the sixty (60) day period Grantee reasonably requests additional specified information regarding the requested use or activity, Grantor shall provide such information to Grantee within five (5) days. Grantor's failure to timely provide the additional reasonably requested information shall be deemed sufficient reason for Grantee to withhold its

approval. If Grantee reasonably requires more than sixty (60) days to respond to the notice, Grantee may so notify Grantor in writing during the sixty (60) day period and will have an additional sixty (60) days to respond. Grantee may also withhold approval based upon its reasonable determination that the action as proposed would be inconsistent with the terms of this Easement. If Grantee's approval is withheld, Grantee shall provide Grantor with its reason(s) for such disapproval, and, if possible, what changes or additions to Grantor's request that would enable Grantor to receive Grantee's approval. Grantee's approval may include reasonable conditions, which must be satisfied in undertaking the proposed use or activity.

A request by Grantor shall be conclusively deemed approved upon Grantee's failure to grant or deny approval within the time periods prescribed above.

If Grantor must undertake emergency action to protect health or safety on the Protected Property or must act by and subject to the requirement of any governmental agency, Grantor may proceed with such action without Grantee's approval provided, that Grantor shall first make a reasonable attempt under the circumstances to give verbal/telephone notice to Grantee of the proposed action.

(c) Addresses for Notices and Responses. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall, except as otherwise provided herein, be in writing either served personally or sent by certified mail, return receipt requested, postage prepaid, addressed as follows:

To Grantors: Kealakekua Heritage Ranch, LLC.
Post Office Box 2240
Kealakekua, Hawaii 96750

To Grantee: State of Hawaii, Board of Land and Natural Resources
Post Office Box 621
Honolulu, Hawaii 96809

or to such other address as either party from time to time shall designate by written notices to the other.

7. Dispute Resolution. If a dispute arises between the parties concerning the rights or obligations of either party under this Easement, the parties shall, within thirty (30) days of discovery of the dispute and delivery of notice thereof, arrange a face-to-face meeting of representatives of the parties and each make good faith efforts to resolve the dispute. If such a meeting is unsuccessful in resolving the dispute by sixty (60) days after the date that the initial request to meet was made, then either party may pursue all available equitable and legal remedies.

8. Grantee's Remedies.

(a) Default, Notice of Violation, Grantee's Right to Cure. If Grantee determines that the Grantor is in violation of the terms of this Easement, or that a violation is threatened, Grantee shall give written notice to Grantor of such violation or threat of violation, and demand corrective action sufficient to cure or prevent the violation and, where the violation

involves injury to the Protected Property resulting from any use or activity inconsistent with the terms and Purpose of this Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.

(b) Grantor's Failure to Respond. Grantee may bring an action as provided in Section 8 if Grantor:

(i) Fails to cure or prevent the violation within thirty (30) days after receipt of notice thereof from Grantee; or

(ii) Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period or fails to continue diligently to cure such violation until finally cured.

(c) Injunctive Relief. Grantee shall be entitled to pursue and enforce any and all remedies as may be available at law or pursuant to this Easement, including damages pursuant to HRS Section 198-5. Grantee's rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to injunctive and other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(d) Damages. Grantee shall be entitled to recover money damages for any injury to the Conservation Values protected by this Easement or for the violation of the terms of this Easement. In assessing such damages, there may be taken into account, in addition to the cost of restoration, the loss of scenic, aesthetic, or environmental value to the Protected Property, and other damages.

(e) No Bond Required. Any action for injunctive relief or damages may be taken without Grantee being required to post bond or provide other security. Grantor is barred from using this provision regarding damages as an affirmative defense against Grantee's rights to injunctive relief.

(f) Emergency Enforcement. If Grantee, in its sole discretion, determines that a violation of this Easement has created circumstances requiring immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire; provided, that Grantee shall first make a reasonable attempt under the circumstances to give verbal/telephone notice to Grantor of the violation and proposed action.

(g) Costs of Enforcement. In the event Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor or anyone under Grantor's control or authority or anyone in contractual privity with Grantor, in violation of the terms of this Easement, and Grantee's reasonable enforcement expenses, including attorney's fees, shall be borne by Grantor. In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantee's reasonable expenses shall be borne by Grantor. If Grantor ultimately

prevails in any judicial proceeding initiated by Grantee to enforce the terms of this Easement, each party shall bear its own attorneys' fees and costs.

(h) Grantee's Forbearance. Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term or any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

(i) Waiver of Certain Defenses. Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription.

(j) Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to obligate Grantor (or to entitle Grantee to bring any action against Grantor) to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or for acts of trespassers, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. Reasonable restoration of significant acts of destruction (more than 5 acres) to vegetation on the Protected Property that are incurred by ecotourism ventures, recreation hale activities, by guests or residents will be an obligation of the Grantor and must be conducted in consultation with and written approval of the Grantee.

(k) Estoppel Certificates. Grantee shall, within thirty (30) days of a request by Grantor, execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, that certifies, to the best of Grantee's knowledge, Grantor's compliance or lack thereof with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Protected Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request.

9. Costs, Liabilities and Insurance, Taxes, Environmental Compliance and Indemnification.

(a) Costs, Legal Requirements, Liabilities and Insurance. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of any insurance coverage desired by Grantor. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Easement, and any such activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Protected Property free and clear of any contractual liens or encumbrances that may be senior to the terms and conditions of this Easement.

(b) Taxes. Grantor shall pay before delinquency all taxes, assessments,

fees, and charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "Taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. If Grantor fails to pay any Taxes when due, Grantee is authorized, but in no event obligated, to make or advance such payment of Taxes upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the Taxes or the accuracy of the bill, statement or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the maximum rate allowed by law.

(c) Representations and Warranties. Grantor represents and warrants that to the best of Grantor's knowledge:

(i) There are no apparent or latent defects in or on the Protected Property, other than lava tubes;

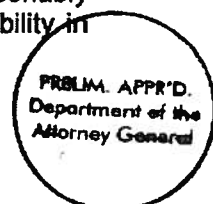
(ii) Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations and requirements applicable to the Protected Property and its use;

(iii) Except as has been disclosed to Grantee by Grantor through the Environmental Site Assessments, Phase I dated April 23, 2010 and Phase II dated November 10, 2010, conducted on the property by Grantee and Grantor respectively, there has been no release, dumping, burying or abandonment on the Protected Property by Grantor or any other person, or migration from any source off site, on or to the Protected Property, of any substances, materials, or wastes which are defined as hazardous, toxic, dangerous, or harmful and/or as a pollutant by any federal, state or local law, regulation, statute, or ordinance. The Grantor shall seek a determination from the Hawaii Department of Health of no further action for sites disclosed through the Environmental Site Assessment, Phase I dated April 23, 2010;

(iv) There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Conservation Values of any portion of the Protected Property. No civil or criminal proceedings have been instigated or are pending against the Grantor or its predecessors by government agencies or third parties arising out the alleged violations of environmental laws, and neither Grantor nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notification relating to a breach of environmental laws.

(d) Remediation. If at any time, there occurs, or has occurred, a release in, on, or about the Protected Property of any substance now or hereafter defined, listed, or otherwise classified, pursuant to any federal, state, or local law, regulation, or requirement as, toxic or dangerous to the air, water, or soil, or in any other way harmful or threatening to human health or environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required.

(e) Control. Grantor shall not itself perform or knowingly permit any Prohibited Activity to be performed by Grantor, its agents or employees, or those within Grantor's ability reasonably control. Grantor will take reasonable steps to prevent, halt and/or enjoin any Prohibited Activity by a third party but shall not be liable for any Prohibited Activity performed or engaged in by any third party over whom Grantor has no ability to reasonably control. Nothing in this Easement shall be construed as giving rise to any right or ability in



Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability of Grantee to become an "operator" with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, or the environmental laws of the State of Hawaii.

(f) Indemnification. Grantor agrees to release and hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with:

(i) Grantor's failure to perform the obligations and covenants set forth in this Easement;

(ii) Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties acting within the scope of their authority; and

(iii) The obligations, covenants, representations and warranties in subsections (a) through (e) of this Section 9.

10. Subsequent Transfer or Extinguishment.

(a) Extinguishment. A court with jurisdiction may, if it determines that conditions upon or surrounding the Protected Property have changed so much that it becomes impossible or impracticable to fulfill the Purpose of the Easement, extinguish or modify this Easement in accordance with applicable State law, at the joint request of both Grantor and Grantee. If this Easement is extinguished by judicial proceeding, Grantee shall be entitled to the value of the Easement calculated in accordance with Section 10(b) below.

(b) Valuation. This Easement constitutes a real property interest immediately vested in Grantee. Easement Value Ratio shall mean the ratio of the value of this Easement on the effective date of the Easement, to the value of the Protected Property unencumbered by this Easement on the effective date of the Easement. The values shall be those values determined in Grantee's 2010 appraisal of the Protected Property. The Easement Value Ratio shall remain constant. If this Easement is extinguished as described in subsection (a) above, Grantor agrees to pay to Grantee the fair market value of the Easement, which the parties stipulate is the value of the Protected Property unencumbered by this Easement on the date of its extinguishment, multiplied by the Easement Value Ratio. The value of the Protected Property unencumbered by this Easement on the date of its extinguishment shall be determined by an appraisal by Grantee.

(c) Condemnation. If all or any of the Protected Property shall be taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interest in the Protected Property subject to the taking or in lieu purchase and all direct or incidental damages resulting

from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Except as provided by applicable law, Grantor and Grantee agree that Grantee's share of the balance of the amount recovered shall be an amount determined by multiplying the amount recovered by the Easement Value Ratio.

(d) Application of Proceeds. The Grantee's portion of the proceeds shall be used to further the purposes of the United States Forest Service Forest Legacy Program.

(e) Subsequent Transfers. Grantor agrees to:

(i) Incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including without limitation, a leasehold interest;

(ii) Describe this Easement in any executory contract for the transfer of any interest in the Protected Property;

(iii) Give written notice to the Grantee of the transfer of any interest in all or a portion of the Protected Property no later than fifteen (15) days before the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the transferee or the transferee's representative.

The failure of the Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

11. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that shall affect the qualification of this Easement or the status of Grantee under any applicable laws, including HRS Chapter 198, Section 170(h) of the Internal Revenue Code of 1986, and the Forest Legacy Program (P.L. 101-624; 104 Stat. 3359), as amended (or any successor provisions(s) then applicable). Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, shall be in accordance with the Assignment and Succession referred to in Section 12 below and shall be recorded in the State of Hawai'i Bureau of Conveyances.

12. Assignment and Succession.

(a) Assignment. This Easement is transferable, but Grantee's rights and obligations under this Easement may be assigned only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under HRS Chapter 198 (or any successor provision(s) then applicable) and in accordance with the provisions of the Assignment of Rights referenced in subsection (b) below. As a condition of such transfer, the successor shall agree to exercise its rights under the assignment consistent with the terms and Purpose of this Easement.

(b) Succession. If at any time it becomes impossible for Grantee to ensure compliance with the covenants, terms, conditions and restrictions contained in this Easement, or

Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable) or to be authorized to acquire and hold conservation easements under HRS Chapter 198 (or any successor provision(s) then applicable), then Grantee's rights and obligations under this Easement shall be transferred to a successor approved by Grantor and Grantee or, failing such joint approval, shall vest in such organization as a court having jurisdiction shall direct, pursuant to the applicable Hawaii law and the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable), and with due regard to the terms and Purpose of this Easement.

13. Recordation. Grantee or Grantor shall record this instrument in a timely fashion in the official records of the Bureau of Conveyances, DLNR, State of Hawaii, and in any other appropriate jurisdictions, and Grantee may re-record it at any time as may be required to preserve its rights in this Easement.

14. Reversionary Clause. Notwithstanding any other provision to the contrary, the Grantee acknowledges that this Easement was acquired with Federal funds under the Forest Legacy Program (P.L. 101-624; 104 Stat. 3359) and that the interest acquired cannot be sold, exchanged, or otherwise disposed, except as provided in Section 12, unless the United States is reimbursed the market value of the interest in land at the time of disposal as calculated in accordance with Section 10(b). Provided however, the Secretary of Agriculture may exercise discretion to consent to such sale or extinguishment upon the State's tender of equal valued consideration acceptable to the Secretary.

15. General Provisions.

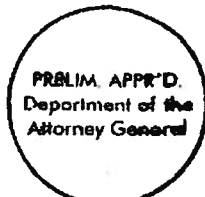
(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Hawaii.

(b) Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the terms and Purpose of this Easement and the policy and purpose of Hawaii Revised Statutes Chapter 198. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the terms and Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements between Grantor and Grantee relating to the Protected Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 11.

(e) No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.



(f) "Grantor" - "Grantee". The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Grantee, its personal representatives, successors and assigns.

(g) Successors and Assigns. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

(h) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(i) Counterparts. The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(j) Headings and Captions. The headings, subheadings and captions used in this Easement are for convenience of reference only and are not to be used to construe, interpret, define, or limit the sections to which they may pertain.

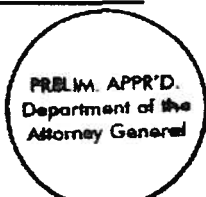
(k) Conservation Easement. The conveyance of this Easement is a conveyance of an interest in real property and constitutes a "conservation easement" as defined in HRS Section 198-1.

(l) Easement Runs With Protected Property. This Easement runs with the land and shall be binding upon Grantor's personal representatives, heirs, successors, and assigns in perpetuity.

16. Schedule of Exhibits. The following Exhibits are attached to and incorporated into this Easement by this reference:

- (a) Legal Description and Survey of Protected Property Subject to Easement
- (b) Site Maps

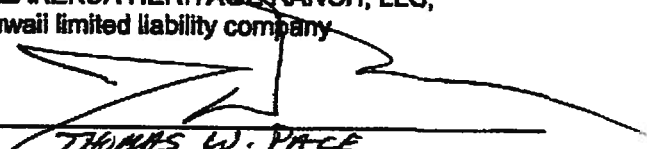
Executed and effective the day and year first above written. _____



IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

Approved by the Board
of Land and Natural
Resources at its meeting
held on April 21, 2011.

KEALAKEKUA HERITAGE RANCH, LLC,
a Hawaii limited liability company

By: 
THOMAS W. PACE
Its: MANAGED


"Grantor"

APPROVED AS TO FORM:

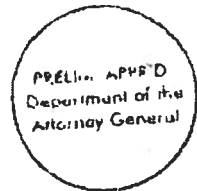

JULIE H. CHINA
Deputy Attorney General

Dated: June 8, 2011

THE STATE OF HAWAII

By: 
WILLIAM J. AIKA, JR.
Chairperson
Board of Land and Natural Resources

"Grantee"



STATE OF HAWAII)
)
COUNTY OF HAWAII) SS.

On this 3 day of June, 2011, before me personally appeared Thomas W. Pace, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Sydette Kalau
Notary Public, State of Hawaii
Printed Name: Sydette Kalau
My Commission Expires: 8/24/2012

Doc. Date: undated # Pages: 38
Name: Sydette Kalau 3rd Circuit
Doc. Description: Deed of conservation Easement
Sydette Kalau 4/03/11
Signature Date
NOTARY CERTIFICATION

