

**ORCHARD PLANTATION**

**MONTH TO MONTH LICENSE AGREEMENT**

THIS **MONTH TO MONTH LICENSE AGREEMENT** is made as of \_\_\_\_\_, 2023 (the “**Agreement Date**”) by and between **SAVIO GROWTH ORCHARD PLANTATION LLC**, a Hawaii limited liability company whose address is 1451 South King Street #504, Honolulu, Hawaii 96814 (“**Licensor**”), and the licensee(s) identified below (individually and collectively, the “**Licensee**”).

Licensor and Licensee agree upon the terms and conditions set forth in this Month to Month License Agreement and all attached Addendums (collectively, this “**Agreement**”) to license the lots agricultural (individually and collectively, the “**Ag Lot**”) identified in Section Error! Reference source not found. below.

**1. SPECIFIC PROVISIONS.**

(a) Commencement Date	The Master Closing Date, as described in Addendum A.1.	
(b) Licensee(s) <sup>1</sup>	Name:	
	Mailing Address:	
	City, State, Zip:	
	Cell Phone:	Home Phone:
	Email:	
	If more than one (1) Licensee, percentage interest: _____%	
	Name:	
	Mailing Address:	
	City, State, Zip:	
	Cell Phone:	Home Phone:
	Email:	
	If more than one (1) Licensee, percentage interest: _____%	
(c) Ag Lot	The premises described below and depicted on the map attached hereto as Addendum A.3: Unit No. _____ / Approximate Gross Area: _____ Unit No. _____ / Approximate Gross Area: _____	

<sup>1</sup> If there are more than two (2) Licensees, attach a separate exhibit page listing each additional Licensee.

	Unit No. _____ / Approximate Gross Area: _____
(d) Term	An approximately one (1) month period commencing on the Commencement Date and ending on the last day of the month in which the Commencement Date occurs. The Term shall automatically renew for one (1) calendar month at the end of the initial Term and each calendar month thereafter until terminated in accordance with the terms of this Agreement.
(e) Loan Amount	\$_____.
(f) Promissory Note Date	The Master Closing Date.
(g) Monthly License Fee	\$_____, being \$400 per acre (rounded to the nearest thousandth of an acre) prorated based on the ratio between (i) the difference between the amount of the Loan and the 99-Year License Acquisition Fee and (ii) the 99-Year License Acquisition Fee (" <b>License Fee</b> "). <sup>2</sup> The License Fee shall be payable monthly in accordance with <u>Section 3</u> of Addendum B
(h) Escrow	Old Republic Title & Escrow of Hawaii, Ltd. 732 Bishop Street, Suite 2200 Honolulu, Hawaii 96815 Escrow Contact: George Weeks Telephone No.: (808) 566-0100 E-mail Address: <a href="mailto:gweeks@ortc.com">gweeks@ortc.com</a>
(i) Operating Expense Contribution	\$40.00 per month per acre, rounded to the nearest thousandth of an acre.
(j) Water Utility Fee	Initially \$40.00 flat fee per month per acre, rounded to the nearest thousandth of an acre and subject to change as described in Addendum A.2 and Addendum B.
(k) Real Property Taxes	Licensee shall reimburse Licensor for Licensee's proportionate share of Real Property Taxes. See <u>Section 3</u> of Addendum B.
(l) Possession	Except as otherwise described in Addendum A.2 and Addendum B, possession of the Ag Lot shall be delivered to Licensee as of the Commencement Date.
(m) 99-Year License Acquisition Fee	\$_____. (based on \$130,000 per acre, rounded to the thousandth of an acre).

<sup>2</sup> The License Fee will be calculated as follows: (a) multiplying \$400 by the number of acres (rounded to the nearest thousandth of an acre) in the Ag Lot; and (b) multiply that product by the quotient determined by dividing (i) the difference between the 99-Year License Acquisition Fee minus the Loan amount by (ii) the 99-Year License Acquisition Fee.

2. **ADDENDA**. This Agreement is comprised of the foregoing Specific Provisions and the following Addenda set forth below and attached to this Agreement; the Addenda are incorporated herein by reference and are hereby made part of this Agreement. Each party agrees to perform all of the obligations on its part stated in the Addenda:

- Addendum A.1 – Loan to Licensor, Pre-Commencement Date Terms and Escrow Instructions
- Addendum A.2 – Important Disclosures Regarding the Property and the Ag Lot
- Addendum A.3 – Map Depicting Ag Lot
- Addendum B – General Terms
- Addendum C – Condominium Development; Right of First Offer
- Addendum D – Right to Purchase 99-Year License
- Addendum E – Organic Designated Ag Lots

**Addenda A.1, A.2 and A.3 shall be effective as of the Agreement Date set forth above. Addenda B, C, D, and E shall be effective as of the Commencement Date set forth above.**

3. **MISCELLANEOUS**

a. **Notices**. All notices required to be given to either party shall be considered given if sent in writing by registered mail to the addresses provided above.

b. **Successors**. All of the covenants, agreements, terms and conditions contained in this Agreement shall apply to and be binding upon Licensor and Licensee and their respective successors and assigns.

c. **Entire Agreement; Amendment**. This Agreement contains all of the terms, covenants, conditions, stipulations, agreements and provisions agreed upon between the parties to this Agreement and supersedes and cancels each and every other agreement, promise and/or negotiation between the parties, whether written or oral, including any existing license or license agreement between the parties covering the Ag Lot. The terms of this Agreement may not be changed, modified or altered except by mutual written agreement executed by the duly authorized persons, agents or officers of the parties.

d. **Severability**. If any term, covenant or condition of this Agreement, or the application of any part of this Agreement to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected and shall remain in full force and effect.

e. **Conflict**. In the event of a conflict between the terms and conditions of this Agreement and any other instrument governing or affecting the Ag Lot, including but not limited to any reasonable policies and procedures adopted by Licensor and the CPR Documents (as defined in Addendum A.2), the most restrictive term or condition shall govern.

f. **Counterparts**. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Copies of this Agreement or signature pages thereof executed and delivered by facsimile, email or other electronic means will constitute originals for all purposes whatsoever.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the Agreement Date above.

**LICENSOR:**

**SAVIO GROWTH ORCHARD PLANTATION  
LLC,**  
a Hawaii limited liability company

By: Savio Manager Inc.  
Its Manager

By: \_\_\_\_\_  
Peter Savio  
Its President

**LICENSEE:**

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

## **Addendum A.1 – Loan to Licensor, Pre-Commencement Date Terms and Escrow Instructions**

**ONLY THIS ADDENDUM A.1 AND THE FOLLOWING ADDENDA A.2 AND A.3, AND NO OTHER ADDENDA TO THIS AGREEMENT, SHALL BE EFFECTIVE AS OF THE AGREEMENT DATE.**

Licensor's parent company is under contract to purchase that certain parcel of real property locating in Waialua, Oahu and identified as Tax Map Key No. (1) 6-5-005:008 (collectively, the "**Property**") from Dole Food Company, Inc. ("**Dole**") pursuant to the terms and conditions of that certain Purchase and Sale Agreement and Joint Escrow Instructions, dated February 8, 2023, as may be amended from time to time (the "**Master Purchase Agreement**").

Licensor's parent company will designate Licensor as the ultimate purchaser of the Property and, subject to the terms and conditions set forth in the Master Purchase Agreement, Licensor's acquisition of the Property will be consummated through an escrow account established with Escrow (the "**Master Escrow Account**"). The date on which Licensor acquires the Property from Dole in accordance with the Master Purchase Agreement is referred to herein as the "**Master Closing Date**."

The Ag Lot identified in Section 1(c) of the Specific Provisions is a part of the Property; and concurrently with Licensor's acquisition of the Property pursuant to the Master Purchase Agreement, (a) Licensee will make a non-revolving term loan (the "**Loan**") to Licensor in the original principal amount set forth in Section 1(e) of the Specific Provisions, on the terms set forth in the form of promissory note attached hereto as more particularly described below and (b) Licensor will license to Licensee, and Licensee will license from Licensor, the Ag Lot, upon the terms and conditions set forth in this Agreement.

Licensor's obligation to license the Ag Lot to Licensee is subject to Licensee making the Loan to Licensor and Licensor's successful acquisition of the Property from HRF. Until Licensor acquires the Property on the Master Closing Date: (i) Licensee shall not have any rights to possession of the Ag Lot and shall not access the Ag Lot except with the prior written consent of Licensor; and (ii) this Agreement and the proceeds of the Loan shall be held in escrow. Until the Master Closing Date, the rights and obligations of the parties shall be as set forth and subject to the terms and conditions of Addenda A.1, A.2 and A.3 to this Agreement.

**1. Loan to Licensor.** The terms and conditions of the Loan are set forth in that certain promissory note (the "**Note**"), a form of which is attached hereto as Schedule 1. In connection with the Loan, Licensee and Licensor acknowledge and agree that:

a. Purpose. The purpose of the Loan is set forth in the Note and described here for convenience: (i) to pay a portion of the purchase price for the Property pursuant to the terms and conditions of the Master Purchase Agreement; (ii) to pay closing and other costs and expenses incurred in connection with Licensor's acquisition of the Property and (iii) to pay for costs and expenses related to the ownership, maintenance, repair, development and improvement of the Property following Licensor's acquisition of the Property.

b. Consideration. In addition to Licensor's promise to repay the Loan as evidence by the Note to be delivered to Licensee concurrently with the Master Closing Date, Licensee is making the Loan to Licensor in consideration for (i) the right to license the Ag Lot, (ii) a right of first offer to purchase the fee simple interest in the Ag Lot as described in Addendum C, and (iii) a right to purchase a 99-Year License Agreement as described in Addendum D, all subject to the terms and conditions of this Agreement.

c. Interest and Repayment. The applicable interest rate and other repayment provisions applicable to the Loan are set forth in the Note, including a right of Licensor to prepay all or a portion of the Loan by setting off any amounts owed by Licensee to Licensor.

d. Bona Fide Debt. The Loan shall be considered a “bona fide debt”, as that term is defined in the Internal Revenue Code Section 1.166-1(c), for federal income tax purposes.

e. Assignment. Licensee shall not be permitted to and shall not assign the Note without the prior written consent of Licensor, which may be granted or withheld at Licensor’s sole discretion.

**2. Escrow, Closing and Disbursement of the Loan.** Licensee and Licensor acknowledge and agree that:

a. Deposit with Escrow. Within two (2) business days following the execution of this Agreement, (i) Licensor and Licensee shall deposit into an escrow account (the “**Licensee Escrow Account**”) established with Escrow a fully-executed copy of this Agreement; (ii) Licensee shall deposit with Escrow funds in an amount equal to the Loan amount set forth in Section 1(e) of the Specific Provisions and (iii) Licensee shall deposit with Escrow an executed, undated original copy of the Note. This Agreement, the Loan proceeds and the Note shall be held in escrow until closing of the Licensor’s acquisition of the Property in accordance with the Master Purchase Agreement.

b. Closing. Concurrently with the closing of the Licensor’s acquisition of the Property on the Master Closing Date in accordance with the Master Purchase Agreement, this Agreement shall be released from Escrow, Escrow shall disburse the Loan proceeds to Licensor (at which time the Loan shall be deemed made to Licensor), Escrow shall date the Note as of the Master Closing Date and deliver the original, dated Note to Licensee, and all other Addenda attached to this Agreement shall immediately and automatically become effective.

c. Disbursement of the Loan. Licensee hereby authorizes and instructs Escrow, at the request and direction of Licensor, to disburse on the Master Closing Date all of the Loan proceeds to the Master Escrow Account and to close the Licensee Escrow Account immediately thereafter. Licensee shall cooperate with Licensor and Escrow, and execute and deliver any additional documentation Escrow or Licensor may request, to facilitate or confirm the foregoing.

**3. Termination; Return of Fees.**

a. Licensee’s Right to Terminate. Licensee shall have the unconditional right to cancel and terminate this Agreement in accordance with this Section 3.a, for any reason or no reason, by delivering written notice (the “**Pre-Closing Termination Notice**”) to Escrow and Licensor no later than 4:00 pm on the date that is five (5) business days before the scheduled Master Closing Date (the “**Pre-Closing Termination Deadline**”). Licensor shall provide written notice advising Licensee of the Pre-Closing Termination Deadline no less than three (3) business days prior thereto. Licensee may not terminate this Agreement during the period *after the Pre-Closing Termination Deadline and up to and including the Master Closing Date*. However, following the Commencement Date, Licensee will have the right to terminate this Agreement in accordance with and subject to the terms and conditions set forth in Addendum B.

b. Licensor’s Right to Terminate. Additionally, Licensor shall have the unconditional right to cancel and terminate this Agreement at any time prior to the Master Closing Date if for any reason Licensor is unable to or does not acquire the Property from Dole. Licensor may exercise its right to terminate this Agreement by delivering a Pre-Closing Termination Notice to Escrow and Licensee at any time prior to the Master Closing Date.

c. Termination. If Licensee or Licensor timely delivers a Pre-Closing Termination Notice in accordance with Section 3.a or Section 3.b, as applicable, then such termination shall be effective as of the date the Pre-Closing Termination Notice is received by Escrow and either Licensor or Licensee, as applicable. In such event, the Loan shall not be made to Licensor and Escrow shall promptly refund the entire amount of the Loan proceeds to Licensee and return the Note to Licensor. Licensor and Licensee shall execute and deliver such reasonable and customary documents, if any, required by Escrow to return the Loan proceeds and the Note, and Licensee and Licensor shall have no further obligations to each other with respect to this Agreement or the Note, except for such obligations that expressly survive the termination of this Agreement.

**End of Addendum A.1**

**Schedule 1 to Addendum A.1 – Form of Promissory Note**

**PROMISSORY NOTE**

US \$ \_\_\_\_\_

Honolulu, Hawaii  
Effective Date: \_\_\_\_\_, 2023

THIS PROMISSORY NOTE (this “**Note**”) is made as of the Effective Date written above, by the undersigned, SAVIO GROWTH ORCHARD PLANTATION LLC, a Hawaii limited liability company (“**Borrower**”), whose address is 1451 South King Street, Room 504, Honolulu, Hawaii 96814, and is payable to the order of and in favor of \_\_\_\_\_ (“**Lender**”), whose address is \_\_\_\_\_.

1. Amount of Loan. For value received, Borrower promises to pay to Lender the principal sum of \_\_\_\_\_ AND NO/100 DOLLARS (\$\_\_\_\_\_.00) (the “**Loan**”), together with interest on the outstanding balance of principal from the date hereof, computed on the principal balance from time to time outstanding at the interest rate set forth below. This Note evidences a non-revolving loan made available by Lender to Borrower in accordance with that certain Month to Month License Agreement between Borrower, as licensor, and Lender, as licensee, having a commencement date as of the effective date of this Note (the “**License Agreement**”). Capitalized terms used but not otherwise defined in this Note shall have the meaning given to such terms in the License Agreement

2. Single Disbursement. The proceeds of the Loan shall be disbursed in a single disbursement concurrent with the date hereof. In no event shall Lender be obligated to make any further disbursements under the Loan.

3. Maturity Date. Subject to extension as set forth below in Section 5, all sums owed under this Note will be due and payable and shall be paid by the Borrower in full by the date that is eighteen (18) months after the effective date of this Note (the “**Maturity Date**”). This payment shall be due without notice or demand and shall be paid to Lender, at the address set forth above, or to such other place as Lender or Lender’s successors and assigns may from time to time designate in writing. For avoidance of doubt, Borrower shall not be required to (but may) make any payments towards principal or interest under this Note until the Maturity Date (as the same may be extended in accordance with Section 5).

4. Purpose. The Loan shall be used for one or more of the following purposes: (a) to a portion of the purchase price for the Property pursuant to the terms and conditions of the Master Purchase Agreement; (b) to pay closing and other costs and expenses incurred in connection with Borrower’s acquisition of the Property; and (c) to pay for costs and expenses related to the ownership, maintenance, repair, development and improvement of the Property following Borrower’s acquisition of the Property.

5. Option to Extend Maturity Date. Borrower shall have one (1) option to extend the Maturity Date set forth in Section 3 above for eighteen (18) additional months, which option may be exercised by Borrower by providing Lender with written notice of its exercise of the option not less than thirty (30) days prior to the original, un-extended Maturity Date. Borrower may not exercise such option if Borrower is in default under the terms of this Note beyond any notice and cure periods.

6. Interest. Interest payable under this Promissory shall accrue at a fixed annual rate equal to four and one half percent (4.50%) per annum (being the Applicable Federal Rate for June



2023 published by the Internal Revenue Service for short-term loans with an annual compounding period, rounded up to the nearest one half percent (0.5%)). Interest shall be calculated, but not compounded, daily on the basis of the actual number of days elapsed over a 365- or 366-day year, as the actual case may be.

7. Security. The Loan is unsecured and no guaranty has been provided to guaranty the punctual payment of any portion of the Loan, including any interest accrued thereon.

8. Application of Payments. Except in the case of an election to the contrary by Lender in the event of a default, and to the extent permitted by law, all payments will be applied first to fees and charges, then accrued interest, and then principal.

9. Prepayments. Borrower may, at its discretion, prepay any amounts owed under this Note without any prepayment fee or other charge: (a) by way of cash payment; or (b) by way of setoff against any financial obligation owing by Lender to Borrower from time to time under the License Agreement. In lieu of accepting payments of the License Fee (and the general excise tax payable with respect thereto) payable by Lender to Borrower under the License Agreement, Borrower may, in its discretion, credit or setoff such monthly License Fee (and the general excise tax payable with respect thereto) payments against any interest which may accrue or principal which may be owed under this Note.

10. Assignment. Lender shall not be permitted to and shall not assign this Note without the prior written consent of Borrower, which may be granted or withheld at Borrower's sole discretion.

11. Default. If Borrower shall default in the payment of principal, interest or other fees or charges when due under this Note, and such default shall not be cured within seven (7) days, or if there shall be any default in the performance of or compliance with any term, covenant, condition or provision required to be performed or complied with under any of the documents evidencing or securing the Loan and such default shall not be remedied within thirty (30) days after Lender provides written notice of such failure, then, and in any such event, Lender shall have the option to declare the unpaid principal sum of this Note, together with all fees and charges and interest accrued thereon, to be immediately due and payable, and such unpaid principal sum, fees and charges and interest shall thereupon become and be due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, and, upon such maturity by acceleration or otherwise, such unpaid principal sum, fees and charges and all accrued and unpaid interest shall thereafter bear interest until fully paid at a rate per annum equal to twelve percent (12%). Failure to exercise this option by Lender shall not constitute waiver of the right to exercise the same in the event of the same or any subsequent default.

12. Notice. Any notice or demand given hereunder shall be in writing and addressed to the appropriate party at the following addresses:

To Borrower: SAVIO GROWTH ORCHARD PLANTATION LLC  
1451 South King Street, Room 504  
Honolulu, Hawaii 96814  
Attention: Peter Savio

To Lender: At the address set forth in the introductory paragraph of this Note.

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three business days after deposit, postage prepaid in the U.S. Mail, (b) sent by overnight delivery using a nationally recognized overnight courier, in which case it

shall be deemed delivered one business day after deposit with such courier, or (c) sent by personal delivery. The above addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

13. No Waiver of Rights. No provision in this Note may be waived, modified or cancelled orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, modification, discharge or cancellation is sought. The failure or delay of Lender to exercise any rights shall not constitute a waiver of the option to exercise the same or any other option at any subsequent time in respect of the same event or any other event. The acceptance by Lender of any payment hereunder which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing options at the time or at any subsequent time or nullify any prior exercise of any such option without the express written consent of Lender.

14. Binding Effect. This Note binds Borrower and Borrower's successors and assigns, and inures to the benefit of Lender and Lender's successors and assigns. In this Note, whenever the context so requires, the neuter gender includes the masculine and feminine, and the singular number includes the plural and vice versa.

15. U.S. Money. Principal and interest shall be payable in lawful money of the United States of America in immediately available funds.

16. Attorney's Fees. Borrower promises to pay Lender reasonable attorneys' fees and such expenses as are incurred to induce or compel the timely payment of this Note or any portion of the indebtedness evidenced hereby, whether suit is brought hereon or not. All attorneys' fees incurred hereunder are deemed fees and charges to which payments received shall be applied first in payment of the amounts owed under the Note.

17. Governing Law. This Note shall be governed by and construed according to the laws of the State of Hawaii, not including its choice of law rules which might require the application of the law of another jurisdiction.

IN WITNESS WHEREOF, the Borrower has executed this Note as of the date first above written.

SAVIO GROWTH ORCHARD PLANTATION LLC,  
a Hawaii limited liability company

By: Savio Manager Inc.,  
Its Manager

By: \_\_\_\_\_  
Peter Savio  
Its President

"Borrower"

**End of Schedule 1 to Addendum A.1**

## **Addendum A.2 – Important Disclosures Regarding the Property and the Ag Lot**

**ONLY THIS ADDENDUM A.2, THE PRIOR ADDENDUM A.1, AND THE FOLLOWING ADDENDUM A.3, AND NO OTHER ADDENDA TO THIS AGREEMENT, SHALL BE EFFECTIVE AS OF THE AGREEMENT DATE.**

Licensee acknowledges, understands, and accepts the following disclosures regarding the Ag Lot and the Property, including without limitation, disclosures relating to water availability, drainage, and general zoning compliance.

**1. Development of the Property.** Licensor currently intends to develop the Property (the “**Development**”) to, among other things, (a) create an agricultural condominium property regime (“**CPR**”) under Hawaii Revised Statutes (“**HRS**”), Chapter 514B to be known as “Orchard Plantation” (the “**Project**”) by recording (as applicable) in the Bureau of Conveyances of the State of Hawaii (the “**Bureau**”) a Declaration of Condominium Property Regime (the “**Declaration**”), a Condominium Map (the “**Condominium Map**”), Bylaws of the Association of Unit Owners (the “**Bylaws**”), house rules and other documents that will establish and govern the administration and operation of the Project (collectively, the “**CPR Documents**”); (b) create within the Project CPR units (each a “**CPR Ag Lot**” and collectively, the “**CPR Ag Lots**”), including one or more CPR Ag Lot(s) that will roughly approximate the location and boundaries of the Ag Lot (the “**Converted CPR Ag Lot**”); (c) set aside portions of the Project for the potential future development of a plantation camp-style cluster development (the “**Plantation Camp**”); (d) restrict the resale price and/or impose a right of repurchase or first refusal for all or some of the CPR Ag Lots to be sold by Licensor (including any CPR Ag Lot which may be sold by Licensor to Licensee); (e) add, remove, or otherwise modify improvements within the Property and the Project; and (f) adopt certain restrictions on the ability of owners of CPR Ag Lots to lease such CPR Ag Lots to third parties. Notwithstanding the foregoing, Licensor makes no representations or warranties regarding the Property or the Development, including without limitation, any representation or warranty regarding (i) the scope, timing or feasibility of the Development; (ii) Licensor’s ability to establish the Project or complete the Development as planned or within a certain time period; (iii) the Licensor’s ability to convert the Ag Lot to a CPR Ag Lot and offer the fee simple interest in the Converted CPR Ag Lot to Licensee within a specified time period; (iv) the financeability or insurability of any CPR Ag Lots (including the Converted CPR Ag Lot) within the Project before or after the Development; and (v) the suitability of the Project, either before or after the Development, for Licensee’s proposed use.

**2. Plantation Camp.** As part of the Development, Licensor intends to set aside approximately thirteen (13) acres of land within the Property for the potential development of the Plantation Camp (the “**Set Aside Area**”). Licensor may (a) designate the Set Aside Area as a common element of the Project under the management and control association of unit owners of the Project (the “**CPR Association**”) to be established under the CPR Documents; (b) create separate CPR Ag Lots comprising the Set Aside Area and convey the resulting units to the CPR Association for future use and development; or (c) otherwise designate the Set Aside Area for use by the CPR Association for the benefit of the owners of CPR Ag Lots within the Project. Subject to restrictions imposed by HRS Chapter 514B and other applicable laws, the CPR Association, for the benefit of the owners of the Project, will have the right to lease, sell or pursue the development of the Plantation Camp upon the Set Aside Area, all in accordance with terms and conditions to be set forth in the Declaration, and neither Licensor nor any of its affiliates will be entitled to any proceeds from the use or sale of the Set Aside Area, the intent being that the Set Aside Area will be for the benefit of the CPR Association (not the Licensor as developer) regardless of whether the Plantation Camp is ultimately developed. Relatedly, Licensor will not be responsible for the cost and expense for the planning and development of the Plantation Camp or the operation of the Set Aside Area. Licensor makes no representations or warranties with respect to the Plantation Camp, including, without limitation,

(i) whether the ultimate development of the Plantation Camp will be approved, permitted or pursued by the CPR Association; (ii) the feasibility of developing the Plantation Camp under current or future laws or conditions applicable to the Property; (iii) with respect to the permits and approvals necessary for the development of the Plantation Camp or the likelihood of obtaining any such permits or approvals; (iv) with respect to the availability of utilities necessary for the development of the Plantation Camp or the cost to bring such utilities to the Property; or (v) with respect to any other matters related to the legal, physical or economic feasibility of the development of the Plantation Camp.

**3. Property As-Is.** Licensor is acquiring the Property in “AS IS”, “WHERE IS” and “WITH ALL FAULTS” condition. Licensee understands that all improvements existing on, in, or under the Property as of the date of this Agreement were constructed or installed by Dole or prior occupants of the Property and were not constructed by Licensor. Information on the history and existing condition of the Property and the improvements existing thereon is limited, and Licensor makes no representations with respect to any previously or currently existing conditions of the Property. Licensee further understands that the Property (including the Ag Lot) is currently not in use by Dole or any other third party and that all or a portion of the Property (including the Ag Lot) may be overgrown with vegetation, and that Licensee will be solely responsible, at its cost and expense, for clearing the Ag Lot as may be necessary for its operations.

**4. Private Water System; Water Utility Infrastructure and Service.**

a. Private Water System Declaration. The Property, including the Ag Lot, is subject to that certain Declaration of Restrictive Covenant (Water System) dated September 1, 2017, recorded in the Bureau as Document No. A-64660776 (the “**Private Water System Declaration**”). Pursuant to the Private Water System Declaration, (i) the land within the Property will need to obtain water for both domestic use and fire protection through a private water system and (ii) provision of a sufficient private water system serving the land within the Property must be made at the time any building permit application for improvements on the land is submitted. Licensor shall not be responsible for providing a water system sufficient to meet the requirements of the Private Water System Declaration or for the potential future development of the Plantation Camp and makes no representations or warranties regarding whether any water systems currently serving any portion of the Property meet the requirements of the Private Water System Declaration.

b. Recycled (R-2) Water; Existing Water Infrastructure. As of the Agreement Date, (i) there is no water service of any kind at the Property; (ii) there is an existing water utility infrastructure (the “**Existing Water Infrastructure**”) within the Property that is owned by Dole; (iii) R 2 recycled water (“**R-2 Water**”), that is sourced from land outside of the Property and is not owned by Licensor or any of its affiliates may be made available to the Property; and (iv) no other quality of water (e.g., potable, non-potable) is available to be provided to the Property. Licensor is in negotiations with Dole for a water facility agreement (the “**Water Facility Agreement**”), under which Dole will provide R-2 Water to the Property on a limited basis. The Water Facility Agreement currently being negotiated by Licensor and Dole is anticipated to only permit R-2 Water to be drawn on an “as-available” basis and only to the extent that water in excess of Dole’s requirements exists. If there is insufficient R-2 Water to service Dole’s needs, no water will be available under the Water Facility Agreement for use at the Property. Dole will not guaranty that a minimum amount of (or any) water will be available or the quality of the water that is provided. Notwithstanding the foregoing, Licensor makes no representation or warranty with respect to the availability, amount, quality or cost of water that may be available to the Property or the Ag Lot from time to time and shall have no obligation to obtain or otherwise guaranty that water will be available to the Ag Lot or the Property at any time.

c. Temporary Water Infrastructure. As of the Agreement Date, the Existing Water Infrastructure may not be sufficient to provide R-2 Water service to all of the agricultural lots in the

Property, including the Ag Lot. In the event Licensor enters into the Water Facility Agreement with Dole and the Existing Water Infrastructure is insufficient to provide R-2 Water to each lot, Licensor will use diligent and reasonable efforts to extend R-2 Water service to the boundary of the Ag Lot (and other agricultural lots within the Property) by installing temporary, above-ground improvements to the Existing Water Infrastructure (the “**Temporary Water Infrastructure**”). Until the Temporary Water Infrastructure is complete, R-2 Water may not be available to the Ag Lot. Once Licensor has notified Licensee that the Temporary Water Infrastructure is complete, Licensee may utilize the Temporary Water Infrastructure for irrigation purposes on an “as-available” basis. Licensor may place reasonable restrictions on the use of R-2 Water from the Temporary Water Infrastructure, including the amount of R-2 Water that may be drawn from the system and the time and manner that water may be drawn from the system. Meters measuring the water use for the Ag Lot will not be installed as part of the Temporary Water Infrastructure. Therefore, in lieu of paying water charges based on actual use, Licensee will pay a monthly flat fee for all water provided to the Ag Lot through the Temporary Water Infrastructure in the amount of the Water Utility Fee set forth in Section 1(j) of the Specific Provisions. Licensee shall be required to pay this flat Water Utility Fee regardless of whether Licensee uses any water during any month.

d. New Water Infrastructure; Water Meters. Following installation of the Temporary Water Infrastructure, Licensor intends, and will use diligence and reasonable efforts, to replace the Temporary Water Infrastructure by installing permanent improvements to the Existing Water Infrastructure (the “**New Water Infrastructure**”) to provide R-2 Water to the Ag Lot (and other agricultural lots in the Property). Upon written notice from Licensor that the New Water Infrastructure necessary to provide R-2 Water service to the Ag Lot has been completed, either Licensor or Licensee, as may be determined in Licensor’s discretion, shall install at Licensee’s sole cost and expense a water meter to measure the amount of R-2 Water being provided to the Ag Lot, and no R-2 Water service will be provided through the New Water Infrastructure until Licensee installs and pays for said water meter. Following the installation of the water meter and the delivery of written notice to Licensor of the same, Licensor will provide R-2 Water service to the Ag Lot through the New Water Infrastructure and remove the Temporary Water Infrastructure, and Licensee shall continue to pay the monthly flat fee in the amount set forth in Section 1(j) of the Specific Provisions. Upon the delivery of written notice to Licensee, the Water Utility Fee set forth in Section 1(j) of the Specific Provisions will be based on the amount of R-2 Water used by Licensee as determined by periodic readings of Licensee’s water meter and the price per gallon charged by Dole under the Water Facilities Agreement. Notwithstanding anything in this Agreement to the contrary, Licensor makes no representation or warranty concerning the provision of R-2 Water or other water to the Ag Lot or any other portion of the Property.

e. R-2 Water Restrictions. R-2 Water is wastewater that has undergone limited treatment. R-2 Water is not potable water (i.e., drinking water), nor is it permitted to be used in all types of agricultural operations. The permissible uses of R-2 Water are limited by law, including Hawaii Administrative Rules Title 11, Chapter 62, Wastewater Systems (the “**Wastewater Law**”). **Licensee is solely responsible for determining whether R-2 Water is permitted under all applicable laws to be used in connection with Licensee’s intended agricultural operations on the Ag Lot. Licensor makes no representation or warranty with respect to permissible uses of R-2 Water or Licensee’s intended or actual use thereof.** Licensee and all other users and occupants of the Ag Lot shall review and adhere to all applicable laws, rules and regulations related to the use of R-2 Water on the Ag Lot, including but not limited to the Wastewater Law and the State of Hawaii Department of Health Wastewater Branch’s *Reuse Guidelines Volume II: Recycled Water Projects (January 2016)* (the “**Wastewater Guidelines**”), and shall obtain at its sole cost any permits, licenses or other approvals that may be required in connection with the use of R-2 Water on the Ag Lot. The Wastewater Guidelines are available at: [https://health.hawaii.gov/wastewater/files/2018/06/V2\\_RWProjects.pdf](https://health.hawaii.gov/wastewater/files/2018/06/V2_RWProjects.pdf). Licensee may request a hard copy of the Wastewater Guidelines and/or Wastewater Law from Licensor, provided that

Licensee may be required to pay a nominal fee for the printing and delivery of the Wastewater Guidelines and Wastewater Law.

f. Licensee's Obligation. Licensor only intends to extend water service to the boundary of the Ag Lot. Licensee will be responsible, at its sole cost and expense, to install any additional irrigation facilities and improvements necessary to connect to the Temporary Water Infrastructure and the New Water Infrastructure and to provide water at other points within the Ag Lot.

g. Interruptions. Water service may be interrupted from time to time for various reasons, including as necessary for the installation, repair, and maintenance of the Existing Water Infrastructure, Temporary Water Infrastructure or New Water Infrastructure. Licensor shall not be liable for any costs or damages incurred by Licensee in connection with any such interruption, regardless of the cause thereof, unless such interruption is caused solely by the gross negligence or intentional misconduct of Licensor.

h. Cooperation. Licensee agrees to cooperate with Licensor in Licensor's efforts to secure the use of the Existing Water Infrastructure, establish water service and install the Temporary Water Infrastructure and New Water Infrastructure, and agrees to consent to and/or join in any documentation necessary or convenient in connection therewith.

**5. Land Use Restrictions.** The Property, the Ag Lot and any activities or operations thereon shall at all times comply with the terms and conditions of this Agreement, all applicable laws, including land use and zoning laws of the State of Hawaii and City & County of Honolulu and the CPR Documents (once made effective).

a. State Land Use Designation. The Property, including the Ag Lot, is located within the State Land Use Agricultural District and is subject to the applicable provisions set forth in HRS Chapter 205 (the "**State Land Use Law**"), including HRS Sections 205-4.5 and 4.6. The lands within the Property has soils classified by the Land Study Bureau's detailed land classification as having an overall (master) productivity rating class of A and B. Consistent with the State Land Use Law, the land within the Property is subject to that certain Declaration of Restrictive Covenants (Agricultural Subdivision) dated September 1, 2017 and recorded in the Bureau as Document No. A-64660775 (the "**Ag Use Declaration**"). The Ag Use Declaration requires that the land within the Property be used primarily in and for the pursuit of agricultural activity and for no other uses other than those set forth in HRS Section 205-4.5. Licensee's use of the Ag Lot shall comply with the State Land Use Law and the Ag Use Declaration.

b. County Zoning. For purposes of Revised Ordinances of Honolulu, Chapter 21 (the "**Land Use Ordinance**"), the land within the Property, including the Ag Lot, are zoned AG-1, Restricted Agricultural District, and may not be used for any uses other than those that are permitted under the Land Use Ordinance for property in the AG-1, Restricted Agricultural District. As used herein, a use that is designated as "permitted" under the Land Use Ordinance does not require any permits or governmental approvals prior to commencing that use.

c. Limitations. Regardless of the uses permitted under the State Land Use Law, the Ag Use Declaration, and the Land Use Ordinance, all uses of the Ag Lot shall comply with the terms of this Agreement. **Houses, dwellings, lodgings, and other residential structures or uses are not permitted on the Ag Lot.** Construction and installation of all other structures or improvements require the prior written consent of Licensor as set forth in Addendum B.

**6. Organic Designated Ag Lots.** The Ag Lots marked with an "O" on the map included in Addendum E are designated for organic farming (each such agricultural lot is an "**Organic Designated Ag Lot**" collectively, the "**Organic Designated Ag Lots**"). Licensor intends that the Organic Designated Ag Lots will be used for the production, handling, processing and marketing of

products that qualify for certification as “organic” under applicable laws; however, Licensor does not have any obligation to ensure that the Organic Designated Ag Lots are suitable for such use. If the Lot is an Organic Designated Ag Lot, Licensee shall ensure that the production, handling, processing, labeling and marketing of organic products with respect to any items produced from or on an Organic Designated Ag Lot complies with all applicable laws relating to the relevant organic certification, including but not limited to any regulations promulgated by the United States Department of Agriculture, as well as any rules, policies, and procedures now or hereafter issued by Licensor with respect to the Organic Designated Ag Lots. **Licensee is solely responsible for determining whether Licensee’s agricultural operations qualify for organic certification under all applicable laws. Licensor makes no representation or warranty with respect to the Property or any individual Ag Lot with regards to the suitability of the Ag Lot for organic farming practices.**

**7. Encroachments.** The Ag Lot is subject to a minimum Setback Area in which no trees, crops, plantings or improvements that exceed three (3) feet in height may be located. As of the Commencement Date, there may be trees, branches or other vegetation (such as bushes, shrubs, etc.) located in the Setback Area or which overhang or encroach into the common areas of the Property (e.g., roads) or other lots in the Property. Licensee shall be responsible for trimming or removing any trees, branches or other vegetation (or any portion thereof) that are impermissibly located within the Setback Area or otherwise encroach from the Ag Lot into another lot or any common area and thereafter shall maintain all vegetation and improvements on the Ag Lot so that they do not violate the Setback Area restriction or encroach into adjoining lots or common areas. Licensor shall not be liable to Licensee or any other person for (and Licensee hereby waives any and all claims, causes of action or other liability arising from or in connection with) maintenance of or any damage caused by any trees, branches or other vegetation impermissibly located within the Setback Area or encroaching on to the Ag Lot, or from the Ag Lot into another lot or any common area. If Licensee fails to trim or remove any trees, branches or other vegetation impermissibly located within the Setback Area or encroaching from the Ag Lot into another lot or any common area, Licensor, upon ten (10) days’ prior written notice to Licensee, may trim or remove such trees, branches or other vegetation and Licensee shall reimburse Licensor for the cost of such work promptly upon written demand.

**8. Security.** Security services for the benefit of Licensee (or any other user of the Property) are not provided at the Property, and Licensor shall not be liable for any personal injury or death sustained by, or any damage, loss or theft of any property of, Licensee or any of Licensee’s invitees, licensees, employees, contractors and agents. All entrants upon the Property are responsible for the security and safety of their person and property at all times.

**9. Utilities and Emergency Services.** The Property is not served by utilities. Licensor makes no representations or warranties regarding the availability, suitability or provision of any utilities, including without limitation, potable or non-potable water for agricultural, domestic or fire protection uses, sewer service, telephone service (including reception of cellular phone service), wired or wireless internet, electric or cable to the Property or the availability of public restrooms within the Property.

**10. Wastewater.** The Property, including the Ag Lot, is subject to that certain Declaration of Restrictive Covenants (Wastewater Treatment and Disposal) dated July 19, 2017, recorded in the Bureau as Document No. A-64360672 and supplemented by that certain Supplemental Declaration of Restrictive Covenants (Wastewater Treatment and Disposal) dated March 2, 2018 and recorded in the Bureau as Document No. 66350937 (collectively, the “**Wastewater Declaration**”). Pursuant to the Wastewater Declaration, (a) no domestic wastewater may be treated or discharged within the Property without review and specific approval of the Department of Health’s Environmental Management Division (Wastewater Branch), (b) except in limited circumstances not applicable to this Agreement, all accessory buildings in the Property must utilize an aerobic treatment unit with

evapo-transpiration fields for disposal of treated effluent (also known as a “**zero discharge system**”), (c) the zero discharge system serving any accessory building in the Property must be designed by a licensed engineer in accordance with the applicable provisions of Hawaii Administrative Rules, Chapter 11-62, and (d) any person installing a zero discharge system in the Property must enter into a proactive maintenance contract with a wastewater professional approved by the Wastewater Branch to assure regular inspection, service, repair and replacement of malfunctioning components and submission of repair logs and monitoring reports. The terms and conditions of the Wastewater Declaration are integrated herein by reference. **For the avoidance of doubt, houses, dwellings, lodgings, and other residential structures or uses are not permitted on the Ag Lot.**

**11. Roads.** Certain roads identified on the map attached as Addendum A.3 may not currently be graded, compacted or otherwise improved for use by vehicles. Those roads within the Property that have been improved currently only consist of leveled and compacted dirt and are not paved, cold-planed or otherwise improved. Due to the nature of dirt roads, the condition and ability to use these roads may be significantly impacted from time to time by various environmental factors such as rain and flooding. Additionally, not all agricultural lots within the Property are currently accessible by these existing dirt roads. As part of the Development, Licensor will install (i.e., grade and compact) new dirt roads within the Property to provide access to the Ag Lot (if not already accessible from an existing improved dirt road) and other agricultural lots within the Property. Licensor may, but shall not be obligated to, make other improvements to the Property roads and to limit access to such roads while Licensor is conducting any work on such roads. Licensor will endeavor to install the new roads shortly after the Master Closing Date. Licensee understands that, until such time as access to the Ag Lot is available through an improved road, Licensee’s vehicular access to the Ag Lot may be limited and Licensee hereby waives any and all claims, causes of action or other liability arising from or in connection with Licensee’s vehicular access (or lack thereof) to its Ag Lot. Licensor makes no representations or warranties with respect to the condition or adequacy of any roadways or access ways located within the Property, including the adequacy of such roadways or access ways for purposes of providing access for emergency vehicles to the Property or any Ag Lot.

**12. Pesticides, Herbicides and Other Hazardous Materials; Other Agricultural Effects.** The Property (including the Ag Lot) may have been used or exposed (and may hereafter be used or exposed) to pesticides, herbicides and/or other hazardous materials by HRF, prior owners of the Property and other licensees, occupants, owners or users of the Property. Residues of such substances may be present in the soil within the Property. Licensee shall be responsible for all remediation, removal, mitigation or other actions that are advisable or required under all applicable law with respect to the Licensee’s Ag Lot. Such remedial actions shall be in accordance with applicable laws. The Ag Lot may be affected by various nuisances, risks and hazards, and by noise, dust, fire, smoke, soot, ash, odor, visual nuisances, flooding, or other adverse conditions of any other kind (including, but not limited to those attributable to rain, ponding of water, wind drift and other weather factors) created by surrounding historical, existing, and prospective agricultural, industrial, development, commercial, sales and other uses and activities, and Licensee specifically accepts these uses (including the risks related thereto), including, but not limited to: (a) pest management (use of pesticides) and weed and fungus control (use of herbicides and pesticides); (b) real estate development and other changes in use, installation of roadways, construction, grading, and sales activities; (c) irrigation with reclaimed water, treated effluent, or other non-potable sources; (d) use of cultivation and harvesting equipment and other uses attendant with agricultural activities; (e) experimental agricultural uses and activities; and (g) drainage from the Ag Lot and other properties, and the effects thereof on the Ag Lot. Licensee expressly assumes all risks and waives all rights to any claim against Licensor, its affiliates and their respective officers, directors, owners, agents and employees for any damages or liability with respect to the same.

**13. Drainage Matters.** Soil and drainage conditions may vary throughout the Property, and portions of the Property, including the Ag Lot, may be susceptible to flooding and may experience



high levels of water run-off from the neighboring properties. Licensor does not make any representations or warranties, express or implied, with respect to soil compaction, soil condition, or drainage within the Property or the Ag Lot, or the need for, or the extent of any required, grading, fill, and/or drainage improvements in connection with Licensee's proposed use of the Ag Lot. Licensor shall not be liable to any Licensee for any loss, damage or other adverse effects cause by flooding or drainage of water run-off.

**14. Flood.** The Property is located in an area designated by the Federal Emergency Management Agency as Flood Zone D. The Flood Zone D designation means there are possible but undetermined flood hazards, but no analysis has been conducted. Licensee may be required to carry flood insurance.

**15. Historic Preservation.** The Property, including the Ag Lot, may include archaeological or historical sites that are subject to the National Historic Preservation Act and/or other applicable laws. All undertakings affecting historic properties on the Property and the Ag Lot shall be administered in accordance with all applicable laws, including but not limited to HRS Chapter 6E and HRS Chapter 205.

**16. Condition of Property.** As described above in this Addendum A.2, the Ag Lot may be subject to various conditions that may alter the Ag Lot's condition or affect its suitability for any proposed use. Licensor has made no independent investigation as to such conditions and Licensor shall not be responsible or liable in any way for any occurrence or existence of such conditions. Licensee shall be solely responsible for inspecting the Ag Lot prior to entering into this Agreement.

**17. Easements.** Certain third parties have rights, in the nature of easements, to use portions of the Property for various purposes (collectively, "**Easement Rights**"), including access and the installation, maintenance and repair of sewer lines, water lines, and electrical facilities. The specific location of many, but not all, of these easements are reflected on the Condominium Map. Licensee's use of the Ag Lot and the Property shall be subject to the Easement Rights, and Licensor shall not be responsible for any interference, damages, loss or other claims arising from any party's exercise of the Easement Rights.

**18. No Real Property Interest or Recordation.** The license being granted pursuant to this Agreement is personal to Licensee, does not constitute or create a real property interest and does not encumber title to the Property (or any portion thereof). Neither this Agreement, nor a short form or memorandum of this Agreement, may be recorded against title to the Property (or any portion thereof) without Licensor's prior written consent, which consent may be withheld in Licensor's sole and absolute discretion.

**19. Not a Subdivision.** The Ag Lot does not constitute a legally subdivided lot or division of land and any maps of the Ag Lot or the Property provided to Licensee designating the boundaries of the Ag Lot, adjacent agricultural lots or common areas within the Property are for illustrative purposes only and should not be construed to designate lines of legally subdivided lots or parcels. Although the map attached as Addendum A.3 identified the Ag Lot (and other agricultural lots within the Project as a "unit", the Ag Lot is not currently designated as a separate condominium unit under HRS Chapter 514B or any other applicable law. Facilities and improvements normally associated with County-approved subdivisions, such as improved access for owner and emergency traffic, fire protection devices, electric, water, sewer and drainage facilities, are not provided and services such as street maintenance and trash collection may not be available to the Property. The Ag Lot will not be considered a legally subdivided lot for purposes of zoning compliance and permitting, and any outstanding violations affecting the legally subdivided lot(s) of which the Ag Lot is a part may adversely impact Licensee's ability to obtain any necessary permits for Licensee's proposed improvements to the Ag Lot. Licensor shall not have any obligation to enforce, correct or otherwise

address any zoning, building code or other violations which may be present, at any time and from time to time, at the Property, and Licensor makes no representations or warranties with respect to Licensee's ability to obtain any permits or satisfy any other legal requirements to construction any improvements on the Ag Lot.

**20. Encumbrances That May Adversely Affect the Property and This Agreement.**

a. Agreement for Issuance of Conditional Use Permit. The Property, including the Ag Lot, is subject to that certain Agreement for Issuance of Conditional Use Permit Under Section 21-5.380 of the Land Use Ordinance (LUO) dated July 6, 2011 and recorded in the Bureau as Document No. 2011-155418 (the "**CUP Agreement**"), which was entered into in connection with an application for a conditional use permit covering the Property and certain parcels adjacent thereto (the "**CUP**"). Pursuant to the CUP Agreement, the Property and the adjacent parcels set forth in the CUP are considered to be one zoning lot and must be jointly developed. Licensee is hereby advised that the CUP and CUP Agreement (if not removed from title to the Property) may substantially and materially adversely impact the Property and/or the intended Development, including, by way of example and not limitation, by (i) preventing or impeding the intended Development, including, but not limited to, the creation of the Project, the CPR Ag Lots, the Plantation Camp, Organic Designated Lots and/or the provision of water service to the Property; (ii) rendering the right of first offer (as described in Addendum C) invalid; (iii) preventing or inhibiting financing of the Property or any Ag Lot or CPR Ag Lot; (iv) preventing or inhibiting Licensee's intended operations and uses of its Ag Lot, and/or (v) delaying Licensor's acquisition of the Property and/or the Development. Licensor is attempting to obtain a copy of the CUP and determine whether Licensor or Dole can remove the CUP and CUP Agreement from title to the Property or otherwise mitigate the adverse impacts caused thereby. In the event Licensor determines, in its sole discretion, that the CUP and the CUP Agreement cannot be removed from title or would otherwise have a substantial material adverse effect on the Property and/or the intended Development thereof, Licensor may terminate this Agreement pursuant to Sections 3.b and 3.c of Addendum A.1.

b. Memorandum of Agreement Regarding Joint Development. The Property, including the Ag Lot, is subject to that certain Memorandum of Agreement Regarding Joint Development dated September 30, 2011 and recorded in the Bureau as Document No. 2011-159694 (the "**Memorandum of JDA**") by and between Dole and Pioneer Hi-Bred International, Inc. ("**Pioneer**"), which Memorandum of JDA provides very limited information regard a certain unrecorded Agreement Regarding Joint Development (the "**JDA**") entered into by Dole and Pioneer. Based on the Memorandum of JDA, the JDA appears to provide a right of first offer for and a right to a drainage easement over the Property in favor of Pioneer. Licensee is hereby advised that the JDA (if not terminated) could substantially and materially adversely impact the Property, Licensor's purchase thereof and/or the intended Development, including, by way of example and not limitation, by (i) preventing or inhibiting Licensor from purchasing the Property; (ii) preventing or impeding the intended Development, including, but not limited to, the creation of the Project, the CPR Ag Lots, the Plantation Camp, Organic Designated Lots and/or the provision of water service to the Property; and/or (iii) delaying Licensor's acquisition of the Property. Licensor is attempting to obtain a copy of the JDA and determine whether Licensor or Dole can terminate the JDA and remove the Memorandum of JDA from title to the Property, or otherwise mitigate the adverse impacts caused thereby. In the event Licensor determines, in its sole discretion, that the JDA and the Memorandum of JDA cannot be removed from title or would otherwise have a substantial material adverse effect on the Property, Licensor's acquisition thereof and/or the intended Development thereof, Licensor may terminate this Agreement pursuant to Sections 3.b and 3.c of Addendum A.1.

**21. Risks Related to Making a Loan.** The Loan being made by Licensee to Licensor will be unsecured and the punctual repayment of the Loan will not be guaranteed by any other party. Licensee understands that (a) there are significant risks associated with lending money, including

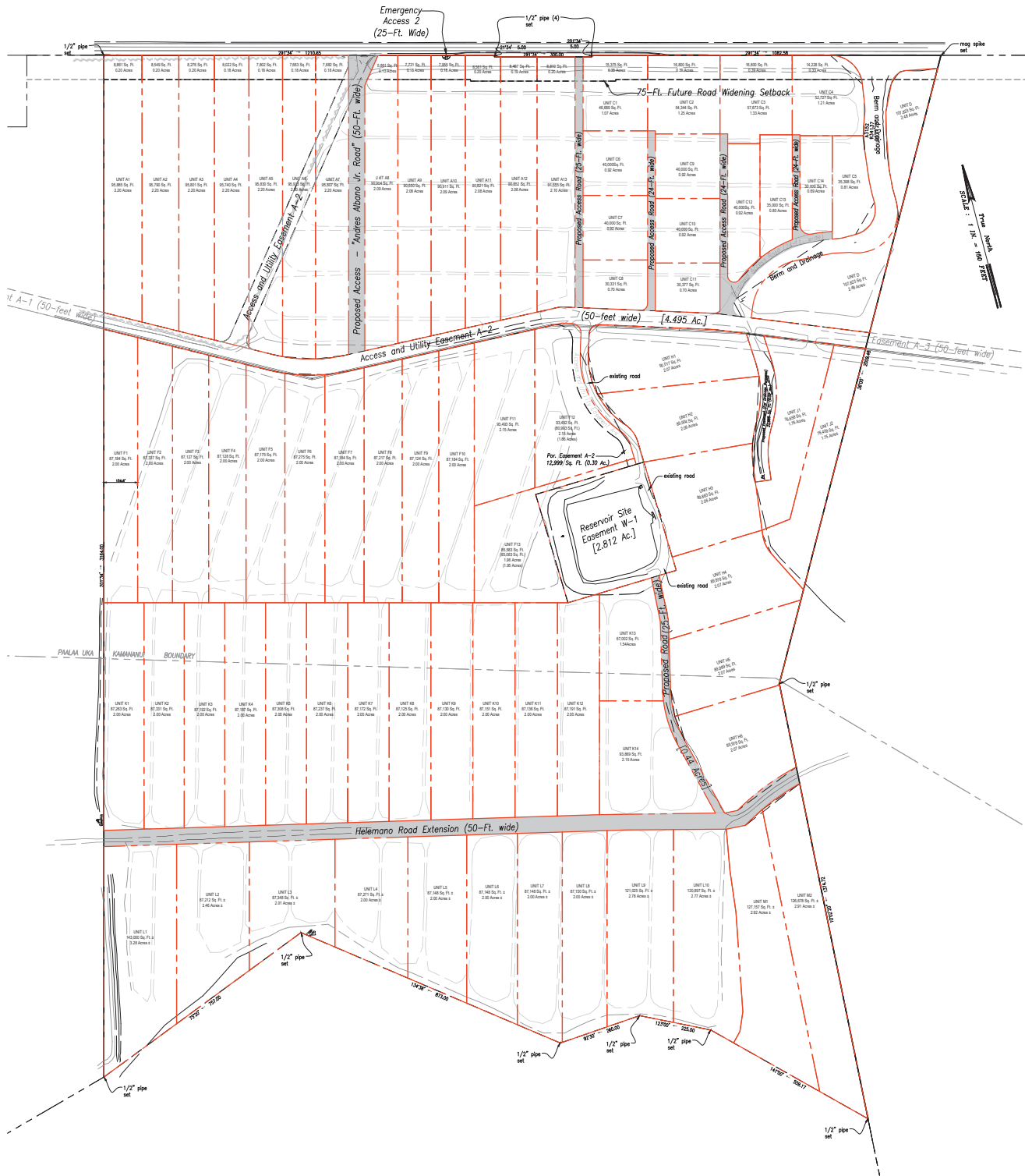
the possibility that the borrower may not be able to repay the loan on a timely basis (or at all); (b) because the Loan is unsecured, Licensee will not have any recourse to any collateral or other property of Licensor if Licensor defaults on its obligation to timely repay the Loan; (c) even if Licensee's financial circumstances change such that Licensee needs the funds loaned to Licensor before the Loan matures, Licensor will not be required to repay the Loan or pay Licensee any interest accrued thereon until the maturity date (which may be up to three (3) years after the Commencement Date); (d) termination of this Agreement by either party will not affect the Loan or require Licensor to immediately repay the Loan (it being understood that Licensor does not need to repay the Loan or any interest accrued thereon until the maturity date even if this Agreement is terminated); and (e) the rate of interest payable under the Loan is fixed for the entire term of the Loan and may not provide Licensee with the highest or best rate of return that Licensee may now or at any time in the future be able to earn on the proceeds of the Loan. Licensee is encouraged to consult with its legal, tax and other advisors with respect to the Loan, the risks related to thereto and the tax and other treatment thereof.

**22. Tax Map Key Numbers.** The City and County of Honolulu has not issued a separate tax map key number for the Ag Lot and the Ag Lot is not separately assessed from other portions of the Property for purposes of establishing real property taxes. The absence of a separate tax map key number for the Ag Lot may, among other things, materially limit Licensee's ability to obtain, or even prevent Licensee from obtaining, permits and other necessary governmental approvals for Licensee's proposed uses of and improvements to the Ag Lot, and financing for the Ag Lot or Licensee's operations in or upon the Ag Lot. The foregoing shall not be construed to imply, or as a representation or warranty from Licensor, that either (a) a tax map key number will be issued for the Ag Lot prior to the Development and conversion of the Ag Lot to a CPR Ag Lot or (b) such permits, approvals or financing will be available once the tax map key number is issued for the Ag Lot or the Converted CPR Ag Lot.

**23. Due Diligence.** By signing this Agreement, Licensee acknowledges that it had the opportunity (or will have the opportunity) prior to the Pre-Closing Termination Deadline to conduct any diligence with respect to this Agreement, the Ag Lot and the Property and all matters related thereto as Licensee deems appropriate, including the opportunity to engage and consult with its own legal, tax or other consultants with respect to this Agreement, the arrangements contemplated herein, and the Ag Lot and the Property.

**End of Addendum A.2**

## Addendum A.3 - Map Depicting Ag Lot



This map is intended to show the general layout, relative location, designations and approximate area of the Ag Lots within the Property. This map is not intended and shall not be deemed to contain any representations or warranties whatsoever. Prospective licensees should undertake independent inspection and verification of the Property and the Ag Lot. Licensor may change the layout, locations, dimensions and areas of the Ag Lots and other areas shown on this map. Although the Ag Lots shown on this map are designated as "units", the Ag Lots have not yet been created as separate condominium units.

**End of Addendum A.3**

## Addendum B – General Terms

### **THIS ADDENDUM B SHALL AUTOMATICALLY BECOME EFFECTIVE AS OF THE COMMENCEMENT DATE**

#### **1. Agreement to License.**

a. Agreement to License. Commencing on the Commencement Date and subject to the terms and conditions of this Agreement, the Licensor hereby licenses to Licensee, and Licensee hereby licenses from Licensor, the Ag Lot for the Term.

b. AS-IS; WHERE-IS. By signing this Agreement, Licensee acknowledges and agrees that: (i) Licensee has had an opportunity to inspect, and has inspected, the Ag Lot and is satisfied with the condition of the Ag Lot, (ii) none of Licensor, its agents, representatives, or affiliates have made any representations or implied or express warranties, including implied warranties of merchantability or fitness for a particular purpose, with respect to the condition or use of the Ag Lot, (iii) Licensee is relying solely on its own investigation and inspection of the Ag Lot and is not relying on any statements, whether written or oral, documents or other information provided by Licensor or its agents, representative or affiliates, and (iv) Licensee accepts the Ag Lot in AS-IS, WHERE-IS and WITH ALL FAULTS condition.

c. Assumption of Risk. Licensee hereby accepts and assumes all risks (i) with respect to Licensee's possession and use of the Ag Lot and the Property and the condition thereof, including, without limitation any Hazardous Materials (as defined below) on the Ag Lot or the Property, the compliance (or noncompliance) of the Ag Lot and the Property with applicable laws, or any easements and any dangerous conditions (latent or patent) on the Ag Lot or the Property; and (ii) of personal injury, wrongful death and of loss of or damage to property, by whomsoever owned, occurring in or upon the Ag Lot or the Property, or arising from or in connection with the use and occupancy of the Ag Lot or the Property by Licensee or its guests, invitees, licensees, or sublicensees, or caused by any accident or fire on the Ag Lot or the Property, or occasioned by any nuisance made or suffered thereon, or resulting from any failure on the part of Licensee to conform to or observe all applicable laws or to maintain the Ag Lot in a good or safe condition. Licensee hereby waives and releases Licensor, its affiliates and their respective officers, directors, owners, agents and employees from any and all claims, liability, damages, or other loss arising from the same, except to the extent caused by the gross negligence or willful misconduct of Licensor.

#### **2. Term; Termination.**

a. Term. The Term of this Agreement shall be as set forth in Section 1(d) of the Specific Provisions of this Agreement, unless sooner terminated as provided in this Agreement.

b. Termination for Convenience. Except as expressly provided herein, Licensor and Licensee shall each have a right to terminate this Agreement for convenience any time after the Commencement Date for any reason or no reason, without penalty, by providing written notice (the "**Termination Notice**") to the other party not less than thirty (30) days prior to the termination date.

c. Termination by Licensor for Breach or Default by Licensee. Licensor may terminate this Agreement for a breach or default by Licensee in accordance with Section 18 below by providing Licensee with a Termination Notice, which will be effective as of the later of the date the Termination Notice is delivered or such later date identified in the Termination Notice.

d. Following Termination. Licensee's obligation to pay any outstanding amounts owed and accrued under this Agreement prior to the termination date shall survive the expiration or sooner termination of this Agreement. If this Agreement is terminated by Licensor, Licensor may, but shall not be obligated to, permit Licensee to harvest crops planted in the Ag Lot subject to the terms of this Agreement. Unless Licensor permits Licensee to harvest such crops or otherwise elects to require Licensee to remove such crops from the Ag Lot, any crops located on the Ag Lot upon termination shall be the property of Licensor and Licensee waives any and all rights to the same. In no event shall Licensor be liable for any damages, including lost profits, suffered by Licensee as a result of the expiration or earlier termination of this Agreement. Upon delivery of the Termination Notice, Licensor may market the Ag Lot for license to any third parties and conduct all activities that may be incidental thereto, including, without limitation, accessing the Ag Lot.

e. Repayment of Loan. The termination of this Agreement shall not affect the maturity of the Loan, and Licensor shall not be required to repay the Loan or any interest which may accrue thereon until the maturity date (as the same may be extended in accordance with the Note).

**3. Monthly License Fee and Other Recurring Charges.** During the Term of this Agreement, Licensee acknowledges and agrees that it shall pay to Licensor, at its business and post office address, the monthly License Fee and other amounts set forth in this Section 3.

a. Monthly License Fee. For each month during the Term of this Agreement, Licensee shall pay to Licensor, in advance on or before the first day of each calendar month, the License Fee in the amount set forth in Section 1(g) of the Specific Provisions in lawful money of the United States of America. The Licensee fee for any partial month shall be prorated accordingly. For so long as the Loan remains outstanding, Licensor may, at its election, credit or setoff the Licensee Fee (and the general excise taxes payable with respect thereto) against any outstanding principal or interest owed under the terms of the Note even if such principal or interest is not yet due and payable under the terms of the Note.

b. Operating Expense Contribution. In order to defray a portion of the costs incurred by Licensor to operate the Property, Licensee shall pay to Licensor each month in advance on or before the first day of each month a fixed monthly Operating Expense Contribution in the amount set forth in Section 1(i) of the Specific Provisions of this Agreement. Once the CPR Association begins assessing common expenses against the Converted CPR Ag Lot (defined in Addendum A.2), Licensor may provide Licensee with written notice thereof and thereafter the monthly Operating Expense Contribution shall be adjusted to equal the actual amount of common expenses assessed by the CPR Association against the Converted CPR Ag Lot.

c. Real Property Taxes. Licensee shall pay to Licensor, within thirty (30) days after Licensor invoices Licensee therefor, Licensee's proportionate share of all real property taxes assessed against the Property. Licensor will invoice Licensee for real property taxes on a semi-annual basis following receipt of the real property tax bills for the Property. For purposes of this Agreement, Licensee's "proportionate share" shall be equal to the number of acres within the Ag Lot divided by the number of acres in the Property designated by Licensor for license by Licensor from time to time (regardless of whether such agricultural lots are actually licensed). Following the issuance of a separate tax map key number and real property tax bill for the Converted CPR Ag Lot, Licensee shall pay, in lieu of its proportionate share of real property tax, the actual amount of real property taxes assessed against the Converted CPR Ag Lot.

d. Water Utility Fee. Once non-potable water is made available to the Ag Lot, Licensee shall pay a monthly Water Utility Fee. The monthly Water Utility Fee shall initially be fixed at the amount set forth in Section 1(j) of the Specific Provisions. Following the installation of a water meter

for the Ag Lot, Licensor may, following notice to Licensee, adjust the Water Utility Fee from time to time to the amount determined by multiplying (i) the amount of water (measured in gallons) used by Licensee as determined by periodic readings of Licensee's water meter and (ii) the then applicable rates being charged for water under the Water Facilities Agreement (or any replacement water facilities agreement under which water is being provided to the Property). Water Utility Fees will be billed not less frequently than quarterly and shall be paid by Licensee no later than thirty (30) days of its receipt of an invoice for such charges.

e. General Excise Tax. In addition to any payment made by Licensee under this Agreement (whether actually paid by Licensee or deemed to be paid to Licensor through setoff or otherwise), Licensee shall pay Licensor the Hawaii general excise tax (currently 4.712%) related to such payment.

**4. Reserved.**

**5. Right to Enter and Use Ag Lot.** Provided that Licensee pays all applicable amounts payable under this Agreement in a timely manner and otherwise complies with all terms and conditions of this Agreement, Licensee may enter upon and use the Ag Lot, on an exclusive basis, for the Term of this Agreement without hindrance or interruption by Licensor or any other person or persons lawfully claiming by, through or under Licensor, except as otherwise expressly provided by this Agreement, subject to the parties' mutual termination rights as set forth in Section 3 above.

**6. Use.**

a. As of the Agreement Date, the Ag Lot is in the State Agricultural District and zoned AG-1, Restricted Agricultural. All uses of the Ag Lot must comply with all laws, including the State Land Use Law, the Land Use Ordinance, applicable subdivision laws, and all regulations, codes, rules, and ordinances applicable thereto.

b. Licensee shall not restrict, impede, change, modify or otherwise affect in any material way the groundwater or drainage patterns of the Ag Lot without the Licensor's prior written consent, including, without limitation, digging ditches, constructing, modifying or removing dams, berms or diversions, and adding, filling or otherwise altering the slope or topography of the Ag Lot. Licensee shall not dig any water wells on the Ag Lot or in the Property.

c. Licensee shall not install any improvements or build, construct or place upon the Ag Lot any building, dwelling, structure, or other improvement or storage container of any kind, regardless of whether temporary or permanent, unless Licensee shall have obtained Licensor's prior written approval for the same. Without limiting other remedies available to Licensor under this Agreement, at law or in equity, Licensor shall have the right, upon not less than twenty (20) days prior written notice to Licensee, to enter the Ag Lot and remove, at Licensee's sole cost and expense, any improvement which was built, constructed or placed upon the Ag Lot without Licensor's approval or is otherwise not permitted under the terms this Agreement, the CPR Documents, and applicable law.

d. Any trees, crops, plantings or improvements located on the Ag Lot that exceed three (3) feet in height shall be set back from all common boundaries shared by the Ag Lot and another lot within the Property a minimum of one foot for every foot that such tree or crop exceeds three (3) feet in height (the "**Setback Area**").

e. The use of the Ag Lot shall at all times be subject to the CPR Documents and any and all other reasonable rules established by Licensor, as may be amended from time to time.

f. In addition to the provisions of this Section 6, Licensee's use of the Ag Lot is specifically subject to the disclosures set forth in Addendum A.2 appended to this Agreement.

**7. Maintenance and Repair of Ag Lot.** During the Term, Licensee, at Licensee's sole cost and expense, shall (a) keep and maintain the Ag Lot, including shared drainage and other common infrastructure situated thereupon, in good clean condition, and (b) shall maintain, replace and repair all improvements that exclusively serve the Ag Lot and (i) exist in or upon the Ag Lot as of the Agreement Date, (ii) are later constructed or installed by Licensee, or (iii) may be required by law to be made, built, maintained, replaced and repaired upon the Ag Lot.

**8. Observance of Laws; Compliance with CPR Documents and Policies and Procedures of Licensor.** Licensee will, at all times during the Term, observe, abide by, and comply with all laws, ordinances, rules and regulations, now existing or hereafter made by any government authority, that are applicable to the Ag Lot and/or the Licensee's use thereof. Licensee further agrees that it shall comply with, abide by, and be bound by all CPR Documents and all rules, policies, and procedures now or hereafter issued by Licensor applicable to the Ag Lot and/or the uses thereof, and to any and all amendments duly adopted to any of said rules, policies, or procedures.

**9. Prohibition Against Strip or Waste.** Licensee will not commit, or permit any third party under its control to commit, any strip or waste or unlawful, improper or offensive use of the Ag Lot, the Property or any other property owned or licensed by Licensor.

**10. Assignment, Mortgage or Agreement.** Licensee will not, without the prior written consent of Licensor, assign, mortgage or otherwise encumber or transfer the Ag Lot or Licensee's interest therein, or sublet or part with possession or control of all or any part of the Ag Lot, and any attempt to do so without Licensor's prior written approval shall be void and shall constitute a default by Licensee under this Agreement. Licensor may, at its sole discretion, assign, pledge, hypothecate or otherwise transfer Licensor's interest under this Agreement without prior consent of or notice to Licensee. Notwithstanding anything in this Agreement to the contrary, upon any assignment of this Agreement by Licensee, Licensee shall remain liable for any and all defaults, damages or liabilities arising in connection with this Agreement regardless of when the same shall accrue.

**11. Indemnification.** Licensee will indemnify, defend and hold Licensor, its affiliates and their respective officers, directors, owners, agents and employees harmless from and against any and all claims, causes of action, suits, liability, demands, losses, costs and expenses (including reasonable attorneys' fees), fines, penalties, and damages, including property damage, personal injury and wrongful death, arising out of any act or omission of Licensee, or any person claiming by, through or under Licensee, in connection with the Ag Lot, the Property, or this Agreement.

**12. Surrender of Ag Lot and Who Owns Improvements.** Upon expiration or sooner termination of this Agreement, Licensee will peaceably deliver up to Licensor possession of the Ag Lot, including all improvements, fixtures, buildings and other structures upon the Ag Lot, in good order, condition and repair, and in a condition that is substantially similar to or better than the condition of the Ag Lot as of the Commencement Date of this Agreement. All improvements or other items existing, built, constructed or installed in or upon the Ag Lot at any time shall belong to the Licensor upon the expiration or sooner termination of this Agreement; provided, however, Licensee shall at the request of Licensor remove any such improvements and other items identified by Licensor upon the expiration or sooner termination of this Agreement. Notwithstanding the foregoing, provided Licensee is not then in default under this Agreement, Licensee may, at its sole cost and expense, remove Licensee's personal property and trade fixtures installed by Licensee during the Term, and shall repair and correct any damage, modification or other effects to the Ag Lot



as a result of such removal. Licensee's obligations under this Section 12 shall survive the expiration or sooner termination of this Agreement.

**13. Restriction Against the General Public; Indemnity.** Licensee shall not permit members of the general public to enter onto the Ag Lot for any purpose without the prior written approval of Licensor, which may be withheld or conditioned at Licensor's sole discretion, and until such time as Licensee obtains a commercial liability insurance policy acceptable to Licensor, naming Licensor as an additional insured. Licensee shall indemnify, defend and hold Licensor harmless from any and all claims, causes of action, suits, liability, demands, losses, costs and expenses (including reasonable attorneys' fees), fines, penalties, and damages, including property damage, personal injury and wrongful death, arising out of or in connection with Licensee's violation of this Section 13.

**14. Insurance.** At all times during the Term, Licensee shall keep in force, at its own expense, such policies of insurance, with coverages and amounts of coverage reasonably required by Licensor from time to time. At a minimum (but without limiting Licensor's right to establish additional coverages and higher amounts of coverage as Licensor may reasonably require from time to time), Licensee shall maintain (a) commercial general liability insurance covering personal injury, bodily injury, and products and completed operations liability, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (b) automobile liability coverage with a combined single limit for bodily injury and property damage not less than \$1,000,000; and (c) worker's compensation as required by applicable law and employer's liability coverage of not less than \$1,000,000 (bodily injury each accident), \$500,000 (bodily injury by disease for each employee), and \$500,000 (bodily injury/disease aggregate). All policies required to be maintained by Licensee pursuant to this Agreement shall be issued in a form acceptable to Licensor by insurance companies having and maintaining at least an A-VI rating in the most current available "Best's Rating Guide" and qualified to do business in the State of Hawaii. Prior to taking possession of the Ag Lot, Licensee shall furnish Licensor with certificates of insurance evidencing the policies required hereunder in form and content reasonably acceptable to Licensor. Such certificates shall name as additional insureds Licensor and all persons who may be reasonably required by Licensor from time to time. At least ten (10) days prior to the expiration date of any such policy of insurance, Licensee shall deposit with Licensor renewal certificates of insurance. If requested by Licensor, Licensee shall deliver to Licensor true and complete copies of any or all insurance policies required by this Agreement. Licensee shall notify Licensor in writing at least thirty (30) days prior to the cancellation or reduction of any insurance required hereunder.

**15. Liens.** Licensee promises at all times to keep the Ag Lot and the Property free and clear of any and all mechanic or materialmen's liens, or any other encumbrance caused by acts or omissions of the Licensee or those claiming under the Licensee.

**16. Total or Partial Taking.**

a. Condemnation of the Entire Ag Lot. If the whole of the Ag Lot is taken by: (i) the exercise of any governmental power of eminent domain, whether by legal proceedings or otherwise by any public or quasi-public authority, or private corporation or individual, having power of condemnation (collectively, "**Condemner**"); or (ii) the voluntary sale or transfer to any Condemner either under threat of condemnation or while legal proceedings for condemnation are pending (collectively, "**Condemnation**"), this Agreement shall terminate on the date that the Condemnation is consummated and Licensor shall be entitled to the Condemnation proceeds for the Ag Lot. Upon termination of this Agreement under this Section 16.a, Licensor and Licensee shall have no further obligations to each other with respect to this Agreement except such obligations as are intended to specifically survive the termination hereof. For avoidance of doubt, in the event this Agreement is terminated under this Section 16.a, the Note shall remain in full force and effect and shall not be affected by the termination of this Agreement pursuant to this Section 16.a.

b. Condemnation of a Portion of the Ag Lot. If only a portion of the Ag Lot is taken by Condemnation, this Agreement shall partially terminate with regard to any portion of the Ag Lot affected by such Condemnation unless either party elects to terminate this Agreement entirely in accordance with Section 2 above. In any event, Licensor shall be entitled to the Condemnation proceeds for the Ag Lot (or the portion subject to the Condemnation). If this Agreement is only partially terminated, then the Agreement shall be amended to, among other things, reflect the reduced area of the Ag Lot and the reduced 99-Year License Acquisition Fee, which reduced fee will be calculated on a per-square-foot basis at a rate of \$130,000.00 per acre with respect to the remaining portion of the Ag Lot. For avoidance of doubt, in the event this Agreement is partially terminated under this Section 16.b, the Note shall remain in full force and effect and shall not be affected by the termination of this Agreement pursuant to this Section 16.b.

**17. Waiver.** Neither the acceptance by Licensor of any payment by the Licensee, nor any failure by Licensor to exercise, nor any delay in exercising, any right, power or privilege of Licensor under this Agreement, shall operate as a waiver of any term or condition of this Agreement, or a waiver of any breach by the Licensee of its duties and obligations under this Agreement. Any waiver, permit, consent or approval of any kind by Licensor must be in writing and shall be effective only as to the extent set forth in writing.

**18. Default; Remedies.** If the Licensee shall fail to observe or perform any of the covenants and obligations contained in this Agreement, or shall fail to pay amounts payable when the same shall become due, and such default continues for ten (10) days after written notice by Licensor, or if Licensee shall abandon the Ag Lot, or suffer this Agreement or any interest hereunder to be taken under any writ of attachment or execution, then upon any one of those events, Licensor may at once enter into and retake possession of the Ag Lot or any part thereof and at its option terminate this Agreement in accordance with Section 2.c above. Upon taking possession of the Ag Lot, the Licensor shall, at its option, become wholly vested and own all of the right, title and interest that the Licensee had in the Ag Lot, including any improvements, tools, equipment and other personal property situated in or upon the Ag Lot, and may expel and remove from the Ag Lot the Licensee or others claiming under the Licensee, all without service of notice or any obligation to resort to any legal process, and without liability for any trespass, loss or damage which may result from such action by Licensor. In the event of a default under this Agreement by Licensee, Licensee shall be responsible, and shall reimburse Licensor upon demand, for any and all damages, costs and expenses incurred or suffered by Licensor in connection with the enforcement of Licensee's obligations under this Agreement or resulting from Licensee's breach of default hereof; and, Licensor may, at its option, offset such damages, costs and expenses against any amounts owed by Licensor to Licensee, including any outstanding principal and interest under the Loan.

**19. Easements and Roadways.**

a. Licensee shall have a non-exclusive right and license to enter upon, over and across the roads and similar common areas in the Property, as designated by Licensor from time to time, whether existing on the Commencement Date or later developed, for the sole purpose of ingress and egress to and from the Ag Lot, subject to any and all rules promulgated by Licensor and/or the CPR Association from time to time.

b. No roadways or portions thereof situated within or upon the Ag Lot and designated by the CPR Documents as common elements, or designated by Licensor or the CPR Association from time to time for the common use of other owners of lots within the Property, whether existing on the Commencement Date or later developed, whether paved or unpaved and whether or not specifically mentioned in the property description, may be removed, restricted or otherwise modified by Licensee without Licensor's prior written consent, which may be withheld at Licensor's sole

discretion. Other owners of lots within the Property shall have a non-exclusive right and license to use all such common roads for access purposes.

c. Licensee further acknowledges that Licensee is prohibited from parking on all common roadways.

**20. Land Clearing and Tree Removal.** No grading, land clearing or other activity that involves the removal of one or more trees with tree trunks more than six (6) inches in diameter at the base will be permitted without the prior written consent of the Licensor. In the event Licensee wishes to engage in land clearing or tree cutting that would remove one or more trees with trunks more than six (6) inches in diameter, Licensee shall (a) submit to Licensor a proposed written plan and a map showing which trees are proposed for removal and which are to be retained and (b) obtain Licensor's written approval prior to commencing such work.

**21. Hazardous Materials.**

a. Compliance. Licensee shall at all times during the Term keep the Ag Lot (and improvements thereon) free of any and all flammable explosives, radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, petroleum, petroleum products, mold, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous chemicals", or "toxic substances" (collectively, "**Hazardous Materials**") under any laws now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials on, under or about the Ag Lot and improvements thereon, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 6901 et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, Hawaii Revised Statutes Chapter 128-D as amended from time to time and any other Laws now or hereafter adopted, published and/or promulgated with respect to Hazardous Materials (collectively, the "**Hazardous Materials Laws**"). Licensee shall keep and maintain the Ag Lot and all improvements thereon and shall not cause or knowingly permit the Ag Lot or the Property or real property adjacent thereto (including the ground water on or under the same) to be in violation of any Hazardous Materials Laws. Licensee shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or knowingly allow to exist on, under or above the Ag Lot or the Property or any improvements thereon, any Hazardous Materials.

b. Reporting. Upon becoming aware of any of the following, Licensee shall immediately advise Licensor in writing of (i) any and all enforcement, clean up, removal, mitigation, or other governmental or regulatory action instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Ag Lot or the Property or any improvements thereon, (ii) all claims made or threatened by any third party against Licensor, Licensee, the Ag Lot or the Property or any improvements thereon relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials or violation of or compliance with any Hazardous Materials Laws, and (iii) Licensee's discovery of any occurrence or condition on the Ag Lot or the Property or any improvements thereon or any real property adjoining or in the vicinity of the Ag Lot or the Property which could subject Licensor, Licensee, the Ag Lot or the Property or any improvements thereon to any restrictions on ownership, occupancy, transferability or use thereof under any Hazardous Materials Laws.

c. **Indemnity.** Licensee shall defend, indemnify and hold harmless Licensor, its affiliates and their respective officers, directors, owners, agents and employees, from all claims, suits, actions, debts, losses, damages (including foreseeable and unforeseen consequential damages), judgments, liabilities, costs and expenses (including reasonable attorney's fees), of any nature whatsoever, arising out of or relating to the presence of any of Hazardous Materials on, within, under or about the Ag Lot, the Property or areas adjacent to the Ag Lot or the Property caused by or related to Licensee's use and occupancy of the Ag Lot or the Property, or Licensee's failure to comply with the provisions of this Section 21.

d. **Survival.** If the Commencement Date occurs, the obligations contained in this Section 21 shall survive the expiration or earlier termination of the Agreement.

**22. Exculpation.** Notwithstanding anything to the contrary contained in this Agreement, Licensor's liability under this Agreement for a default shall be limited to actual, direct, but not consequential, damages therefor and shall be recoverable only from Licensor's interest in the Property, and neither Licensor nor any of its affiliates, officers, directors, owners, agents or employees shall have any personal liability therefor or hereunder.

**23. Subordination.** This Agreement, and all rights of Licensee hereunder, shall be subordinate to (a) any mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the real property of which the Ag Lot is a part or any interest of Licensor therein and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof; (b) any reciprocal easement agreement, grant of easements, or declaration of conditions, covenants and restriction currently recorded against title to the Ag Lot or the Property, including any subsequent easements designed, granted, or reserved in accordance with any such agreement, grant or declaration currently encumbering the Ag Lot or the Property; and (c) the CPR Documents, as the same may be further amended from time to time. Licensee agrees to execute any documents required to effectuate the subordination provisions set forth above. Licensee does hereby make, constitute and irrevocably appoint Licensor as Licensee's attorney-in-fact and in Licensee's name, place and stead, to execute such documents in accordance with this Section 23.

**End of Addendum B**

## **Addendum C – Condominium Development; Right of First Offer**

### **THIS ADDENDUM C SHALL AUTOMATICALLY BECOME EFFECTIVE AS OF THE COMMENCEMENT DATE**

Unless otherwise defined herein, initially-capitalized words shall have the meanings given them in the other parts of this Agreement.

Licensee acknowledges that Licensor intends to pursue the Development of the Property as more particularly described in Addendum A.2. As an inducement to Licensor to enter into this Agreement and to pursue the Development and other improvements to the Property, and notwithstanding anything in this Agreement to the contrary, Licensee acknowledges and agrees as follows:

**1. CPR Documents.** In order to complete the Development, Licensor intends to (a) execute and record (as applicable) the CPR Documents to establish the Project, and (b) register the Project and the CPR Ag Lots (as defined in Addendum A.2) with the State of Hawaii Real Estate Commission (the “**REC**”) by filing a developer’s public report (and any amendment to or restatement of the developer’s public report for the Project) (the “**Public Report**”) for the Project in accordance with HRS Chapter 514B (as amended, the “**CPR Act**”). Upon the issuance of an effective date for the Public Report, Licensor will provide Licensee with a copy of the then-current CPR Documents, the Public Report, and all other documents, disclosures and receipts required under the CPR Act in connection with the sale of a CPR Ag Lot in the Project.

**2. Converted CPR Ag Lot.** As part of the Development, Licensor will create the Converted CPR Ag Lot (being a CPR Ag Lot that is approximately the same general size, configuration and location as the Ag Lot). Licensee acknowledges, understands and agrees that due to various factors, including (a) the relative accuracy of the map depicting the Ag Lot attached hereto and the means by which the Ag Lot was located and identified on the ground, (b) variations in surveying techniques and accuracies, and (c) the topography of the Property, the Converted CPR Ag Lot may not be in exactly the same location or configuration or contain exactly the same area as the Ag Lot. Licensee releases and waives any and all claims related to such differences.

**3. Right of First Offer.** For so long as this Agreement remains in full force and effect and Licensee is not in default under the terms of this Agreement, Licensee shall have a right of first offer to purchase the Converted CPR Ag Lot in accordance with this Section 3.

a. Sale Notice. Following the issuance of an effective date for the Public Report, and provided that Licensee is not then in default under this Agreement, Licensor shall deliver to Licensee (along with the other documents to be delivered under Section 1 above) a notice containing the purchase price at which Licensor is willing to sell the Converted CPR Ag Lot to Licensee (the “**Sale Notice**”).

b. Exercise. Licensee shall have thirty (30) days from the delivery date of the Sale Notice (the “**Exercise Deadline**”) to enter into a purchase contract, on the standard Project form filed with the REC in connection with the Public Report, pursuant to which Licensee will purchase the Converted CPR Ag Lot at the purchase price set forth in the Sale Notice and thereafter to acquire the Converted CPR Ag Lot in accordance with such purchase contract.

c. Waiver of Right of First Offer. If Licensee does not enter into a purchase contract by the Exercise Deadline for any reason other than a default by Licensor under this Agreement or Licensee does not thereafter acquire the Converted CPR Ag Lot in accordance with the terms of the

purchase contract, Licensee's right of first offer to purchase the Converted CPR Ag Lot shall be deemed waived and of no further force or effect, and Licensor shall have the right to (i) terminate this Agreement pursuant to Section 2.b of Addendum B and (ii) regardless of whether Licensor terminates this Agreement, market and sell the Converted CPR Ag Lot to a third party.

d. Termination of the Agreement. If this Agreement is terminated for any reason, the right of first offer described in this Section 3 shall be null and void.

4. Reserved Rights. Licensor expressly reserves the right, in Licensor's sole discretion and without prior notice to Licensee, to modify the boundary lines and gross area of the Ag Lot, the Converted CPR Ag Lot, the location of roads and other common areas within the Project, the 99-Year License Acquisition Fee (as defined in Addendum D) and other amounts payable under this Agreement, and other aspects of the Ag Lot, the Converted CPR Ag Lot, the Project and this Agreement, as may be necessary or convenient to consummate the Development and the sale of one or more CPR Ag Lots. Licensee shall cooperate with Licensor to accomplish the foregoing, including, amending this Agreement to reflect any such modification within five (5) days of the written request of Licensor, at no cost to Licensee. Without limiting the generality of the foregoing, upon creation of the Converted CPR Ag Lot, the term Ag Lot shall automatically be modified to mean and refer to the Converted CPR Ag Lot, regardless of whether the boundaries of the Ag Lot identified on the Map attached as Addendum A.3 are modified as a result of the Redevelopment.

5. Indemnity. As an inducement to Licensor to enter into this Agreement and pursue the Development: (a) Licensee hereby fully and irrevocably waives and releases Licensor, and its members, managers, officers, agents, consultants, successors, assigns and affiliates, from any and all claims, actions, causes of action, demands, obligations, liabilities, expenses (including attorneys' fees) or damages, known or unknown, suspected or unsuspected, which Licensee has or may have, now or in the future, relating to or arising from the Development or this Agreement, except where caused solely by the gross negligence or willful misconduct of Licensor; and (b) Licensee will indemnify, defend and hold Licensor harmless from and against any and all claims, causes of action, suits, liability, demands, losses, costs and expenses (including reasonable attorneys' fees), fines, penalties, and damages, including property damage, personal injury and wrongful death, arising out of any act or omission of Licensee, or any person claiming by, through or under Licensee, in connection with the Ag Lot or this Agreement. The foregoing release is intended to be a general release, which specifically includes a release of claims that Licensee does not know or suspect to exist in favor of Licensee, and, if known by Licensee, would materially affect the Licensee's decision to execute this Agreement. This Section 5 shall survive the expiration or earlier termination of this Agreement.

6. Cooperation. The parties acknowledge that the completion of the Development requires and is dependent upon the cooperation of Licensor and Licensee. To facilitate such actions, Licensee hereby appoints Licensor and its assigns as Licensee's attorney-in-fact with full power of substitution to execute and record on behalf of Licensee any document deemed necessary or desirable by Licensor to complete the Development, and other transactions or actions contemplated in this Addendum, including without limitation: (a) the modification of the Project by recording one or more amendments, restatements, supplements or other modifications to the Declaration, Condominium Map and Bylaws at the Bureau of Conveyances of the State of Hawaii and/or the Office of the Assistant Registrar of the Land Court of the State of Hawaii; (b) filing of a developer's public report and any amendments thereto or restatements thereof with the REC; and (c) subordination of this Agreement to the CPR Documents as set forth in Section 7 below. Said power of attorney shall be coupled with an interest, shall be irrevocable, and shall not be affected by the death or disability of Licensee. Upon Licensor's request, Licensee shall execute and deliver to Licensor evidence of such power of attorney in form and with content acceptable to Licensor.

7. **Subordination**. This Agreement shall be subject to and subordinate at all times to the CPR Documents (including any and all amendments which may be made hereafter), without the necessity of any further instrument or act on the part of Licensee to effectuate such subordination. The subordination of Licensee's interest as herein provided shall be self-operating, and no further instrument or subordination shall be required. In confirmation of such subordination, Licensee agrees promptly to execute and deliver to Licensor any instrument that Licensor may require to evidence such subordination. If Licensee has failed to execute and deliver such instrument within ten (10) days after receipt thereof from Licensor, and Licensee further fails to execute and deliver said instrument within ten (10) days after receipt of written notice of said failure from Licensor, Licensee shall be deemed to have agreed to all of the provisions in such instruments.

**End of Addendum C**

## **Addendum D – Right to Purchase 99-Year License**

### **THIS ADDENDUM D SHALL AUTOMATICALLY BECOME EFFECTIVE AS OF THE COMMENCEMENT DATE**

Notwithstanding anything in this Agreement to the contrary, the parties agree that at any time prior to Licensor's issuance of a Sale Notice as contemplated in Addendum C hereto, and so long as Licensee is not in default under this Agreement, Licensee may elect to purchase a 99-Year license agreement covering the Ag Lot (a "**99-Year License Agreement**") upon the following terms and conditions:

1. **Notice of Intent.** If Licensee intends to purchase a 99-Year License Agreement, Licensee shall deliver to Licensor written notice of Licensee's intent to do so together with proof of sufficient funds (after deduction of the outstanding principal amount of the Loan and accrued but unpaid interest, if any) to pay the 99-Year License Acquisition Fee identified in Section 1(m) of the Specific Provisions ("**99-Year License Conversion Notice**")
2. **Form of 99-Year License Agreement.** Promptly upon Licensor's receipt of the 99- Year License Conversion Notice, Licensor shall provide Licensee with copy of Licensor's then current form of 99-Year License Agreement for Licensee's review.
3. **Closing.** On a date mutually agreed upon by the parties (the "**99-Year License Closing Date**"), but no later than five (5) business days following Licensor's delivery of the 99-Year License Agreement to Licensee, (a) Licensee shall pay to Licensor the 99-Year License Acquisition Fee identified in Section 1(m) of the Specific Provisions in full together with all amounts due and unpaid under this Agreement as of the 99-year License Closing Date, (b) Licensee and Licensor shall each execute and date the 99-Year License Agreement, (c) Licensee shall return to Licensor the original Note, and (d) this Agreement shall automatically terminate as of the 99-year License Closing Date.
4. **Modification of 99-Year License Acquisition Fee.** Notwithstanding anything to the contrary in this Agreement, Licensee acknowledges and agrees that the 99-Year License Acquisition Fee may be modified from time to time as a result of the Development (as described in Addendum A.2), and agrees to cooperate and take any action necessary or convenient to consummate such modifications, including, without limitation, amending this Agreement.
5. **Payment of 99-Year License Acquisition Fee.** The 99-Year License Acquisition Fee to be paid upon the 99-Year License Closing Date shall be reduced by the principal amount of the Loan and all accrued but unpaid interest on the Loan outstanding as of the 99-Year License Closing Date. The remainder of the 99-Year License Acquisition Fee shall be paid in cash or other form acceptable Licensor. In no event shall the License Fee or any other amounts paid by Licensee under this Agreement be applied as a credit to or an offset against the 99-Year License Acquisition Fee.
6. **Termination of this Agreement.** The fully executed 99-Year License Agreement shall supersede and replace this Agreement and, as of the effective date of the 99-Year License Agreement, this Agreement shall be of no further force or effect except for those provisions which are expressly intended to survive.

**End of Addendum D**



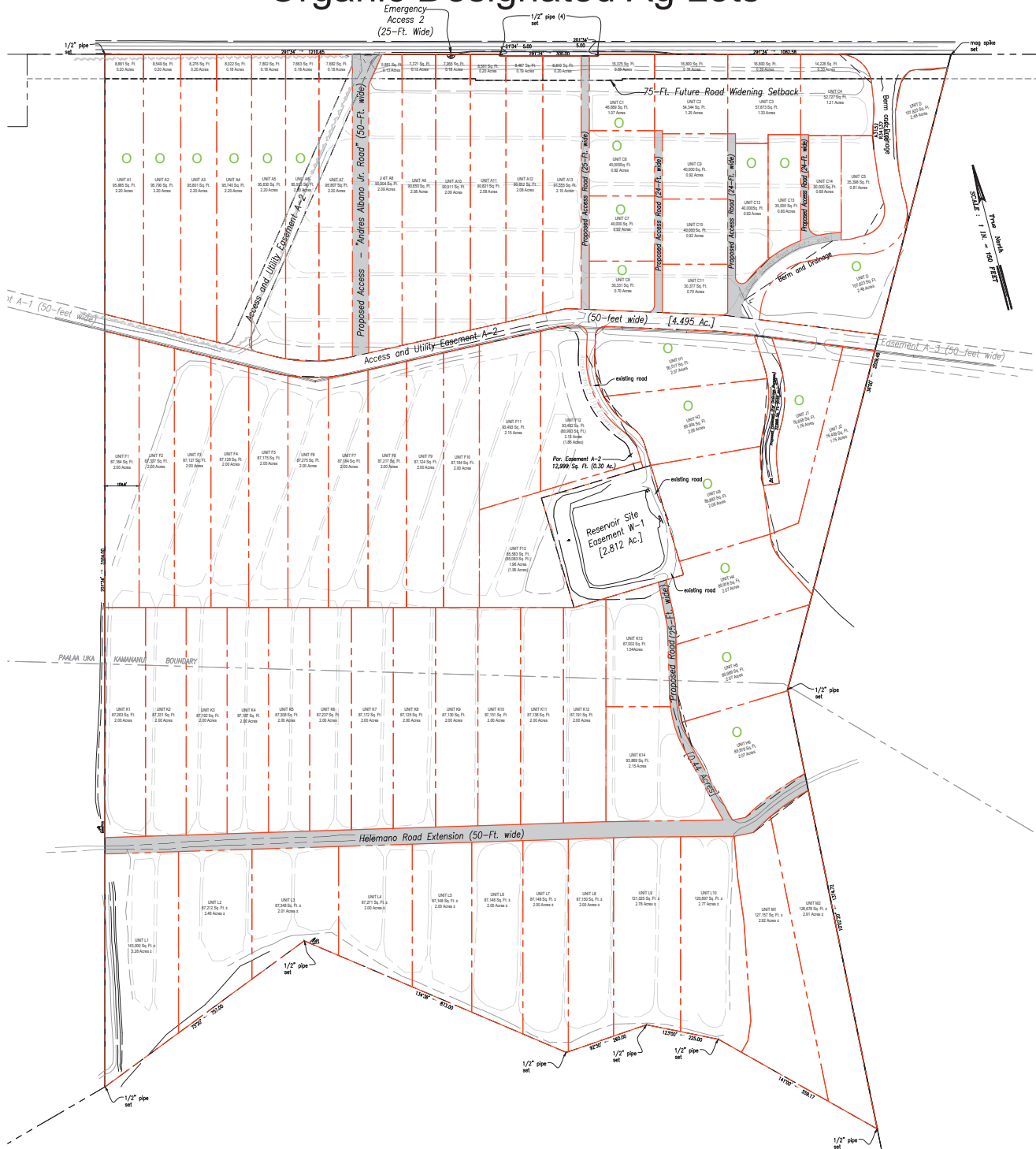
**Addendum E – Organic Designated Ag Lots**

**THIS ADDENDUM E SHALL AUTOMATICALLY BECOME EFFECTIVE AS OF THE  
COMMENCEMENT DATE**

1. The Ag Lots within the Property marked with an “O” on the map on the following page are the “Organic Designated Ag Lots”, as that term is defined in Addendum A.2.
  
2. If the Ag Lot is an Organic Designated Ag Lot, Licensee is responsible for ensuring that all farming operations at its Ag Lot comply with all applicable laws relating to the production, handling, processing, labeling and marketing of organic products, including but not limited to any regulations promulgated by the United States Department of Agriculture, as well as any rules, policies, and procedures now or hereafter issued by Licensor with respect to the Organic Designated Ag Lots.

*[Map appears on the following page]*

# Orchard Plantation Organic Designated Ag Lots



This map is intended to show the general layout, relative location, designations and approximate area of the Ag Lots within the Property. This map is not intended and shall not be deemed to contain any representations or warranties whatsoever. Prospective licensees should undertake independent inspection and verification of the Property and the Ag Lot. Licensor may change the layout, locations, dimensions and areas of the Ag Lots and other areas shown on this map. Although the Ag Lots shown on this map are designated as "units", the Ag Lots have not yet been created as separate condominium units.

**Legend:**

**O** - Organic Designated Ag Lot