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Commonwealth Recorder

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**DEPARTMENT OF PUBLIC LANDS
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**DEED OF TRANSFER AND CONSERVATION AGREEMENT TO TRANSFER
PUBLIC DOMAIN LANDS FROM THE DEPARTMENT OF PUBLIC LANDS,
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS TO THE
DEPARTMENT OF LANDS AND NATURAL RESOURCES, COMMONWEALTH OF
THE NORTHERN MARIANA ISLANDS FOR THE PROTECTION OF ENDANGERED
SPECIES**

This Deed of Transfer and Conservation Agreement (hereinafter referred to as “Agreement”), is made and entered into this 9th day of July, 2012, by and between the DEPARTMENT OF PUBLIC LANDS, established under Public Law No. 15-2, having the authority and responsibility over the management, use and disposition of public lands in the Commonwealth (hereinafter the “Grantor”), and the DEPARTMENT OF LANDS AND NATURAL RESOURCES (DLNR), located on Industrial Street and whose address is Caller Box 10007, Saipan MP, 96950 (hereinafter the “Grantee”).

RECITALS

WHEREAS, the Environmental Protection Agency (“EPA”) awarded the Grantor a Brownfields Assessment cooperative agreement in 2006, and a Brownfields Cleanup cooperative agreement in 2008 to assess and remove unexploded ordnance (“UXO”) located on the Marpi Point Village Homestead in Saipan. EPA’s award of the Brownfields cooperative agreements triggered compliance with the Endangered Species Act (ESA); and

WHEREAS, the EPA conducted a formal consultation under Section 7 of the ESA with

the U.S. Fish and Wildlife Service (USFWS) on the potential effects the UXO assessment and removal project may have on endangered and threatened species and their habitat in the area of the project; and

WHEREAS, on February 10, 2009, USFWS issued its Biological Opinion on the proposed project, which concluded the ESA consultation; and

WHEREAS, the Biological Opinion included numerous conservation measures that Grantor agreed to implement to avoid or minimize effects to the endangered Micronesian megapode (*megapodius laperouse*), and endangered nightingale reed-warbler (*Acrocephalus luscinia*), including:

(1) setting aside in perpetuity a portion of public lands located directly adjacent to the project site (approximately 31.2 ha, or 77 acres) for the protection and conservation for the nightingale reed-warbler (the “Conservation Area” identified on Figure 1) and not allowing any clearing, construction, recreation, or other activities that are incompatible with nightingale reed-warbler protection; and

(2) setting aside approximately 3 ha or 8 acres of pristine limestone forest within the project area to avoid impacts to the Micronesian megapode (the “Avoidance Area” identified on Figure 1); and

WHEREAS, sometime on or before June 2009, Grantor’s contractor inadvertently cleared about three to five acres out of the total eight acres of the Avoidance Area in violation of the conservation measures set forth in the Biological Opinion; and

WHEREAS, in August 2009, Grantor agreed to implement a Remediation Plan to address the damage its contractor caused to the Avoidance Area, including taking the following actions:

(1) setting aside in perpetuity, delineating, and marking an additional 17.6 ha (43.5 acres) of pristine limestone forest in the areas adjacent to the project for the conservation

and protection of the Micronesian megapode (the "Remediation Area" identified on Figure 1);

- (2) developing a reforestation plan which includes reforesting with native plant species the three to five acres of the Avoidance Area that had been cleared and protecting the Avoidance Area in perpetuity; and
- (3) increasing the number of site visits to the Avoidance, Remediation, and Conservation Areas to prevent reoccurrence, providing a copy of the proposed remediation plan to Grantor's contractor, and working with said contractor to properly delineate and mark the 43.5 acres of Remediation Area .

WHEREAS, all public lands in the Northern Mariana Islands belong collectively to the people of the Commonwealth and it is intended that the management and disposition of public lands should ultimately benefit the people of the Commonwealth; and

WHEREAS, Grantor has the authority, under Commonwealth Law, to manage the use and disposition of public lands and to transfer public lands to Grantee for managing lands restricted for wildlife conservation and to establish and record any and all requisite legal agreements binding in perpetuity against the three parcels identified herein, and Grantee has the authority to manage such public lands for wildlife conservation, eliminate incompatible uses of such public lands, and enforce the rules and other restrictions required by this Agreement; and

WHEREAS, a primary responsibility of Grantee is to conserve and protect fish, plant, and wildlife resources for the people of the Commonwealth's use and enjoyment.

DEED OF TRANSFER OF PUBLIC LANDS

NOW, THEREFORE, Grantor shall transfer the three parcels of public lands -- the Conservation Area, Avoidance Area, and Remediation Area -- to Grantee and Grantee shall

receive the transfer of the parcels and shall hold such properties in perpetuity subject to the terms of this Agreement; and shall manage the parcels for the protection of the endangered Micronesian megapode and nightingale reed warbler in accordance with the Biological Opinion and Remediation Plan;

FURTHER, in view of the above recitals, together with the public objectives to be accomplished, the Grantor, pursuant to its powers under the Constitution of the Northern Mariana Islands, Article XI, Section (5) (b) does by these presents hereby grant, remise, release, convey, and quitclaim forever to the Grantee, its successors and assigns, all of Grantor's right, title, interest, claim or demand in or to those parcels of public lands situated, lying and being located at Saipan, Northern Mariana Islands, and described as follows:

Part of Tract 1-2 in Marpi, Saipan, containing approximately 176,552 square meters, more or less; Tract 4-2 in Marpi, Saipan, containing approximately 312,089 square meters, more or less; and a portion of Lot No. 058 A 05, containing an area of approximately 33,000 square meters, more or less, as shown on DLS Check No. 058 A 00 and filed at the Commonwealth Recorder as File No. 93-3738, dated October 18, 1993 (the "Property"). A map of these three parcels is attached hereto as Figure 1.

TO HAVE AND TO HOLD, the above-described Property, together with the rights, title, and interest vests with the Grantee, its successors, forever, in accordance with the terms of this Agreement, including the terms and conditions stated below:

1. Purpose

The purpose of this Agreement is to set aside and manage the Property in perpetuity for the protection of wildlife resources, in particular, the endangered Micronesian megapode and the endangered nightingale reed-warbler (the "Conservation Purpose").

2. Prohibited Uses

Grantee shall not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with this Agreement. Any use or activity that would diminish,

impair, or interfere with the Conservation Purpose of the Property, including without limitation, livestock grazing, land clearing, burning, farming, forestry or mining activity, commercial or industrial uses, construction of any buildings, structures, improvements or roadways, human habitation, recreation, leases, contracts, and other practices that may in any way adversely affect the Property is prohibited. This Agreement authorizes the Grantee to enforce these covenants in the manner described herein. However, unless otherwise specified, nothing in this Agreement shall require the Grantee to take any action to restore the condition of the Property after any Act of God or other natural event over which it had no control.

It is agreed by Grantee that this prohibition is deemed to be and is construed as an express condition subsequent on which the conveyance is made. If Grantee shall fail to comply strictly with the prohibition, the title to the Property shall revert to Grantor and thereupon the title to the whole of such Property shall immediately revert to and reverse in the Grantor, and the Grantee shall lose and forfeit all of its right, title and interest in and to the whole of the Property and to any improvement and fixtures thereon, and the Grantor shall be responsible for complying with all of the terms, conditions, covenants, and Conservation Purpose of this Agreement and shall have the right of reentry to the Property.

3. Responsibilities of Grantor and Grantee

i) Grantor

- a. Grantor shall record this Deed of Transfer and Conservation Agreement in accordance with the laws of the CNMI.
- b. Grantor shall carry out its responsibilities under this Agreement in order to uphold the Conservation Purpose.
- c. In consultation with the USFWS and EPA, Grantor shall install an adequate amount of fencing to halt any encroachment of domesticated farm animals on the Avoidance

Area.

ii) Grantee

- a. Grantee shall implement a reforestation plan approved by the USFWS for the Avoidance Area. The Reforestation Plan is attached as Exhibit 1.
- b. Grantee shall conduct monthly monitoring, and such additional monitoring as circumstances may require, of the Property to ensure compliance with this Agreement.
- c. Grantee shall provide reports, photographs or other documentary evidence to the USFWS upon request in order to ensure compliance with this Agreement, and take such other actions the USFWS may deem necessary for the protection of the Conservation Purpose of this Agreement.
- d. Grantee shall manage its responsibilities under this Agreement in order to uphold the Conservation Purpose.

4. Enforcement

Grantee is responsible for enforcement of this Agreement, for the purpose of preserving the Property's Conservation Purpose and open space character in perpetuity. Failure of the Grantee to carry out these responsibilities shall not impair the validity of this Agreement or limit its enforceability in any way.

Grantee shall take all actions that it deems necessary to ensure compliance with the terms, conditions, covenants, and purposes of this Agreement. The Grantee shall have the right to prevent and correct violations of the terms, conditions, covenants, and purposes of this Agreement. If the Grantee finds what it believes is a violation or potential violation, it may at its discretion take appropriate legal action to ensure compliance with the terms, conditions,

covenants, and purposes of this Agreement and shall have the right to correct violations and prevent the threat of violations. Except when an ongoing or imminent violation could irreversibly diminish or impair the Conservation Purpose and open space character of the Property, the Grantee shall give the violating party written notice of the violation or potential violation, and thirty (30) days to correct it, before filing any legal action.

If a court with jurisdiction determines that a violation may exist, has occurred, or is about to occur, the Grantee may obtain an injunction, specific performance, or any other appropriate equitable or legal remedy, including (i) money damages, including damages for the loss of the conservation values protected by this Agreement, (ii) restoration of the Property to its condition existing prior to such violation, and (iii) an award for all of the Grantee's expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorney's fees. The failure of the Grantee to discover a violation or potential violation, or to take immediate legal action to prevent or correct a violation or potential violation known to the Grantee, shall not bar the Grantee from taking subsequent legal action. The Grantee's remedies under this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

Without limiting the violator's liability therefor, the Grantee shall apply damages recovered to the cost of undertaking any corrective action on the Property. Should the restoration of lost values be impossible or impractical for whatever reason, the Grantee shall apply any and all damages recovered to furthering the conservation of the endangered Micronesian megapode and endangered nightingale reed-warbler.

Failure or refusal to exercise any rights under the terms of this Agreement by the Grantee in the event of a violation of any term herein shall not constitute a waiver or forfeiture of the Grantee's right to enforce any term, condition, covenant, or Conservation Purpose of this

Agreement.

IN WITNESS WHEREOF, the Grantor and Grantee hereunto set their respective hands, the date and year first written above, at Saipan, Commonwealth of the Northern Mariana Islands.

DEPARTMENT OF PUBLIC LANDS



PEDRO I. ITIBUS
Acting Secretary

5/29/12

Date

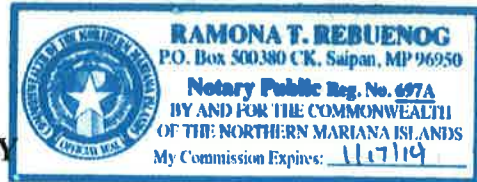
COMMONWEALTH OF THE)
NORTHERN MARIANA ISLANDS)
)
SAIPAN, MARIANA ISLANDS)

On this 29 day of MAY, 201~~2~~^{PTD}, before me, a Notary Public in and for the Commonwealth of the Northern Mariana Islands, personally appeared **Pedro I. Itibus**, Acting Secretary of the Department of Public Lands, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the purposes therein set forth.

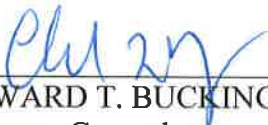
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Notary Public



APPROVED AS TO FORM AND LEGAL CAPACITY



EDWARD T. BUCKINGHAM
Attorney General

5-29-12

Date

DEPARTMENT OF LANDS AND NATURAL RESOURCES



ARNOLD I. PALACIOS
Secretary



Date

COMMONWEALTH OF THE)
NORTHERN MARIANA ISLANDS)
)
SAIPAN, MARIANA ISLANDS)

On this 9th day of July, 2012, before me, a Notary Public in and for the Commonwealth of the Northern Mariana Islands, personally appeared **Arnold I. Palacios**, Secretary of the Department of Lands and Natural Resources, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



MICHELLE A. CAMACHO
P.O. Box 50053 CK, Saipan, MP 96950 0053
Notary Public
BY AND FOR THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS
My Commission Expires: 5/17/13

Notary Public