

EXHIBIT “C-1”

**Limited Warranty Deed with Covenants, Reservation of Rights and
Agreements; Amendments**

EXHIBIT "C-1"

LAND COURT

REGULAR SYSTEM

Return By Mail ☒ Pick-Up ☐ To:

CARLSMITH BALL LLP
2200 ASB Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Attention: Mark K. Murakami
Telephone: 808.523.2561
TG Escrow No. A9-101-3467

TGOH 200935482
TGES A9-101-3467
BARBARA PAULO

TITLE OF DOCUMENT:

LIMITED WARRANTY DEED WITH COVENANTS, RESERVATION OF RIGHTS AND AGREEMENTS

PARTIES TO DOCUMENT:

GRANTOR: **JAMES CAMPBELL COMPANY LLC**, a Delaware limited liability company

GRANTEE: **KUNIA LOA RIDGE FARMLANDS**, a Hawaii nonprofit corporation
1188 Bishop Street, Suite 1201, Honolulu, Hawaii 96813

TAX MAP KEY(S): (Oahu) 9-2-004-013
Certificate of Title No. 830,900

(This document consists of ¹⁴~~18~~ pages.)

LIMITED WARRANTY DEED WITH COVENANTS, RESERVATION OF RIGHTS AND AGREEMENTS

KNOW ALL MEN BY THESE PRESENTS:

That as of March 17, 2010, **JAMES CAMPBELL COMPANY LLC**, a Delaware limited liability company (the "**Grantor**"), whose address is the James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration previously paid to Grantor by **KUNIA LOA RIDGE FARMLANDS**, a Hawaii nonprofit corporation (the "**Grantee**"), whose address is 1188 Bishop Street, Suite 1201, Honolulu, Hawaii 96813, the receipt and sufficiency of which is hereby acknowledged by the Grantor, and upon and subject to the covenants and conditions herein set forth, **DOES HEREBY GRANT, BARGAIN, SELL, and CONVEY** unto Grantee, its successors and assigns, forever, that certain parcel of real estate (the "**Property**") situated at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, and more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference, subject to the reservations and encumbrances herein and in **Exhibit A** attached hereto, **AND SUBJECT ALSO TO THE FOLLOWING COVENANTS, RESERVATION OF RIGHTS AND AGREEMENTS:**

1. Reservation of Public Trail Access and Other Rights.

a. Generally. Grantor hereby reserves unto itself, and unto its successors and assigns the right, at their respective own cost, to create an access easement for recreational purposes for (i) an easement for vehicular and pedestrian access over **Easement "49"** (Map 10) of Land Court Application No. 1069 and over any replacement or relocated access easement through the Property in the general location of Easement "49", and (ii) an easement for a parking area adjacent to or near to Easement "49" and the boundary between the Property and Lot 18717 (Map 1468) of Land Court Application No. 1069 (the "**parking easement area**") (collectively, Easement "49" (and any replacement or relocated access easement through the Property in the general location of Easement "49") and the parking easement area shall be referred to as the "**easement areas**"). The approximate location of the parking easement area is shown on **Exhibit B** attached hereto and incorporated herein by this reference.

b. Subdivision and Grants of Easement. Grantor hereby reserves unto itself, and unto its successors and assigns the right, at their respective own cost, to (i) obtain subdivision approval from all applicable governmental authorities, including, as applicable, the Board of Land and Natural Resources of the State of Hawaii, the Department of Planning and Permitting of the City and County of Honolulu, and the Land Court of the State of Hawaii, for the designation of the parking easement area as an easement of record in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, and (ii) thereafter grant one or more grants of easement to the Department of Land and Natural Resources of the State of Hawaii for recreational use of the easement areas, on terms and conditions acceptable to the Department of Land and Natural Resources of the State of Hawaii at that time; provided, however, that it is intended that these grants of easement will provide that the easement areas will be maintained by the Department of Land and Natural Resources, and that the landowners of the land through which the easement areas cross will have the protection of applicable laws

regarding recreational access, such as HRS Chapter 520 (Landowners' Liability), and (iii) such other rights in and to the easement areas consistent with the intent and purpose hereunder. By accepting title to the land through which the easement areas cross, Grantee, on behalf of itself, and its successors and assigns, does hereby agree to cooperate with Grantor, and with its successors and assigns, to effectuate such subdivisions, and shall execute such documentation, as may from time to time be necessary to subdivide and designate the parking easement area.

c. Private Waterline Easement. Grantor has entered into that certain Grant of Private Waterline Easement dated September 3, 2008, in favor of Syngenta Hawaii, LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3785842 (the **"Grant of Private Waterline Easement"**) which encumbers the Property. Paragraph 22 (Designation of Land Court Easement) of the Grant of Private Waterline Easement requires that the Grantor named therein, as owner of the Property, designate the easement area described therein as a Land Court easement, and to thereafter amend and restate the Grant of Private Waterline Easement to incorporate therein such new legal description. This has not occurred. Therefore, Grantor hereby reserves unto itself, and unto its successors and assigns the right, at their respective own cost, to (i) obtain subdivision approval from all applicable governmental authorities, including, as applicable, the Department of Planning and Permitting of the City and County of Honolulu, and the Land Court of the State of Hawaii, for the designation of the easement area graphically described in the Grant of Private Waterline Easement as an easement of record in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, and (ii) thereafter amend and restate the Grant of Private Waterline Easement with the grantee thereunder, and to have such amended and restated grant of easement filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii. Grantee, on behalf of itself and its successors and assigns agrees to join in and consent to such amended and restated grant of easement if requested to do so by Grantor, its successors or assigns or by the grantee under the Grant of Private Waterline Easement.

d. No Joinder or Consent. Grantor, its successors and assigns may exercise all of the rights reserved under this paragraph 1 (Reservation of Public Trail Access and Other Rights) without the consent or joinder of any other person.

2. Release of Terms and Conditions. Grantor, on behalf of itself and its successors and assigns, as applicable, does hereby agree to release the reservations set forth in paragraph 1 (Reservation of Public Trail Access and Other Rights), at such time as such reservations are no longer necessary.

3. Property in "As Is, Where Is" Condition.

a. No Warranties. It is expressly understood and agreed that Grantor has not made any representation or warranty, express or implied, regarding any aspect of the Property including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, suitability, habitability, quality, physical condition and value, and Grantor hereby disclaims any and all liability for any and all such representations and warranties. Grantee expressly acknowledges and agrees that the existing fence lines at the Property may not be located on the legal boundaries of the Property, and that Grantor makes no representations or warranties regarding the existence or non-existence of encroachments, if

any, into the Property or out of the Property onto adjacent lands. Grantee agrees that it has examined and investigated the Property prior to the execution of this instrument and that Grantee has relied solely upon such examinations and investigations in acquiring the Property. Without limiting the generality of the foregoing, Grantee acknowledges that (i) it has made all inspections, investigations and analyses deemed necessary or appropriate to determine compliance by the Property with all environmental or other applicable laws that may apply to the Property, and (ii) Grantor has made no representation or warranty, express or implied, concerning the Property's compliance with environmental or other applicable laws.

b. "As Is" Condition. Grantee acknowledges and agrees that it is acquiring the Property in its "as is, where is" condition, with all faults, if any, and that Grantee has assumed all risks regarding all aspects of the Property, and the condition thereof, including, without limitation: (i) the risk of any physical condition affecting the Property including, without limitation, the existence of any soils conditions, or the existence of archeological or historical conditions on the Property; (ii) the risk of any damage or loss to the Property caused by any means including, without limitation, flood or earthquake; and (iii) the risk of use, zoning, habitability, merchantability or quality of the Property or the suitability of the Property for its present use or future development; and (iv) the activities of Grantor and others on adjacent or other nearby lands.

c. Mutual Release. Grantee expressly releases Grantor, its successors and assigns, from any and all liability and claims that Grantee, its successors and assigns may have against Grantor, its successors and assigns with regard to: (i) known hazardous materials existing on the Property on or before the Conveyance Date (as defined in paragraph 3.g (Conveyance Date)) of which Grantee is actually aware, and (ii) hazardous materials released, leaked, spilled, overflow, discharged or emitted on or from the Property at any time from and after the Conveyance Date, or otherwise resulting from occupancy or operation of the Property by Grantee or by Grantee's agents. Grantee agrees to incorporate such release of Grantor, its successors and assigns in all subsequent conveyances of all or a portion of the Property. Grantor expressly releases Grantee from any and all liability and claims that Grantor may have against Grantee, its successors and assigns with regard to any unknown hazardous materials existing on the Property on or before the Conveyance Date of which Grantee is unaware.

d. Indemnity. Grantee shall Indemnify (as this term is defined in paragraph 4 (Indemnity)) Grantor, its successors and assigns from and against any and all claims and demands for loss or damage, including claims for personal injury, property damage or wrongful death, arising at any time on or after the Conveyance Date, as a direct or indirect result of or in connection with hazardous materials caused or permitted by Grantee or by Grantee's agents at any time on or after the Conveyance Date to be released, leaked, spilled, overflow, discharged or emitted on or from the Property, or otherwise resulting from occupancy or operation of the Property by Grantee or by Grantee's agents. Grantee's Indemnity contained in this paragraph 3.d (Indemnity) shall not be construed to apply to clean up of, or any consequential damages related to any contamination resulting from or attributable to: (i) any unknown hazardous materials existing on the Property on or before the Conveyance Date of which Grantee is unaware; or (ii) any hazardous materials migrating, entering or leaching onto, above, or beneath the Property at any time from and after the Conveyance Date from any adjoining or nearby land over which Grantee has no control or in which Grantee has no

ownership interest. Grantee shall bear the burden of proof of establishing that the conditions set forth in the immediately preceding sentence apply, so as to relieve Grantee of its Indemnity obligations under this paragraph 3.d (Indemnity).

e. Adjacent Land Use. Grantee acknowledges and agrees for itself, its permitted assigns, transferees, and any other party claiming by, through or under it that: (i) Grantor has entered and may further enter into agreements with others for development and use of other lands owned by or formerly owned by Grantor located adjacent to or near the Property; (ii) such agricultural, developmental, commercial and other activities may involve by way of example and not in limitation thereof, noise, smoke, soot, dust, lights, noxious vapors, odors, and other nuisances of every description arising from or incidental to the activities conducted from time to time on adjacent or other nearby lands, subject only to zoning and other legal restrictions on use; and (iii) Grantee is acquiring the Property subject to all risks associated with the location of the Property. The foregoing shall not prevent Grantee from pursuing all remedies legally available to Grantee in the event of any violation of zoning or other legal restrictions on use.

f. Government Approvals. Grantee acknowledges that Grantor has made and makes no representations regarding Grantee's ability to obtain or retain the zoning, governmental approvals or permits necessary to use, occupancy or further development of the Property.

g. Conveyance Date. As used herein, the term "**Conveyance Date**" means the date that this instrument is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

4. Indemnity. In addition to any other Indemnity contained herein running in favor of Grantor, and not in limitation thereof, Grantee shall Indemnify Grantor, its successors and assigns, from and against any and all actions, suits, losses, costs, damages, liabilities or claims thereof, including attorneys' fees, arising out of or in connection with any action or omission by Grantee, Grantee's agents or representatives, or any others claiming by, through or under Grantee, and which relate in any way to this instrument. The foregoing Indemnity shall specifically include by way of example and not in limitation of the foregoing, claims for injury and damage, including personal injury and property damage. As the context requires, as used in this instrument, the term "**Indemnify**" means the protection of a party, by a money payment if necessary, against out-of-pocket loss. The term shall include an obligation by the indemnitor to defend and hold the indemnitee harmless (with counsel reasonably acceptable to the indemnitee) in connection with any claim against which the Indemnity operates. The obligation to Indemnify shall specifically include, but shall not be limited to payment of (or in the alternative, reimbursement of) all costs and expenses paid by the indemnitee or reasonably anticipated to be incurred by the indemnitee for the indemnitee's defense, including without limitation, reasonable attorneys' fees and costs, and all other consultants' reasonable fees and costs. An Indemnity shall also specifically include all costs for research regarding settlement or other preventive measures undertaken by the indemnitee with regard to any such claim.

5. Attorneys' Fees. In the event of a dispute under this instrument, the prevailing party shall be entitled to recover from the losing party all costs including reasonable attorneys' fees.

6. Governing Law. This instrument shall be governed by laws of the State of Hawaii.

7. Perpetuities. If any of the terms, covenants or conditions set forth herein shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

8. Effect of Invalidity. The terms, covenants and conditions set forth herein shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof, of any such terms, covenants or conditions shall not affect the validity or enforceability of any other provisions hereof.

TOGETHER WITH the reversions, remainders, rents, issues and profits thereof, together with all buildings, improvements, tenements, rights, easements, privileges, and appurtenances to the same belonging or appertaining or held and enjoyed therewith, and all of the estate, right, title and interest of Grantor both at law and in equity therein and thereto.

TO HAVE AND TO HOLD the same unto Grantee, its successors and assigns, forever.

AND Grantor, for itself and its successors and assigns, does hereby covenant and agree with Grantee, its successors and assigns, that Grantor has done or suffered no act or thing whereby the Property described in **Exhibit A** is encumbered, except as aforesaid and set forth hereinafter; that the Property described in **Exhibit A** is free and clear of liens and encumbrances made or suffered by Grantor except for the encumbrances contained herein and as set forth in **Exhibit A**, and real property taxes not yet due and payable; and that Grantor will and its successors and assigns shall **WARRANT AND DEFEND** the same unto Grantee, its successors and assigns, forever, against the loss or claims and demands of all persons claiming by, through or under Grantor except as aforesaid.

AND Grantee does hereby covenant to and with Grantor for the benefit of Grantor and its successors and assigns, that Grantee will observe and comply with all of the terms, covenants, conditions and restrictions set forth in any declaration of covenants or deed of record with respect to the Property, as the same exist or may hereafter be amended from time to time in accordance with law and the terms of such declaration(s) of covenants or deed(s) on the part of Grantee to be observed and performed, as and when required to do so, and will Indemnify Grantor from and against any failure to observe and comply with any such terms, covenants, conditions and restrictions.

The terms "**Grantor**" and "**Grantee**" wherever herein used shall be held to mean and include Grantor, its successors and assigns, and Grantee, its successors and assigns, and this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their said respective successors and assigns.

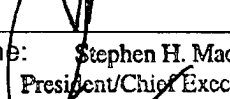
The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts.

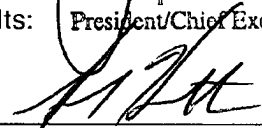
[the remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the undersigned has executed these presents as of the date first above written.

Grantor:

JAMES CAMPBELL COMPANY LLC, a
Delaware limited liability company

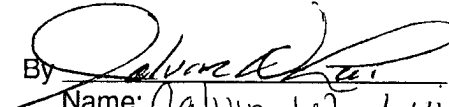
By 
Name: **Stephen H. MacMillan**
Its: **President/Chief Executive Officer**

By 
Name: **Bertram L. Hatton**
Its: **Executive Vice President**
Hawaiian Land Management

IN WITNESS WHEREOF, the undersigned has executed these presents as of the date first above written.

Grantee:

KUNIA LOA RIDGE FARMLANDS, a Hawaii
nonprofit corporation

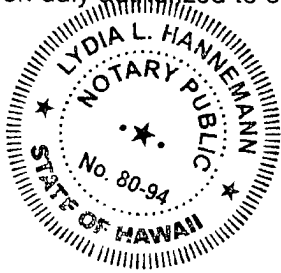
By 
Name: Calvin W. Lui
Its: President

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

ss.

On this 3rd day of March, 2010, before me personally appeared Stephen H. MacMillan and Bertram L. Hatton, to me personally known, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Lydia L. Hannemann

Notary Public, State of Hawaii

Name: **Lydia L. Hannemann**

My commission expires: **February 11, 2012**

NOTARY CERTIFICATION STATEMENT

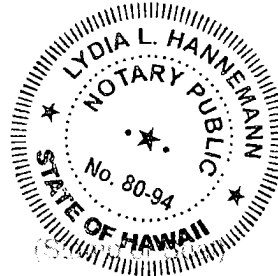
Document Identification or Description: **LIMITED WARRANTY DEED WITH COVENANTS, RESERVATION OF RIGHTS AND AGREEMENTS**

Document Date: undated at time of execution

No. of Pages: 13

Jurisdiction (in which notarial act is performed): First Circuit

Lydia L. Hannemann 3/3/2010
Signature of Notary Date of Notarization and
Certification Statement



Lydia L. Hannemann

Printed Name of Notary

(James Campbell Company LLC)

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

ss.

On this 9th day of March, 2010, before me personally appeared Calvin W. Lui, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacity.



Barbara T. Paulo

Notary Public, State of Hawaii

Name: Barbara T. Paulo

My commission expires: Expiration Date: June 14, 2012

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **LIMITED WARRANTY DEED WITH COVENANTS, RESERVATION OF RIGHTS AND AGREEMENTS**

Document Date: undated at time of execution

No. of Pages: 18/14

Jurisdiction (in which notarial act is performed): First Circuit

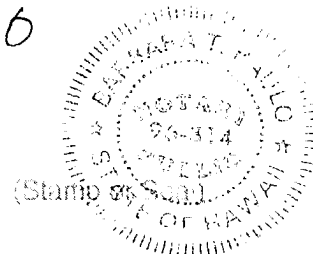
Barbara T. Paulo 3-9-2010

Signature of Notary

Date of Notarization and
Certification Statement

Barbara T. Paulo

Printed Name of Notary



(Kunia Loa Ridge Farmlands)

EXHIBIT A

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawaii, more particularly described as follows:

LOT M-8-B (area 854.23 acres), as shown on Map 5, filed in the Office of the Assistant Registrar of the Land Court to the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased.

BEING all of the land described in and covered by **Certificate of Title No. 830,900** issued to James Campbell Company LLC.

SUBJECT, HOWEVER, to the following:

1. Easement "49" (40 feet wide), as shown on Map 10, as set forth by Land Court Order No. 4113, filed August 5, 1940, as amended by Land Court Order No. 17969, filed April 1, 1960, to reduce the width from 40 feet to 30 feet, as shown on Map 23.
2. Access rights in favor of Lot 17534, over Easement "49", as set forth by Land Court Order No. 172495, filed October 22, 2007.
3. Trustees Limited Warranty Deed dated November 1, 2006, by and between the Trustees under the Will and of the Estate of James Campbell, Deceased, as grantor, and James Campbell Company LLC, as grantee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3505988.
4. Declaration of Site Access; Joinder (undated), made by James Campbell Company LLC, as Declarant, with joinder and consent of the United States Environmental Protection Agency and Del Monte Fresh Produce (Hawaii), Inc., filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3676945.
5. Declaration of Environmental Restrictions (Well Restriction Area); Joinder (undated), made by James Campbell Company LLC, as Declarant, with joinder and consent of the United States Environmental Protection Agency and Del Monte Fresh Produce (Hawaii), Inc., filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3676946.
6. Declaration of Covenants Regarding Water Allocation and Easements dated December 13, 2007, made by James Campbell Company LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3694441, as amended and restated by instrument dated August 21, 2008, filed in said Office of the Assistant Registrar as Document No. 3782044, and as further amended by instrument dated February 24, 2010, filed in said Office of the Assistant Registrar as Document No. 3942984.
7. Grant of Private Waterline Easement dated September 3, 2008, in favor of Syngenta Hawaii, LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3785842.

8. Grant of Nonexclusive Easement (Access Only) dated December 10, 2008, in favor of Army Hawaii Family Housing LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3812213.

9. Grant of Nonexclusive Easement (Access and Utility Purposes) dated September 30, 2009, in favor of Gill-Olson Joint Venture, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3903239, affecting Easement "49".

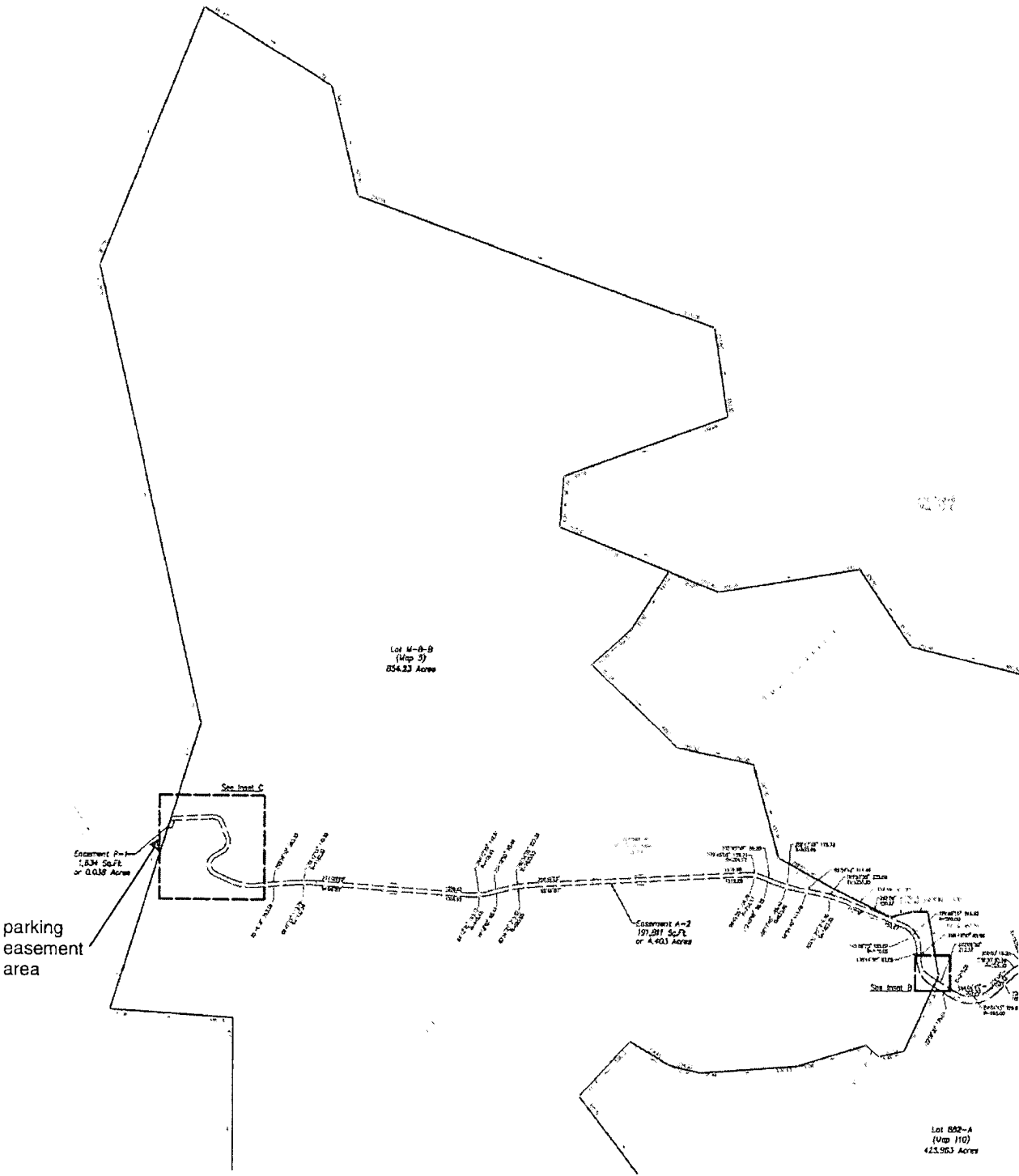
10. Grant of Nonexclusive Easement (Access and Utility Purposes) dated September 30, 2009, in favor of Edmund C. Olson, Trustee of the Edmund C. Olson Trust No. 2 under agreement dated August 21, 1985, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3903245, affecting Easement "49".

11. Grant of Nonexclusive Easement (Access and Utility Purposes) dated September 30, 2009, in favor of The Trust for Public Land, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3903249, affecting Easement "49".

12. Grant of Nonexclusive Easement (Access Only) dated September 30, 2009, in favor of The Trust for Public Land, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3903251.

END OF EXHIBIT A

EXHIBIT B





L-147 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

MAR 17, 2010 08:01 AM

Doc No(s) 3948040
on Cert(s) 975,762



20 3/16 Z4

/s/ NICKI ANN THOMPSON
ASSISTANT REGISTRAR

LAND COURT

REGULAR SYSTEM

Return By Mail ☒ Pick-Up ☐ To:

Carlsmith Ball LLP
2200 ASB Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Attention: Mark K. Murakami
Telephone: 808.523.2561
TG Escrow No. A9-101-3487

TGOH 200935482 -S
TGES A9-101-3467
BARBARA PAULO

LC (3)

TITLE OF DOCUMENT:

Easement No. E02123800

**GRANT OF NONEXCLUSIVE EASEMENT
(ACCESS PURPOSES ONLY)**

PARTIES TO DOCUMENT:

GRANTOR: JAMES CAMPBELL COMPANY LLC, a Delaware limited liability company

GRANTEE: KUNIA LOA RIDGE FARMLANDS, a Hawaii nonprofit corporation
1188 Bishop Street, Suite 1201, Honolulu, Hawaii 96813

TAX MAP KEY(S):

Oahu 9-2-004-010

BURDEN: Certificate of Title No. 892,761 (Lot 882-A)

APPURTENANT TO: Certificate of Title No. 975,762 (Lot M-8-B)

(This document consists of 13 pages.)

LAND COURT

REGULAR SYSTEM

Return By Mail ☒ Pick-Up ☐ To:

Carlsmith Ball LLP
2200 ASB Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Attention: Mark K. Murakami
Telephone: 808.523.2561
TG Escrow No. A9-101-3467

TGOH 200935482
TGES A9-101-3467
BARBARA PAULO

TITLE OF DOCUMENT:

Easement No. E02123800

**GRANT OF NONEXCLUSIVE EASEMENT
(ACCESS PURPOSES ONLY)**

PARTIES TO DOCUMENT:

GRANTOR: JAMES CAMPBELL COMPANY LLC, a Delaware limited liability company

GRANTEE: KUNIA LOA RIDGE FARMLANDS, a Hawaii nonprofit corporation
1188 Bishop Street, Suite 1201, Honolulu, Hawaii 96813

TAX MAP KEY(S):

Oahu 9-2-004-010

BURDEN: Certificate of Title No. 892,761 (Lot 882-A)

APPURTENANT TO: Certificate of Title No. 475,762 (Lot M-8-B)

(This document consists of 13 pages.)

**GRANT OF NONEXCLUSIVE EASEMENT
(ACCESS PURPOSES ONLY)**

THIS INDENTURE, made this 17th day of March, 2010, by and between **JAMES CAMPBELL COMPANY LLC**, a Delaware limited liability company ("Grantor"), whose address is the James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707, and **KUNIA LOA RIDGE FARMLANDS**, a Hawaii nonprofit corporation (the "Grantee"), whose address is 1188 Bishop Street, Suite 1201, Honolulu, Hawaii 96813;

RECITALS:

WHEREAS, Grantee has requested an easement for access and utility purposes across land through which Grantor has certain reserved rights;

WHEREAS, Grantor and Grantee have reached agreement on the terms and conditions under which Grantor has agreed to permit Grantee to use the easement area described herein for access purposes only, and the parties desire to document such agreements;

AGREEMENT:

NOW THEREFORE, for and in consideration of the sum of ONE AND NO/100 DOLLARS (\$1.00) paid to them by Grantee, receipt whereof is hereby acknowledged, and of the terms, covenants and conditions hereinafter contained and on the part of Grantee to be observed and performed, and pursuant to Grantor's reserved rights set forth in that certain Limited Warranty Deed With Covenants and Reservation of Rights dated January 23, 2008 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3704219, and noted on **Certificate of Title No. 892,761**, issued to (a) **FAT LAW'S FARM, INC.**, (b) **LAW TIENG'S FARM LLC**, (c) **TONY TAN LAW and MANYVONE LAW**, husband and wife, and (d) **HAE VIENGKHOU and PHOUANGPHET VIENGKHOU**, husband and wife, Grantor does hereby grant unto Grantee the right, in the nature of a nonexclusive easement over the easement area described below (the "**easement area**"), to be exercised and enjoyed by Grantee solely for vehicular and pedestrian access, which right shall be appurtenant to the Benefited Property (defined below), which easement area is located in the approximate location graphically shown on **Exhibit A** attached hereto and incorporated herein by this reference. The easement area is located within the land described in **Exhibit B** attached hereto and incorporated herein by this reference.

TO HAVE AND TO HOLD the same unto Grantee, its lessees, tenants, licensees and other occupants, forever.

SUBJECT, HOWEVER, to any and all existing recorded uses, licenses, easements and other encumbrances of record that are noted on the Certificate of Title referred to above; and

In consideration of the rights hereby granted, the acceptance thereof and the obligations hereby assumed, Grantor and Grantee hereby covenant and agree as follows:

1. Use of Easement Area. Grantee shall use the easement area solely for ingress and egress to and from Grantee's land described as **Lot M-8-B** (Map 5) of Land

Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased, said land being commonly known as Tax Map Key No. (Oahu) 9-2-004-013 located off of Kunia Road containing approximately 854.23 acres of land, more or less (the "**Benefited Property**"), which use shall be for vehicular and pedestrian ingress and egress to and from the Benefited Property, and Grantee shall exercise the rights granted to Grantee hereunder in a manner so as not to interfere unreasonably with the land through which the easement area crosses. The Benefited Property is all of the land covered by **Certificate of Title No.** 975,762 issued to Kunia Loa Ridge Farmlands. Parking of vehicles within the easement area is prohibited.

2. Coordination of Uses. Grantee acknowledges that Grantor and other persons have rights to use the easement area and that other persons may have rights to use the easement area in the future. Grantee agrees to coordinate Grantee's use of the easement area with any other person having the right to use the easement area.

3. Maintenance. The Grantee shall at Grantee's own expense, keep all private roadway or utility improvements within the easement area in good order, condition, maintenance and repair, reasonable wear and tear from normal usage or damage by casualty excepted. Neither Grantor nor the owner of the land through which the easement area crosses shall have any obligation for such maintenance.

4. Observance of Laws and Other Requirements. Grantee shall at all times during the term of this grant of easement: (a) observe, perform and comply with all Applicable Laws now or hereafter made with respect to Grantee's use of the easement area; (b) maintain in effect all permits, approvals, licenses, consents or other entitlements, if any, required by Applicable Laws for Grantee's permitted use of the easement area hereunder; and (c) keep the easement area in a safe and nuisance free condition, to the extent the same is consistent with Grantee's use of the easement area. Any failure by Grantee to maintain the easement area or to comply with the requirements set forth in clauses (a) through (c) of the immediately preceding sentence shall be an event of default under this grant of easement, and Grantor shall have the right to exercise all remedies which Grantor may have hereunder, at law or in equity. Grantee shall Indemnify (defined in paragraph 8 (Indemnity)) Grantor and the owner of the land through which the easement area crosses against all actions, suits, claims and damages by whomsoever brought or made by reason of the nonobservance or nonperformance by Grantee as required hereunder of the requirements of: (i) all Applicable Laws, (ii) permits, approvals, licenses, consents or other entitlements, if any, for Grantee's use of the easement area, and (iii) this paragraph 4 (Observance of Laws and Other Requirements). As used herein the term "**Applicable Laws**" means all federal, state and local laws, statutes, ordinances, codes, rules, regulations, standards, directives, interpretations and conditions of approval, and all legislative, administrative or judicial orders, decrees, requirements, rulings or judgments, which now or in the future may be applicable to the land through which the easement area crosses, or to the use of the same.

5. Condition of Easement Area. Grantee accepts the easement area in its "as is, where is" condition and acknowledge that Grantor has made no representations concerning the condition of the easement area or the suitability or fitness of the easement area for any particular use or purpose. Grantee also acknowledges that the improvements, if any, within the easement area are or may be nonconforming under Applicable Laws. Grantee assumes all risks arising from any nonconforming improvements within the easement area.

6. Construction of Improvements. No improvements may be constructed on or adjacent to the easement area without the prior written consent of the owner of the land through which the easement area crosses, which consent shall not be unreasonably withheld or delayed, but shall be conditioned upon compliance with the reasonable needs of the fee simple owner of the land through which the easement area crosses.

7. Limitation of Liability. Grantor and the owner of the land through which the easement area crosses shall each not be liable or responsible for any loss or damage sustained by Grantee or anyone claiming by, through or under Grantee because of any act or omission of any lessee, tenant, licensee or other occupant of the surrounding lands of Grantor, the owner of the land through which the easement area crosses, or of any other person.

8. Indemnity. Grantee shall Indemnify Grantor and the owner of the land through which the easement area crosses from and against any and all actions, suits, losses, costs, damages, liabilities or claims thereof ("**Claims**"), including reasonable attorneys' fees, arising out of or in connection with any loss or damage to property and/or injury to or death of persons arising out of or resulting from the acts or omissions of Grantee or anyone claiming by, through or under Grantee in connection with the exercise of the rights or privileges granted hereunder, or arising out of or in connection with any improvements within the easement area made by Grantee; provided, however that nothing herein shall be deemed to require Grantee to Indemnify Grantor or the owner of the land through which the easement area crosses for any Claim, to the extent such Claim was caused solely by Grantor's own acts or omissions or such owner's own acts or omissions. Grantee's obligations to Indemnify Grantor and the owner of the land through which the easement area crosses under this paragraph 8 (Indemnity), under paragraph 4 (Observance of Laws and Other Requirements) and under paragraph 9 (No Liens) shall survive the termination of this grant of easement and shall be binding upon Grantee, its successors and assigns. As used herein, the term "**Indemnify**" means the protection of a party, by a money payment if necessary, against reasonable out-of-pocket loss. The term shall include an obligation by the indemnitor to defend and hold the indemnitee harmless (with counsel reasonably acceptable to the indemnitee) in connection with any claim against which the Indemnity operates. The obligation to Indemnify shall specifically include, but shall not be limited to, payment of all reasonable costs and expenses paid by the indemnitee or reasonably anticipated to be incurred by the indemnitee for the indemnitee's defense, including without limitation, reasonable attorneys' fees and costs, and all other consultants' reasonable fees and costs. An Indemnity shall also specifically include all reasonable costs for research regarding settlement or other preventive measures undertaken by the indemnitee with regard to any such claim.

9. No Liens. Grantee shall not commit or suffer any act or neglect whereby the easement area becomes subject to any attachment, judgment, lien, charge or encumbrance whatsoever, and shall Indemnify Grantor and the owner of the land through which the easement area crosses from and against any and all loss, liability, claim or demand for damage or injury with respect thereto.

10. Assignment. Grantee shall not assign any right hereby granted without the prior written consent of Grantor and the owner of the land through which the easement area crosses, which consents may not be unreasonably withheld, conditioned or delayed, and any purported assignment or transfer without such consent shall be void; provided, however that notwithstanding the foregoing, Grantor agrees to consent to an assignment of

this grant of easement if such assignment is made in conjunction with a conveyance of Grantee's fee simple interest in and to all of the Benefited Property. It is the intent of the parties that Grantee's rights and obligations under this grant of easement shall at all times be appurtenant to Grantee's fee simple ownership of the Benefited Property, and shall not be separated from such interest.. Grantor, may, from time to time, assign all or a portion of Grantor's rights under this grant of easement to the owner of the land through which the easement area crosses, without notice, joinder or consent of Grantee or any other person.

11. Cooperation. Grantee agrees to cooperate, join in and/or consent to Grantor's exercise of its reserved rights under paragraph 19 (Grantor's Reservations) if so requested by Grantor, which cooperation, joinder(s) or consent(s) shall not be unreasonably withheld, conditioned or delayed. Grantee agrees to cooperate, join in and/or consent to such documentation as is reasonably necessary for Grantor to fulfill Grantor's obligations under paragraph 21 (Designation of Land Court Easement).

12. Abandonment or Termination. In the event Grantee abandons the use of the easement area or the easement area remains unused by Grantee for a continuous period of one (1) year, this grant of easement shall automatically terminate, and Grantee shall, at Grantor's request, or the request of the owner of the land through which the easement area crosses, at any time after such abandonment, or at any time after a termination of this grant of easement under paragraph 14 (Default and Remedies), execute such documents as Grantor reasonably requests for the purpose of terminating this grant of easement. As used herein, the term "**abandon**" means that Grantee, through action or inaction, shows an intent to no longer use the easement area or portion thereof for the purposes for which this grant of easement is given, and upon written request by Grantor or the owner of the land through which the easement area crosses to Grantee requesting confirmation of continued use of the easement area, Grantee fails to respond in writing within a reasonable period of time not to exceed forty-five (45) days, Grantee shall be deemed to have abandoned the applicable portion of the easement area. Grantee hereby agrees that on or before the termination or cancellation of this grant of easement, or within a reasonable period following such termination or cancellation, if requested by both Grantor and the owner of the land through which the easement area crosses, Grantee will remove its own improvements, if any, from the easement area and will restore the easement area to the condition existing at the time of entry thereon, reasonable and ordinary wear and tear and damages by the elements or by circumstances over which Grantee has no control excepted.

13. Condemnation. If the easement area is taken or condemned in whole or part by any authority having the power of eminent domain, all compensation and damages awarded on account of the condemnation or taking shall be payable to the owner of the land through which the easement area crosses, without any apportionment to Grantee, except that Grantee may claim and recover from the condemning authority full compensation for any severance or other damages, including the cost of obtaining and relocating to a substitute easement area or right of way.

14. Default and Remedies. If a party fails to perform any of the terms, covenants and agreements contained herein, if such failure continues for a period of thirty (30) days after written notice, then the non-defaulting party shall be entitled to all remedies available to it at law or equity, including by way of example and not in limitation thereof, the right to sue such person for specific performance, injunctive relief and/or monetary damages, including without limitation, reasonable attorneys' fees, costs and expenses. Grantor shall have the right to terminate this grant of easement for a material breach by Grantee of the

terms and conditions hereof, or a continuing material default of Grantee's performance of the terms and conditions of this grant of easement, if a court of competent jurisdiction determines that such termination is appropriate in the circumstances giving rise to Grantor's exercise of its rights and remedies at law or equity, and such court determines that other remedies are inadequate under such circumstances.

15. Rights to Cure. If Grantor, Grantee or the owner of the land through which the easement area crosses fails to observe or perform any of the terms, covenants or conditions contained in this grant of easement on the part of such party to be observed and performed (including both monetary and non-monetary obligations), or fails to observe or perform any of its obligation(s) hereunder within the time period specified herein for observance or performance, and fails to cure such nonobservance or nonperformance within any cure period (if applicable), without limiting any other remedy which may be available to the party seeking performance at law or in equity, the party seeking performance shall have the right (but not the obligation) to wholly or partially perform such covenant or obligation on behalf of the non-performing party after giving a second written notice demanding performance within a reasonable period of time, and indicating that the party seeking performance intends to exercise its rights of self-help under this paragraph 15 (Rights to Cure), at the cost and expense of the non-performing party if such performance does not occur within such reasonable period of time. If such performance does not occur within such specified time period, the party seeking performance may enter onto the easement area and undertake such actions as the party seeking performance deems appropriate under the circumstances and with the facts known to such party at that time. If Grantor, Grantee or the owner of the land through which the easement area crosses exercise their respective rights under this paragraph 15 (Rights to Cure), then the non-performing party shall promptly reimburse the party seeking performance for any and all reasonable costs and expenses incurred by the party seeking performance in connection with such action, including without limitation, all reasonable consultants', experts' and attorneys' fees and costs, plus interest thereon at a rate equal to twelve (12%) per annum (but in no event more than the maximum per annum rate of interest permitted to be charged by then Applicable Laws) accruing from the date such costs or expenses are incurred under this paragraph 15 (Rights to Cure), until actually paid in full.

16. Expenses of Enforcement. If any of Grantor, Grantee or the owner of the land through which the easement area crosses brings any legal proceeding to enforce any of the terms, covenants or conditions hereof, the unsuccessful party in such proceeding shall pay the prevailing party's costs and expenses, including reasonable attorneys' fees, incurred in the bringing or defending of such proceeding.

17. Remedies Cumulative. The remedies set forth herein shall be in addition to remedies otherwise applicable or provided herein or otherwise available at law or in equity, it being understood that all rights and remedies shall always be non-exclusive and cumulative and that the exercise of one remedy or form of relief available hereunder shall not be exclusive of, or constitute a waiver of, any other.

18. No Waiver. The failure in any case to enforce the provisions of any covenant, condition, restriction, obligation or charge of this grant of easement shall not constitute a waiver of any right to enforce any such provision of this grant of easement in any other case.

19. Grantor's Reservations. Any other provision herein notwithstanding, and in addition to any other reservations set forth in this grant of easement, this grant of easement is subject to the reservation unto Grantor, its successors and assigns, of the following rights, to which Grantee hereby consents: (a) the right to utilize or to permit others to utilize the easement area, and (b) the right to make one or more irrevocable, nonexclusive grants or assignments of nonexclusive rights in the easement area from time to time to governmental authorities, public or private utilities or others.

20. Owner's Rights. Any other provision herein notwithstanding, nothing in this grant of easement shall be interpreted or otherwise deemed to prevent the owner of the land through which the easement area crosses from using or permitting others to use the easement area, or from making one or more irrevocable, nonexclusive grants or assignments of nonexclusive rights in the easement area from time to time to governmental authorities, public or private utilities or others.

21. Designation of Land Court Easement. Grantor shall seek subdivision approval for the easement area from the Department of Planning and Permitting of the City and County of Honolulu, and designation of the easement area in the Office of the Assistant Registrar of the Land Court of the State of Hawaii. Upon such designation of the easement area, Grantor and Grantee shall amend and restate this grant of easement in its entirety to incorporate herein the new legal description of the easement area. Grantee shall reimburse Grantor for one-half of the cost to obtain such governmental approvals to create such Land Court designated easement, and the cost to amend and restate this grant of easement, as and when invoiced by Grantor. Grantor and Grantee shall indemnify, defend, and hold harmless the owner of the land through which the easement area crosses from and against any and all claims arising in connection with the terms and conditions of subdivision approval for subdivision of the easement area or designation of the easement area.

22. Multiple Grantees. If there are more than one grantee under this grant of easement, then all such persons shall be jointly and severally bound by the Grantee's covenants in this grant of easement and any notice given to any one person by Grantor or by the owner of the land through which the easement area crosses shall be deemed to be notice upon all such persons.

23. Binding Effect. This instrument shall be binding upon and shall inure to the benefit of Grantor, Grantee and the owner of the land through which the easement area crosses, and their respective heirs, devisees, personal representatives, successors, and assigns.

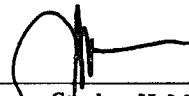
24. Counterparts. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts.

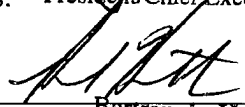
[remainder of this page intentionally left blank; signatures on following page]

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date and year first above written.

Grantor:

JAMES CAMPBELL COMPANY LLC, a
Delaware limited liability company

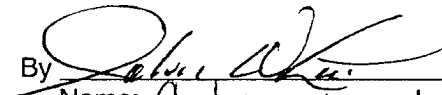
By 
Name: Stephen H. MacMillan
Its: President/Chief Executive Officer

By 
Name: Bertram L. Hatton
Its: Executive Vice President
Hawaii Land Management

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date and year first above written.

Grantee:

KUNIA LOA RIDGE FARMLANDS, a
Hawaii nonprofit corporation

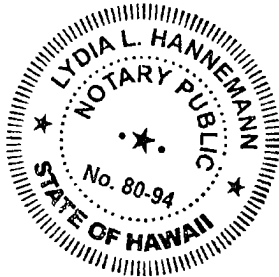
By 
Name: Calvin W. Lui
Its: President

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS.

On this 3rd day of March, 2010, before me personally appeared Stephen H. MacMillan and Bertram L. Hatton, to me personally known, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Lydia L. Hannemann
Notary Public, State of Hawaii
Name: Lydia L. Hannemann
My commission expires: February 11, 2012

NOTARY CERTIFICATION STATEMENT

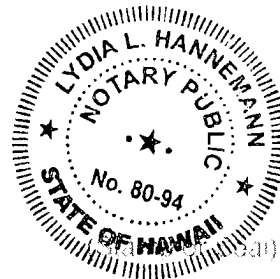
Document Identification or Description: **GRANT OF NONEXCLUSIVE EASEMENT (ACCESS PURPOSES ONLY)**

Document Date: undated at time of execution

No. of Pages: 13

Jurisdiction (in which notarial act is performed): First Circuit

Lydia L. Hannemann 3/3/2010
Signature of Notary Date of Notarization and
Certification Statement



Lydia L. Hannemann
Printed Name of Notary

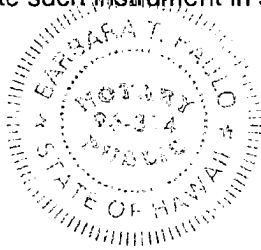
(James Campbell Company LLC)

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS.

On this 9th day of March, 2010, before me personally appeared Calvin W. Loo, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Barbara T. Paulo

Notary Public, State of Hawaii

Name:

Barbara T. Paulo

My commission expires:

Expiration Date: June 14, 2012

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **GRANT OF NONEXCLUSIVE EASEMENT (ACCESS PURPOSES ONLY)**

Document Date: undated at time of execution

No. of Pages: 13

Jurisdiction (in which notarial act is performed): First Circuit

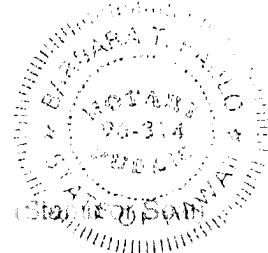
Barbara T. Paulo

Signature of Notary

Date of Notarization and
Certification Statement

Barbara T. Paulo

Printed Name of Notary



(Kunia Loa Ridge Farmlands)

EXHIBIT A

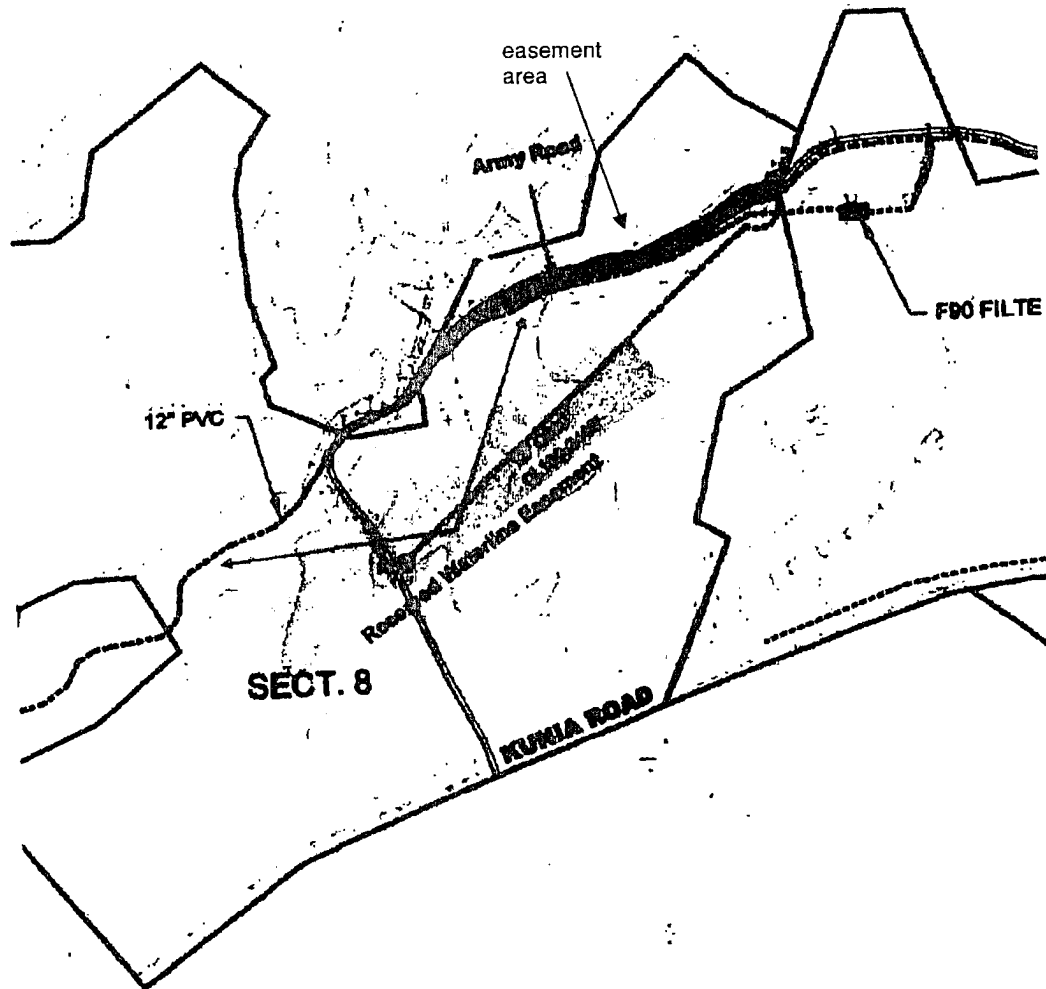


EXHIBIT B

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawaii, more particularly described as follows:

LOT 882-A (area 425.963 acres), as shown on Map 110, filed in the Office of the Assistant Registrar of the Land Court to the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased.

BEING all of the land described in and covered by **Certificate of Title No. 892,761**, issued to (a) **FAT LAW'S FARM, INC.**, (b) **LAW TIENG'S FARM LLC**, (c) **TONY TAN LAW and MANYVONE LAW**, husband and wife, and (d) **HAE VIENGKHOU and PHOUANGPHET VIENGKHOU**, husband and wife.

End of Exhibit B



L-146 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

MAR 17, 2010 08:01 AM

Doc No(s) 3948039
on Cert(s) 975,762



20 2/16 Z4

/s/ NICKI ANN THOMPSON
ASSISTANT REGISTRAR

LAND COURT

REGULAR SYSTEM

Return By Mail ☒ Pick-Up ☐ To:

KA
Carlsmith Ball LLP
2200 ASB Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Attention: Mark K. Murakami
Telephone: 808.523.2561
TG Escrow No. A9-101-3467

TGOH 200935482 -S
TGES A9-101-3467
BARBARA PAULO

LC (2)

TITLE OF DOCUMENT:

Easement No. E02123900

**GRANT OF NONEXCLUSIVE EASEMENT
(ACCESS AND UTILITY PURPOSES)**

PARTIES TO DOCUMENT:

GRANTOR: JAMES CAMPBELL COMPANY LLC, a Delaware limited liability company

GRANTEE: KUNIA LOA RIDGE FARMLANDS, a Hawaii nonprofit corporation
1188 Bishop Street, Suite 1201, Honolulu, Hawaii 96813

TAX MAP KEY(S):

Oahu 9-2-004-010

BURDEN: Certificate of Title No. 892,761 (as to Easement "49")

APPURTENANT TO: Certificate of Title No. 975,762 (as to Lot M-8-B)

(This document consists of 12 pages.)

LAND COURT

REGULAR SYSTEM

Return By Mail ☒ Pick-Up ☐ To:

Carlsmith Ball LLP
2200 ASB Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Attention: Mark K. Murakami
Telephone: 808.523.2561
TG Escrow No. A9-101-3467

TGOH 200935482
TGES A9-101-3467
BARBARA PAULO

TITLE OF DOCUMENT:

Easement No. E02123900

**GRANT OF NONEXCLUSIVE EASEMENT
(ACCESS AND UTILITY PURPOSES)**

PARTIES TO DOCUMENT:

GRANTOR: JAMES CAMPBELL COMPANY LLC, a Delaware limited liability company

GRANTEE: KUNIA LOA RIDGE FARMLANDS, a Hawaii nonprofit corporation
1188 Bishop Street, Suite 1201, Honolulu, Hawaii 96813

TAX MAP KEY(S):

Oahu 9-2-004-010

BURDEN: Certificate of Title No. 892,761 (as to Easement "49")

APPURTENANT TO: Certificate of Title No. 975,762 (as to Lot M-8-B)

(This document consists of 12 pages.)

**GRANT OF NONEXCLUSIVE EASEMENT
(ACCESS AND UTILITY PURPOSES)**

THIS INDENTURE, made this 17th day of March, 2010, by and between **JAMES CAMPBELL COMPANY LLC**, a Delaware limited liability company ("Grantor"), whose address is the James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707, and **KUNIA LOA RIDGE FARMLANDS**, a Hawaii nonprofit corporation (the "Grantee"), whose address is 1188 Bishop Street, Suite 1201, Honolulu, Hawaii 96813;

R E C I T A L S :

WHEREAS, Grantee has requested an easement for access and utility purposes across land through which Grantor has certain reserved rights;

WHEREAS, Grantor and Grantee have reached agreement on the terms and conditions under which Grantor has agreed to permit Grantee to use the easement area described herein for access and utility purposes, and the parties desire to document such agreements;

A G R E E M E N T :

NOW THEREFORE, for and in consideration of the sum of ONE AND NO/100 DOLLARS (\$1.00) paid to them by Grantee, receipt whereof is hereby acknowledged, and of the terms, covenants and conditions hereinafter contained and on the part of Grantee to be observed and performed, and pursuant to Grantor's reserved rights set forth in that certain Limited Warranty Deed With Covenants and Reservation of Rights dated January 23, 2008 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3704219, and noted on **Certificate of Title No. 892,761**, issued to (a) **FAT LAW'S FARM, INC.**, (b) **LAW TIENG'S FARM LLC**, (c) **TONY TAN LAW and MANYVONE LAW**, husband and wife, and (d) **HAE VIENGKHOU and PHOUANGPHET VIENGKHOU**, husband and wife, Grantor does hereby grant unto Grantee the right, in the nature of a nonexclusive easement over the easement area described below (the "**easement area**"), to be exercised and enjoyed by Grantee solely for vehicular and pedestrian access to and from Kunia Road (a public highway) and for utility purposes, which easement rights shall be appurtenant to the Benefited Property (defined below) together with the right, but not the obligation, to maintain and repair the easement area and improvements located within the easement area or appurtenant thereto, and together also with the right, but not the obligation, to construct, reconstruct, install, reinstall, use, operate, repair and maintain such private roadway, waterline or other utility improvements for use of the Benefited Property within such easement area (sometimes referred to as "**private roadway or utility improvements**") as Grantee from time to time deems necessary or appropriate, subject to the terms and conditions set forth in this grant of easement. The easement area is described as follows:

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawaii, more particularly described as follows:

EASEMENT "49" (30 feet wide), as shown on Map 10, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased;

BEING a portion of the land described in and covered by **Certificate of Title No. 892,761**, issued to (a) **FAT LAW'S FARM, INC.**, (b) **LAW TIENG'S FARM LLC**, (c) **TONY TAN LAW and MANYVONE LAW**, husband and wife, and (d) **HAE VIENGKHOU and PHOUANGPHET VIENGKHOU**, husband and wife.

TOGETHER with the right of ingress to and egress from the easement area for all purposes in connection with the rights hereby granted.

TO HAVE AND TO HOLD the same unto Grantee, its lessees, tenants, licensees and other occupants, forever.

SUBJECT, HOWEVER, to any and all existing recorded uses, licenses, easements and other encumbrances of record that are noted on the Certificate of Title referred to above; and

In consideration of the rights hereby granted, the acceptance thereof and the obligations hereby assumed, Grantor and Grantee hereby covenant and agree as follows:

1. Use of Easement Area. Grantee shall use the easement area solely for utility purposes and for ingress and egress to and from Grantee's land described as **Lot M-8-B** (Map 5) of Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased, said land being commonly known as Tax Map Key No. (Oahu) 9-2-004-013 located off of Kunia Road containing approximately 854.23 acres of land, more or less (the "**Benefited Property**"), which use shall be for vehicular and pedestrian ingress and egress to and from the Benefited Property and for utility service to the Benefited Property, and Grantee shall exercise the rights granted to Grantee hereunder in a manner so as not to interfere unreasonably with the land through which the easement area crosses. The Benefited Property is all of the land covered by **Certificate of Title No. 915,162** issued to Kunia Loa Ridge Farmlands. Parking of vehicles within the easement area is prohibited. The parties acknowledge that the easement area connects the Benefited Property with Kunia Road. Grantee shall use the easement area solely for vehicular and pedestrian access to and from Kunia Road (a public highway) and for waterline and other utility purposes, which easement rights shall be appurtenant to the Benefited Property. Grantee shall have the right, but not the obligation, to construct, reconstruct, install, reinstall, use, operate, repair and maintain within the easement area such private roadway or utility improvements as Grantee determines may be required to provide ingress and egress, access to and water and other utility service to the Benefited Property, as Grantee from time to time deems necessary or appropriate, and for no other purposes. If Grantee installs overhead utilities within the easement area, Grantor shall have the right to require that Grantee underground such utilities, if at the time of the request, underground utilities are then being installed or planned to be installed as a matter of practice in the area.

2. Coordination of Uses. Grantee acknowledges that Grantor, the owner of the land through which the easement area crosses, and other persons have rights to use the easement area and that other persons may have rights to use the easement area in the future. Grantee agrees to coordinate its use of the easement area with any other person having the right to use the easement area.

3. Maintenance.

a. Grantee's Obligations. If Grantee constructs any new private roadway or utility improvements within the easement area at Grantee's own cost for Grantee's own use, then, Grantee shall, at Grantee's own expense, keep all such new private roadway or utility improvements in good order, condition, maintenance and repair, reasonable wear and tear from normal usage or damage by casualty excepted. Grantee shall at all times exercise reasonable precaution against damaging the property adjoining the easement area and shall immediately repair any such damaged property.

b. Grantor's Obligations. Grantor shall have no obligation to maintain or repair the easement area or any improvements located within the easement area or appurtenant thereto.

c. Owner's Responsibility. Except as set forth in paragraph 3.a (Grantee's Obligations), the owner of the land through which the easement area crosses shall at such owner's own expense, keep all private roadway or utility improvements within the easement area in good order, condition, maintenance and repair, reasonable wear and tear from normal usage or damage by casualty excepted.

d. No Responsibility for Other Party. Grantor, Grantee and the owner of the land through which the easement area crosses shall each not be responsible to repair any damage to the easement area or improvements located therein caused by the other party.

4. Observance of Laws and Other Requirements. Grantee shall at all times during the term of this grant of easement: (a) observe, perform and comply with all Applicable Laws now or hereafter made with respect to Grantee's use of the easement area; (b) maintain in effect all permits, approvals, licenses, consents or other entitlements, if any, required by Applicable Laws for Grantee's permitted use of the easement area hereunder; and (c) keep the easement area in a safe and nuisance free condition, to the extent the same is consistent with Grantee's use of the easement area. Any failure by Grantee to maintain Grantee's own private roadway or utility improvements as required by paragraph 3.a (Maintenance - Grantee's Obligations) or to comply with the requirements set forth in clauses (a) through (c) of the immediately preceding sentence shall be an event of default under this grant of easement, and Grantor shall have the right to exercise all remedies which Grantor may have hereunder, at law or in equity. Grantee shall Indemnify (defined in paragraph 8 (Indemnity)) Grantor and the owner of the land through which the easement area crosses against all actions, suits, claims and damages by whomsoever brought or made by reason of the nonobservance or nonperformance by Grantee as required hereunder of the requirements of: (i) all Applicable Laws, (ii) permits, approvals, licenses, consents or other entitlements, if any, for Grantee's use of the easement area, and (iii) this paragraph 4 (Observance of Laws and Other Requirements). As used herein the term "**Applicable Laws**" means all federal, state and local laws, statutes, ordinances, codes, rules, regulations, standards, directives, interpretations and conditions of approval, and all legislative, administrative or judicial orders, decrees, requirements, rulings or judgments, which now or in the future may be applicable to the land through which the easement area crosses, or to the use of the same.

5. Condition of Easement Area. Grantee accepts the easement area in its "as is, where is" condition and acknowledge that Grantor has made no representations

concerning the condition of the easement area or the suitability or fitness of the easement area for any particular use or purpose. Grantee also acknowledges that the improvements, if any, including by way of example and not in limitation thereof, the private roadway or utility improvements, within the easement area are or may be nonconforming under Applicable Laws. Grantee assumes all risks arising from any nonconforming improvements within the easement area.

6. Construction of Improvements. No private roadway or utility improvements and no other improvements may be constructed on or adjacent to the easement area without the prior written consent of the owner of the land through which the easement area crosses, which consent shall not be unreasonably withheld or delayed, but shall be conditioned upon compliance with the reasonable needs of the fee simple owner of the land through which the easement area crosses.

7. Limitation of Liability. Grantor and the owner of the land through which the easement area crosses shall each not be liable or responsible for any loss or damage sustained by Grantee or anyone claiming by, through or under Grantee because of any act or omission of any lessee, tenant, licensee or other occupant of the surrounding lands of Grantor, the owner of the land through which the easement area crosses, or of any other person.

8. Indemnity. Grantee shall Indemnify Grantor and the owner of the land through which the easement area crosses from and against any and all actions, suits, losses, costs, damages, liabilities or claims thereof ("**Claims**"), including reasonable attorneys' fees, arising out of or in connection with any loss or damage to property and/or injury to or death of persons arising out of or resulting from the acts or omissions of Grantee or anyone claiming by, through or under Grantee in connection with the exercise of the rights or privileges granted hereunder, or arising out of or in connection with any private roadway or utility improvements within the easement area; provided, however that nothing herein shall be deemed to require Grantee to Indemnify Grantor or the owner of the land through which the easement area crosses for any Claim, to the extent such Claim was caused solely by Grantor's own acts or omissions or such owner's own acts or omissions. Grantee's obligations to Indemnify Grantor and the owner of the land through which the easement area crosses under this paragraph 8 (Indemnity), under paragraph 4 (Observance of Laws and Other Requirements) and under paragraph 9 (No Liens) shall survive the termination of this grant of easement and shall be binding upon Grantee, its successors and assigns. As used herein, the term "**Indemnify**" means the protection of a party, by a money payment if necessary, against reasonable out-of-pocket loss. The term shall include an obligation by the indemnitor to defend and hold the indemnitee harmless (with counsel reasonably acceptable to the indemnitee) in connection with any claim against which the Indemnity operates. The obligation to Indemnify shall specifically include, but shall not be limited to, payment of all reasonable costs and expenses paid by the indemnitee or reasonably anticipated to be incurred by the indemnitee for the indemnitee's defense, including without limitation, reasonable attorneys' fees and costs, and all other consultants' reasonable fees and costs. An Indemnity shall also specifically include all reasonable costs for research regarding settlement or other preventive measures undertaken by the indemnitee with regard to any such claim.

9. No Liens. Grantee shall not commit or suffer any act or neglect whereby the easement area becomes subject to any attachment, judgment, lien, charge or encumbrance whatsoever, and shall Indemnify Grantor and the owner of the land through

which the easement area crosses from and against any and all loss, liability, claim or demand for damage or injury with respect thereto.

10. Assignment. Grantee shall not assign any right hereby granted without the prior written consent of Grantor and the owner of the land through which the easement area crosses, which consents may not be unreasonably withheld, conditioned or delayed, and any purported assignment or transfer without such consent shall be void. Grantor, may, from time to time, assign all or a portion of Grantor's rights under this grant of easement to the owner of the land through which the easement area crosses, without notice, joinder or consent of Grantee or any other person.

11. Cooperation. Grantee agrees to cooperate, join in and/or consent to Grantor's exercise of its reserved rights under paragraph 19 (Grantor's Reservations) if so requested by Grantor, which cooperation, joinder(s) or consent(s) shall not be unreasonably withheld, conditioned or delayed.

12. Abandonment or Termination. In the event Grantee abandons the use of the easement area or the easement area remains unused by Grantee for a continuous period of one (1) year, this grant of easement shall automatically terminate, and Grantee shall, at Grantor's request, or the request of the owner of the land through which the easement area crosses, at any time after such abandonment, or at any time after a termination of this grant of easement under paragraph 14 (Default and Remedies), execute such documents as Grantor reasonably requests for the purpose of terminating this grant of easement. As used herein, the term "**abandon**" means that Grantee, through action or inaction, shows an intent to no longer use the easement area or portion thereof for the purposes for which this grant of easement is given, and upon written request by Grantor or the owner of the land through which the easement area crosses to Grantee requesting confirmation of continued use of the easement area, Grantee fails to respond in writing within a reasonable period of time not to exceed forty-five (45) days, Grantee shall be deemed to have abandoned the applicable portion of the easement area. Grantee hereby agrees that on or before the termination or cancellation of this grant of easement, or within a reasonable period following such termination or cancellation, if requested by both Grantor and the owner of the land through which the easement area crosses, Grantee will remove its own private roadway or utility improvements from the easement area and will restore the easement area to the condition existing at the time of entry thereon, reasonable and ordinary wear and tear and damages by the elements or by circumstances over which Grantee has no control excepted.

13. Condemnation. If the easement area is taken or condemned in whole or part by any authority having the power of eminent domain, all compensation and damages awarded on account of the condemnation or taking shall be payable to the owner of the land through which the easement area crosses, without any apportionment to Grantee, except that Grantee may claim and recover from the condemning authority full compensation for any severance or other damages, including the cost of obtaining and relocating to a substitute easement area or right of way.

14. Default and Remedies. If a party fails to perform any of the terms, covenants and agreements contained herein, if such failure continues for a period of thirty (30) days after written notice, then the non-defaulting party shall be entitled to all remedies available to it at law or equity, including by way of example and not in limitation thereof, the right to sue such person for specific performance, injunctive relief and/or monetary damages,

including without limitation, reasonable attorneys' fees, costs and expenses. Grantor shall have the right to terminate this grant of easement for a material breach by Grantee of the terms and conditions hereof, or a continuing material default of Grantee's performance of the terms and conditions of this grant of easement, if a court of competent jurisdiction determines that such termination is appropriate in the circumstances giving rise to Grantor's exercise of its rights and remedies at law or equity, and such court determines that other remedies are inadequate under such circumstances.

15. Rights to Cure. If Grantor, Grantee or the owner of the land through which the easement area crosses fails to observe or perform any of the terms, covenants or conditions contained in this grant of easement on the part of such party to be observed and performed (including both monetary and non-monetary obligations), or fails to observe or perform any of its obligation(s) hereunder within the time period specified herein for observance or performance, and fails to cure such nonobservance or nonperformance within any cure period (if applicable), without limiting any other remedy which may be available to the party seeking performance at law or in equity, the party seeking performance shall have the right (but not the obligation) to wholly or partially perform such covenant or obligation on behalf of the non-performing party after giving a second written notice demanding performance within a reasonable period of time, and indicating that the party seeking performance intends to exercise its rights of self-help under this paragraph 15 (Rights to Cure), at the cost and expense of the non-performing party if such performance does not occur within such reasonable period of time. If such performance does not occur within such specified time period, the party seeking performance may enter onto the easement area and undertake such actions as the party seeking performance deems appropriate under the circumstances and with the facts known to such party at that time. If Grantor, Grantee or the owner of the land through which the easement area crosses exercise their respective rights under this paragraph 15 (Rights to Cure), then the non-performing party shall promptly reimburse the party seeking performance for any and all reasonable costs and expenses incurred by the party seeking performance in connection with such action, including without limitation, all reasonable consultants', experts' and attorneys' fees and costs, plus interest thereon at a rate equal to twelve (12%) per annum (but in no event more than the maximum per annum rate of interest permitted to be charged by then Applicable Laws) accruing from the date such costs or expenses are incurred under this paragraph 15 (Rights to Cure), until actually paid in full.

16. Expenses of Enforcement. If any of Grantor, Grantee or the owner of the land through which the easement area crosses brings any legal proceeding to enforce any of the terms, covenants or conditions hereof, the unsuccessful party in such proceeding shall pay the prevailing party's costs and expenses, including reasonable attorneys' fees, incurred in the bringing or defending of such proceeding.

17. Remedies Cumulative. The remedies set forth herein shall be in addition to remedies otherwise applicable or provided herein or otherwise available at law or in equity, it being understood that all rights and remedies shall always be non-exclusive and cumulative and that the exercise of one remedy or form of relief available hereunder shall not be exclusive of, or constitute a waiver of, any other.

18. No Waiver. The failure in any case to enforce the provisions of any covenant, condition, restriction, obligation or charge of this grant of easement shall not constitute a waiver of any right to enforce any such provision of this grant of easement in any other case.

19. Grantor's Reservations. Any other provision herein notwithstanding, and in addition to any other reservations set forth in this grant of easement, this grant of easement is subject to the reservation unto Grantor, its successors and assigns, of the following rights, to which Grantee hereby consents: (a) the right to utilize or to permit others to utilize the easement area, and (b) the right to make one or more irrevocable, nonexclusive grants or assignments of nonexclusive rights in the easement area from time to time to governmental authorities, public or private utilities or others.

20. Owner's Rights. Any other provision herein notwithstanding, nothing in this grant of easement shall be interpreted or otherwise deemed to prevent the owner of the land through which the easement area crosses from using or permitting others to use the easement area, or from making one or more irrevocable, nonexclusive grants or assignments of nonexclusive rights in the easement area from time to time to governmental authorities, public or private utilities or others.

21. Multiple Grantees. If there are more than one grantee under this grant of easement, then all such persons shall be jointly and severally bound by the Grantee's covenants in this grant of easement and any notice given to any one person by Grantor or by the owner of the land through which the easement area crosses shall be deemed to be notice upon all such persons.

22. Binding Effect. This instrument shall be binding upon and shall inure to the benefit of Grantor, Grantee and the owner of the land through which the easement area crosses, and their respective heirs, devisees, personal representatives, successors, and assigns.

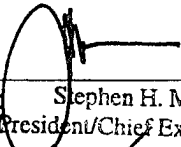
23. Counterparts. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts.


[remainder of this page intentionally left blank; signatures on following page]

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date and year first above written.

Grantor:

JAMES CAMPBELL COMPANY LLC, a
Delaware limited liability company

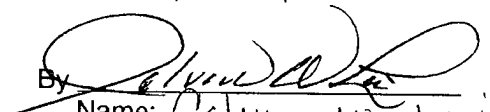
By 
Name: **Stephen H. MacMillan**
Its: **President/Chief Executive Officer**

By 
Name: **Bertram L. Hatton**
Its: **Executive Vice President**
Hawai Land Management

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date and year first above written.

Grantee:

KUNIA LOA RIDGE FARMLANDS, a
Hawaii nonprofit corporation

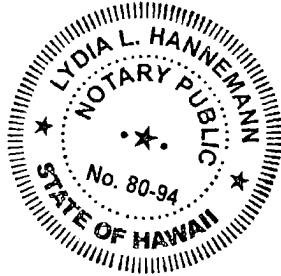
By 
Name: Calvin W. Lui
Its: President

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

ss.

On this 3rd day of March, 2010, before me personally appeared Stephen H. MacMillan and Bertram L. Hatton, to me personally known, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Lydia L. Hannemann
Notary Public, State of Hawaii
Name: **Lydia L. Hannemann**
My commission expires: **February 11, 2012**

NOTARY CERTIFICATION STATEMENT

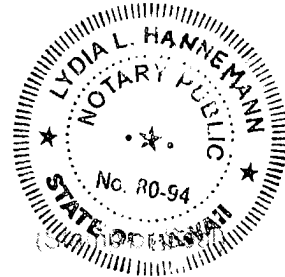
Document Identification or Description: **GRANT OF NONEXCLUSIVE EASEMENT (ACCESS AND UTILITY PURPOSES)**

Document Date: undated at time of execution

No. of Pages: 12

Jurisdiction (in which notarial act is performed): First Circuit

Lydia L. Hannemann 3/3/2010
Signature of Notary Date of Notarization and
Certification Statement



Lydia L. Hannemann

Printed Name of Notary

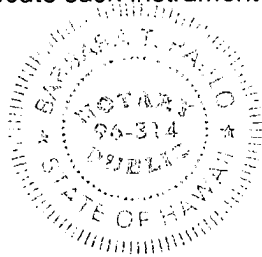
(James Campbell Company LLC)

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS.

On this 9th day of March, 2010, before me personally appeared Calvin W. Lui, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Barbara T. Paulo

Notary Public, State of Hawaii

Name:

Barbara T. Paulo

My commission expires: Expiration Date June 14 2012

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **GRANT OF NONEXCLUSIVE EASEMENT (ACCESS AND UTILITY PURPOSES)**

Document Date: undated at time of execution

No. of Pages: 12

Jurisdiction (in which notarial act is performed): First Circuit

Barbara T. Paulo 3/9/2010

Signature of Notary

Date of Notarization and
Certification Statement

Barbara T. Paulo

Printed Name of Notary



(Kunia Loa Ridge Farmlands)

**ASSIGNMENT AND ASSUMPTION OF GRANTEE'S RIGHTS AND OBLIGATIONS
UNDER GRANT OF EASEMENT**

THIS INSTRUMENT is made as of March 17, 2010, by and between **JAMES CAMPBELL COMPANY LLC**, a Delaware limited liability company ("**Assignor**") whose address is James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707 and **KUNIA LOA RIDGE FARMLANDS**, a Hawaii nonprofit corporation (the "**Assignee**"), whose address is 1188 Bishop Street, Suite 1201, Honolulu, Hawaii 96813.

WITNESSETH:

THAT THE ASSIGNOR, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid to Assignor, the receipt and sufficiency of which is hereby acknowledged, and of the covenants and agreements of Assignee hereinafter contained and on the part of Assignee to be faithfully kept and performed, does hereby sell, assign, transfer, set over and deliver unto Assignee all of Assignor's right, title and interest in, to and under the following ("**Grant of Easement**"):

That certain unrecorded Grant of Nonexclusive Easement (Access Only) dated March 10, 2010, by and between Army Hawaii Family Housing LLC, a Delaware limited liability company, as Grantor, and James Campbell Company LLC, a Delaware limited liability company, as Grantee, a fully executed copy of which is attached as **Exhibit A** and incorporated herein by this reference.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith unto the Assignee, and its successors and assigns, for and during the full unexpired term of the Grant of Easement; **SUBJECT, HOWEVER**, to the observance and performance by the Assignee of all of the terms, covenants and conditions contained in the Grant of Easement, which, according to the terms and provisions thereof, are or ought to be observed and performed by the Grantee therein named.

AND THE ASSIGNOR, in consideration of the easement premises, does hereby covenant and agree to and with Assignee as follows: (i) Assignor is the lawful owner of the estate and interest created under the Grant of Easement; (ii) the Grant of Easement is in full force and effect and not in default; (iii) the estate and interest created by the Grant of Easement is free and clear of all encumbrances other than those therein mentioned, and except for assessments for real property taxes not yet by law required to be paid; (iv) Assignor has good right to sell and assign the estate and interest created by the Grant of Easement; and (v) Assignor will **WARRANT AND DEFEND** title to the estate and interest created by the Grant of Easement unto Assignee against the lawful claims and demands of all persons except as otherwise provided herein.

AND THE ASSIGNEE hereby acknowledges, verifies and confirms that Assignee has reviewed and fully understands all the material terms, covenants and conditions of the Grant of Easement and in consideration of the premises, does hereby promise, covenant and agree to and with Assignor, and to and with the Grantor under the Grant of Easement, from and after the date hereof that Assignee will faithfully observe and perform all of the terms, covenants and conditions contained in the Grant of Easement which

are or ought to be observed and performed by the Grantee therein named, and will at all times hereafter indemnify, defend and hold Assignor harmless from and against the nonobservance of the terms, covenants and conditions contained in the Grant of Easement arising from and after the date hereof.

IT IS MUTUALLY AGREED as follows:

1. Express Intent of the Parties. It is the express intent of the parties to this instrument that from and after the date of this instrument, Assignee shall be the "Grantee" under the Grant of Easement for all purposes, and that Assignor shall no longer have any of the rights, powers, privileges and obligations of the Grantee under the Grant of Easement, and the terms and conditions of this instrument shall be liberally construed to effectuate this express intent.

2. Further Cooperation. The parties hereto agree to execute any and all other documents, agreements and instruments, and to take any and all other actions, which may be reasonably necessary or desirable to effect the transactions contemplated hereunder.

3. Partial Invalidity. If any provisions of this instrument or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this instrument and the application of such provisions to other persons or circumstances shall not be affected thereby.

4. Amendment. This instrument may be amended only by a writing signed by each of the parties to this instrument.

5. No Other Effect. Except as expressly provided herein, in all other respects, the Grant of Easement shall remain unmodified, and in full force and effect.

6. Binding Effect. This instrument shall be binding upon and shall inure to the benefit of Assignor, Assignee, and their respective heirs, devisees, personal representatives, successors and assigns.

7. Governing Law. The laws of the State of Hawai'i shall govern the construction, validity, performance and enforcement of this instrument.

8. Entire Agreement. This instrument is the only agreement of the parties concerning the subject matter and supersedes any and all prior agreements and understandings, whether written or oral, concerning the subject matter. There are no verbal representations, understandings, stipulations, agreements or promises pertaining to this not incorporated in writing herein.

9. Consent. **ARMY HAWAII FAMILY HOUSING LLC**, a Delaware limited liability company, in consideration of the sum of One and No/100 Dollars (\$1.00) paid to it, the receipt and sufficiency of which is hereby acknowledged, as Grantor under the Grant of Easement, **DOES HEREBY CONSENT** to Assignor's assignment of the Grantee's interest under the Grant of Easement to Assignee set forth herein; **UPON THE EXPRESS CONDITION** that: (i) all of the terms, covenants and conditions to be observed and performed by the Grantee under the Grant of Easement from and after the date of this instrument shall be faithfully observed and performed by the Assignee; (ii) this consent is

limited to the above referenced assignment and shall not be deemed or construed as authorizing any other or further assignment of the Grantee's interest in the Grant of Easement or as a waiver of any of the terms, covenants, or conditions contained in the Grant of Easement; and (iii) all rights of the undersigned as Grantor under the Grant of Easement are hereby expressly reserved.

10. Counterparts. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts.

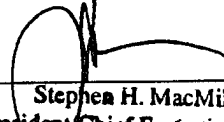
[the remainder of this page intentionally left blank; signature(s) on following page(s)]

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date first above written.


Assignor:

JAMES CAMPBELL COMPANY LLC, a
Delaware limited liability company

By


Name: **Stephen H. MacMillan**
Its: **President/Chief Executive Officer**

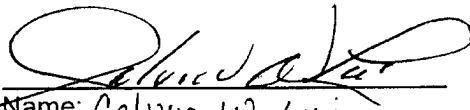
By


Name: **Beltram L. Hatton**
Its: **Executive Vice President**
Hawaii Land Management

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date first above written.

Assignee:

KUNIA LOA RIDGE FARMLANDS, a
Hawaii nonprofit corporation

By 
Name: Calvin W. Lui
Its: President

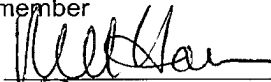
IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date first above written.

Consenting Party:

ARMY HAWAII FAMILY HOUSING LLC,
a Delaware limited liability company

By **AHFH MANAGING MEMBER LLC,**
a Delaware limited liability company,
its managing member

By: **ACTUS LEND LEASE HOLDINGS
LLC,**
a Delaware limited liability company,
its sole member

By: 
Name: RICHARD HAWES
Its: EOP - HAWAII
ACTUS LLC

**GRANT OF NONEXCLUSIVE EASEMENT
(ACCESS ONLY)**

THIS INDENTURE, made this 10th day of March, 2010, by and between **ARMY HAWAII FAMILY HOUSING LLC**, a Delaware limited liability company ("Grantor"), whose address is 215 Duck Road, Building 950, Schofield Barracks, Hawaii 96857, and **JAMES CAMPBELL COMPANY LLC**, a Delaware limited liability company ("Grantee"), whose address is the James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707;

R E C I T A L S :

WHEREAS, Grantor is the owner of Lot 17846, consisting of approximately 2,395.961 acres, as shown on Map 1370, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased, as more fully described in **Exhibit B** attached hereto and incorporated herein by this reference ("Lot 17846")

WHEREAS, Grantee is the owner of Lot M-8-B, consisting of approximately 854.23 acres, as shown on Map 5, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased, as more fully described in **Exhibit C** attached hereto and incorporated herein by this reference ("Lot M-8-B");

WHEREAS, Grantee has requested an easement for access purposes across Lot 17846, for the purpose of ingress and egress to and from Lot M-8-B;

WHEREAS, Grantor and Grantee have reached agreement on the terms and conditions under which Grantor has agreed to permit Grantee to use the Easement Area described herein for access purposes only, and the parties desire to document such agreements;

A G R E E M E N T :

NOW THEREFORE, for and in consideration of the sum of ONE AND NO/100 DOLLARS (\$1.00) paid to them by Grantee, receipt whereof is hereby acknowledged, and of the terms, covenants and conditions hereinafter contained and on the part of Grantee to be observed and performed, Grantor does hereby grant unto Grantee the right, in the nature of a nonexclusive easement over the Easement Area graphically shown on **Exhibit A** attached hereto and incorporated herein by this reference (the "Easement Area"), to be exercised and enjoyed by Grantee solely for vehicular and pedestrian access, which easement right shall be appurtenant to the Benefited Property (defined below). The Easement Area is located within the land described in **Exhibit B** attached hereto and incorporated herein by this reference.

TO HAVE AND TO HOLD the same unto Grantee, its successors, permitted assigns, lessees, tenants, licensees and other occupants, and each of their permittees or invitees, subject to the prohibition in paragraph 1 (Permitted Use of Easement Area) that use of the Easement Area under this grant of easement by the general public is prohibited; provided, however, that this grant of easement shall automatically terminate or partially terminate, as

applicable, upon dedication and conveyance of all or a portion of the Easement Area to, and acceptance by, any governmental authority for use as a public road.

SUBJECT, HOWEVER, to any and all existing recorded uses, licenses, easements and other encumbrances of record, and such other unrecorded uses, licenses, easements and other encumbrances, if any, that have been disclosed in writing by Grantor to Grantee prior to execution of this grant of easement; and

RESERVING, HOWEVER, unto Grantor, for the benefit of Grantor, its lessees, tenants, licensees and other occupants, all rights of Grantor with respect to the Easement Area other than as specifically conferred upon Grantee herein.

In consideration of the rights hereby granted, the acceptance thereof and the obligations hereby assumed, Grantor and Grantee hereby covenant and agree as follows:

1. Permitted Use of Easement Area. Grantee shall use the Easement Area solely for vehicular and pedestrian ingress and egress to and from Lot M-8-B (the "Benefited Property"), which easement rights shall be appurtenant to the Benefited Property; provided that use of the Easement Area under this grant of easement by the general public is prohibited. Grantee shall exercise the rights granted to Grantee hereunder in a manner so as not to interfere unreasonably with the land through which the Easement Area crosses. The Benefited Property is all of the land covered by **Certificate of Title No. 830,900** issued to Grantee. Parking of vehicles within the Easement Area is prohibited. Grantee shall not commit or cause to be committed any waste in or upon the Easement Area or maintain any public or private nuisance or any other action which may interfere with or disturb the quiet enjoyment of any surrounding property, nor shall Grantee permit the Easement Area to be used for any improper, offensive or unlawful purpose.

2. Coordination of Uses. Grantee acknowledges that Grantor and other persons have rights to use the Easement Area for access only and that other persons may have rights to use the Easement Area in the future. Grantee agrees to coordinate its use of the Easement Area with any other person having the right to use the Easement Area.

3. Maintenance. Grantee shall have no obligation to maintain or repair the existing dirt road within the Easement Area, provided, however that Grantee acknowledges that because Grantor has no such obligation under this grant of easement to do so, that Grantee's election not to maintain or repair the existing dirt road shall be at Grantee's own risk and peril. Grantee shall at all times exercise every reasonable precaution against damaging the property adjoining the Easement Area and shall immediately repair any such damaged property.

4. Observance of Laws and Other Requirements. Grantee shall at all times during the term of this grant of easement: (a) observe, perform and comply with all Applicable Laws now or hereafter made with respect to Grantee's use of the Easement Area; (b) maintain in effect all permits, approvals, licenses, consents or other entitlements, if any, required by Applicable Laws for Grantee's permitted use of the Easement Area hereunder; and (c) keep the Easement Area in a safe and nuisance free condition, to the extent the same is consistent with Grantee's use of the Easement Area. Any failure by Grantee to comply with the requirements set forth in clauses (a) through (c) of the immediately preceding sentence shall be an event of default under this grant of easement, and Grantor shall have the right to exercise all remedies which Grantor may have hereunder, at law or in equity. Grantee shall Indemnify (defined in paragraph 8 (Indemnity)) Grantor and the owner of the land through which the Easement Area

crosses (if other than Grantor) against all actions, suits, claims and damages by whomsoever brought or made by reason of the nonobservance or nonperformance by Grantee as required hereunder of the requirements of: (i) all Applicable Laws, (ii) permits, approvals, licenses, consents or other entitlements, if any, for Grantee's use of the Easement Area, and (iii) this paragraph 4 (Observance of Laws and Other Requirements). As used herein the term "Applicable Laws" means all federal, state and local laws, statutes, ordinances, codes, rules, regulations, standards, directives, interpretations and conditions of approval, and all legislative, administrative or judicial orders, decrees, requirements, rulings or judgments, which now or in the future may be applicable to the land through which the Easement Area crosses, or to the use of the same.

5. Condition of Easement Area. Grantee confirms to Grantor that Grantee has made such investigation of facts concerning the physical condition of the Easement Area as Grantee has deemed appropriate. Grantee accepts the Easement Area in its "as is, where is" condition and acknowledges that Grantor has made no representations concerning the condition of the Easement Area or the suitability or fitness of the Easement Area for any particular use or purpose. Grantee also acknowledges that the improvements, if any, within the Easement Area are or may be nonconforming under Applicable Laws. Grantee assumes all risks arising from any nonconforming improvements within the Easement Area.

6. Construction of Improvements. No improvements may be constructed on or adjacent to the Easement Area without the prior written consent of Grantor, which consent shall not be unreasonably withheld or delayed.

7. Limitation of Liability. Grantor shall not be liable or responsible for any loss or damage sustained by Grantee or anyone claiming by, through or under Grantee because of any act or omission of Grantee or any adjacent landowner(s), its/their lessees, tenants, licensees or other occupants, or any other person.

8. Indemnity. Grantee shall Indemnify Grantor from and against any and all actions, suits, losses, costs, damages, liabilities or claims thereof ("Claims"), including reasonable attorneys' fees, arising out of or in connection with any loss or damage to property and/or injury to or death of persons arising out of or resulting from the acts or omissions of Grantee or anyone claiming by, through or under Grantee in connection with the exercise of the rights or privileges granted hereunder, or arising out of or in connection with any improvements made by Grantee within the Easement Area; provided, however that nothing herein shall be deemed to require Grantee to Indemnify Grantor for any Claim, to the extent such Claim was caused solely by Grantor's own acts or omissions. Grantee's obligations to Indemnify Grantor under this paragraph 8 (Indemnity), under paragraph 4 (Observance of Laws and Other Requirements) and under paragraph 9 (No Liens) shall survive the termination of this grant of easement and shall be binding upon Grantee, its successors and assigns. As used herein, the term "Indemnify" means the protection of a party, by a money payment if necessary, against reasonable out-of-pocket loss. The term shall include an obligation by the indemnitor to defend and hold the indemnitee harmless (with counsel reasonably acceptable to the indemnitee) in connection with any claim against which the Indemnity operates. The obligation to Indemnify shall specifically include, but shall not be limited to, payment of all reasonable costs and expenses paid by the indemnitee or reasonably anticipated to be incurred by the indemnitee for the indemnitee's defense, including without limitation, reasonable attorneys' fees and costs, and all other consultants' reasonable fees and costs. An Indemnity shall also specifically include all reasonable costs for research regarding settlement or other preventive measures undertaken by the indemnitee with regard to any such claim.

9. No Liens. Grantee shall not commit or suffer any act or neglect whereby the Easement Area becomes subject to any attachment, judgment, lien, charge or encumbrance whatsoever, and shall indemnify Grantor from and against any and all loss, liability, claim or demand for damage or injury with respect thereto.

10. Assignment. Grantee shall not assign any right hereby granted without the prior written consent of Grantor, which may be withheld for any reason, and any purported assignment or transfer without such consent shall be void; provided, however that notwithstanding the foregoing, Grantor agrees to consent to an assignment of this grant of easement if such assignment is made in conjunction with a conveyance of Grantee's fee simple interest in and to all of the Benefited Property. It is the intent of the parties that Grantee's rights and obligations under this grant of easement shall at all times be appurtenant to Grantee's fee simple ownership of the Benefited Property, and shall not be separated from such interest.

11. Cooperation. Grantee agrees to cooperate, join in and/or consent to Grantor's exercise of its reserved rights under paragraph 19 (Grantor's Reservations) if so requested by Grantor, which cooperation, joinder(s) or consent(s) shall not be unreasonably withheld, conditioned or delayed. Grantor and Grantee agree to cooperate, join in and/or consent to the other party's exercise of the reserved rights set forth in paragraph 20 (Designation of Land Court Easement).

12. Abandonment, Termination or Relocation. In the event Grantee abandons the use of the Easement Area or the Easement Area remains unused by Grantee for a continuous period of five (5) years, this grant of easement shall automatically terminate, and Grantee shall, at Grantor's request, at any time after such abandonment, or at any time after a termination of this grant of easement under paragraph 14 (Default and Remedies) or relocation of this grant of easement under paragraph 19 (Grantor's Reservations), execute such documents as Grantor reasonably requests for the purpose of terminating this grant of easement. As used herein, the term "abandon" means that Grantee, through action or inaction, show an intent to no longer use the Easement Area or portion thereof for access to the Benefited Property, and upon written request by Grantor to Grantee requesting confirmation of continued use of the Easement Area, Grantee fails to respond in writing within a reasonable period of time not to exceed forty-five (45) days, Grantee shall be deemed to have abandoned the applicable portion of the Easement Area. Grantee hereby agrees that on or before the termination or cancellation of this grant of easement, or within a reasonable period following such termination or cancellation, Grantee will remove its own improvements from the Easement Area, if any, and will restore the Easement Area to the condition existing at the time of entry thereon, reasonable and ordinary wear and tear and damages by the elements or by circumstances over which Grantee has no control excepted.

13. Condemnation. If the Easement Area is taken or condemned in whole or part by any authority having the power of eminent domain, all compensation and damages awarded on account of the condemnation or taking shall be payable to Grantor, without any apportionment to Grantee, except that Grantee may claim and recover from the condemning authority full compensation for any severance or other damages, including the cost of obtaining and relocating to a substitute Easement Area or right of way.

14. Default and Remedies. If a party fails to perform any of the terms, covenants and agreements contained herein, if such failure continues for a period of thirty (30) days after written notice, then the non-defaulting party shall be entitled to all remedies available to it at law or equity, including by way of example and not in limitation thereof, the right to sue such person

for specific performance, injunctive relief and/or monetary damages, including without limitation, reasonable attorneys' fees, costs and expenses. Grantor shall have the right to terminate this grant of easement for a material breach by Grantee of the terms and conditions hereof, or a continuing material default of Grantee's performance of the terms and conditions of this grant of easement, if a court of competent jurisdiction determines that such termination is appropriate in the circumstances giving rise to Grantor's exercise of its rights and remedies at law or equity, and such court determines that other remedies are inadequate under such circumstances.

15. Rights to Cure. If a party fails to observe or perform any of the terms, covenants or conditions contained in this grant of easement on the part of such party to be observed and performed (including both monetary and non-monetary obligations), or fails to observe or perform any of its obligation(s) hereunder within the time period specified herein for observance or performance, and fails to cure such nonobservance or nonperformance within any cure period (if applicable), without limiting any other remedy which may be available to the party seeking performance at law or in equity, the party seeking performance shall have the right (but not the obligation) to wholly or partially perform such covenant or obligation on behalf of the non-performing party after giving a second written notice demanding performance within a reasonable period of time, and indicating that the party seeking performance intends to exercise its rights of self-help under this paragraph 15 (Rights to Cure), at the cost and expense of the non-performing party if such performance does not occur within such reasonable period of time. If such performance does not occur within such specified time period, the party seeking performance may enter onto the Easement Area and undertake such actions as the party seeking performance deems appropriate under the circumstances and with the facts known to such party at that time. If either Grantor or Grantee exercise their respective rights under this paragraph 15 (Rights to Cure), then the non-performing party shall promptly reimburse the party seeking performance for any and all reasonable costs and expenses incurred by the party seeking performance in connection with such action, including without limitation, all reasonable consultants', experts' and attorneys' fees and costs, plus interest thereon at a rate equal to twelve (12%) per annum (but in no event more than the maximum per annum rate of interest permitted to be charged by then Applicable Laws) accruing from the date such costs or expenses are incurred under this paragraph 15 (Rights to Cure), until actually paid in full.

16. Expenses of Enforcement. If Grantor or Grantee bring any legal proceeding to enforce any of the terms, covenants or conditions hereof, the unsuccessful party in such proceeding shall pay the prevailing party's costs and expenses, including reasonable attorneys' fees, incurred in the bringing or defending of such proceeding.

17. Remedies Cumulative. The remedies set forth herein shall be in addition to remedies otherwise applicable or provided herein or otherwise available at law or in equity, it being understood that all rights and remedies shall always be non-exclusive and cumulative and that the exercise of one remedy or form of relief available hereunder shall not be exclusive of, or constitute a waiver of, any other.

18. No Waiver. The failure in any case to enforce the provisions of any covenant, condition, restriction, obligation or charge of this grant of easement shall not constitute a waiver of any right to enforce any such provision of this grant of easement in any other case.

19. Grantor's Reservations. Any other provision herein notwithstanding, and in addition to any other reservations set forth in this grant of easement, this grant of easement is subject to the reservation unto Grantor, its successors and assigns, of the following rights, to which Grantee hereby consents: (a) the right from time to time to realign or relocate the

Easement Area, at Grantor's own cost, as development or use of the surrounding lands may require, provided that upon completion of such realignment or relocation, Grantor shall enter into a grant of easement with Grantee for such realigned or relocated Easement Area; (b) the right to subdivide all or any portion of the land through which the Easement Area crosses into lots or to consolidate all or any portion of such land with adjoining land and to resubdivide the same into lots at Grantor's expense; (c) the right to utilize or to permit others to utilize the Easement Area, provided that such use does not unreasonably interfere with Grantee's use of the same; (d) the right to make one or more irrevocable, nonexclusive grants or assignments of nonexclusive rights in the Easement Area from time to time to any person, including without limitation, governmental authorities, public or private utilities, or others; and (e) the right to construct improvements and install landscaping in the Easement Area as long as such activities do not disturb or otherwise hinder Grantee's use of such Easement Area.

20. Designation of Land Court Easement. Grantor and Grantee shall each have the right to seek subdivision approval for the Easement Area from the Department of Planning and Permitting of the City and County of Honolulu, and designation of the Easement Area in the Office of the Assistant Registrar of the Land Court of the State of Hawaii. If Grantor or Grantee exercises this right to designate the Easement Area in the Land Court, then upon such designation of the Easement Area, Grantor and Grantee shall amend and restate this grant of easement in its entirety to incorporate herein the new legal description of the Easement Area. The party who seeks designation of the Easement Area shall bear the cost to obtain such governmental approvals to create such Land Court designated easement, and the cost to amend and restate this grant of easement.

21. Binding Effect. The terms "Grantor" and "Grantee" wherever herein used shall be held to mean and include Grantor, its successors and permitted assigns, and Grantee, its successors and assigns, and this instrument shall be binding upon and shall inure to the benefit of Grantor, Grantee, and their respective heirs, devisees, personal representatives, successors, and assigns.

22. Governing Law. The laws of the State of Hawai'i shall govern the construction, validity, performance and enforcement of this instrument.

23. Entire Agreement. This instrument is the only agreement of the parties concerning the subject matter and supersedes any and all prior agreements and understandings, whether written or oral, concerning the subject matter. There are no verbal representations, understandings, stipulations, agreements or promises pertaining to this not incorporated in writing herein.

24. Counterparts. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts.

[signatures on following page]

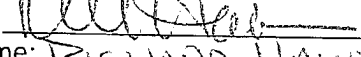
IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date and year first above written.

Grantor:

ARMY HAWAII FAMILY HOUSING LLC,
a Delaware limited liability company

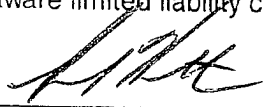
By **AHFH MANAGING MEMBER LLC,**
a Delaware limited liability company,
its managing member

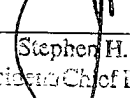
By: **ACTUS LEND LEASE HOLDINGS LLC,**
a Delaware limited liability company,
its sole member

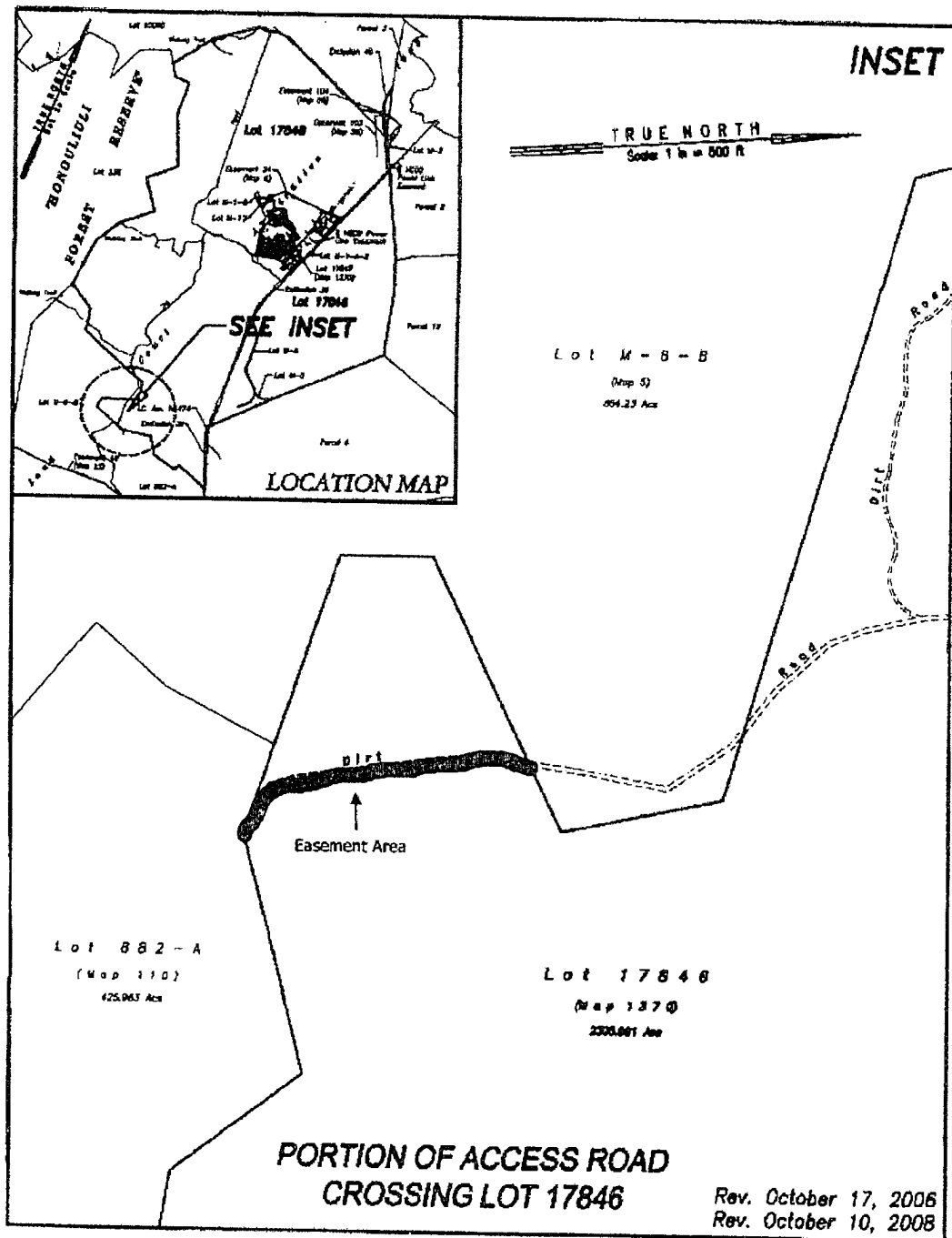
By: 
Name: **RICHARD HAUER**
Its: **EVP - ACTUS HAWAII LLC**

Grantee:

JAMES CAMPBELL COMPANY LLC,
a Delaware limited liability company

By: 
Name: **Bertram L. Hatton**
Its: **Executive Vice President
Hawaii Land Management**

By: 
Name: **Stephen H. MacMillan**
Its: **President/Chief Executive Officer**



Tax Map Key: 9-2-05:

ACE LAND SURVEYING, LLC
735 Bishop St. Suite 330
Honolulu, HI 96813

8.5" x 11" = 0.65 sq.ft.



EXHIBIT B

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT 17846, GROSS area 2,542.363 acres, LESS Lots M-2, 17847, M-4, M-5, M-13, M-1-B and M-1-A-2, Exclusions 38, 39 and 40, area 146.402 acres, NET area 2,395.961 acres, more or less, as shown on Map 1370, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased;

Being the land(s) described in **Certificate of Title No. 930,578** issued to ARMY HAWAII FAMILY HOUSING LLC, a Delaware limited liability company.

End of Exhibit B

EXHIBIT C

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT M-8-B, area 854.23 acres, as shown on Map 5, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased;

Being the land(s) described in **Certificate of Title No. 830,900** issued to JAMES CAMPBELL COMPANY LLC, a Delaware limited liability company.

End of Exhibit C

751F
40A



L-148 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED
MAR 17, 2010 08:01 AM
Doc No(s) 3948041
on Cert(s) 975,762



/s/ NICKI ANN THOMPSON
ASSISTANT REGISTRAR

60 4/16 Z4

KA

LAND COURT SYSTEM	REGULAR SYSTEM
Return by Mail <input type="checkbox"/> Pickup <input checked="" type="checkbox"/> To:	
Raymond S. Iwamoto, Esq. Schlack Ito Lockwood Piper & Elkind 745 Fort Street, Suite 1500 Honolulu, Hawaii 96813 Phone: (808) 523-6060	TGOH 200935482 -S TGES. A9-101-3467 BARBARA PAULO Total Pages: <u>5360</u> LC(4)
TMK: (1) 9-2-004:013	

**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVATION
OF EASEMENTS FOR
THE
KUNIA LOA RIDGE FARMS AGRICULTURAL SUBDIVISION**

(4)

LAND COURT SYSTEM	REGULAR SYSTEM
Return by Mail <input type="checkbox"/> Pickup <input checked="" type="checkbox"/> To: Raymond S. Iwamoto, Esq. Schlack Ito Lockwood Piper & Elkind 745 Fort Street, Suite 1500 Honolulu, Hawaii 96813 Phone: (808) 523-6060	TGOH 200935482 TGES A9-101-3467 BARBARA PAULO Total Pages: <u>53 66</u>

TMK: (1) 9-2-004:013

**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVATION
OF EASEMENTS FOR
THE
KUNIA LOA RIDGE FARMS AGRICULTURAL SUBDIVISION**

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS FOR
THE KUNIA LOA RIDGE FARMS AGRICULTURAL SUBDIVISION**

TABLE OF CONTENTS

<u>DESCRIPTION</u>	<u>PAGE NO.</u>
ARTICLE I DEFINITIONS	2
1.1. Agricultural Activities.	2
1.2. Agricultural Lot.	2
1.3. Articles.	2
1.4. Assessment(s).	2
1.5. Authorized Vehicle.	2
1.6. Board or Board of Directors.	2
1.7. Budget.	2
1.8. Building.	2
1.9. Burial Council.	3
1.10. Bylaws.	3
1.11. Capital Improvement Assessment.	3
1.12. Close of Escrow.	3
1.13. Common Assessment.	3
1.14. Common Expenses.	3
1.15. Common Property.	4
1.16. Coop.	4
1.17. Coop Easement.	4
1.18. County.	4
1.19. County Planning Director.	4
1.20. DCCA.	4
1.21. Declarant.	5
1.22. Declarant Control Period Expiration Date.	5
1.23. Declaration.	5
1.24. Director.	5
1.25. Farm Rules.	5

1.26. Farmer's Committee.....	5
1.27. Farmsite Diagram.....	5
1.28. Final Plat.....	5
1.29. Historic Preservation Plan and Historical Sites.....	5
1.30. Improvement.	6
1.31. Local Governmental Agency.....	6
1.32. Lot.....	6
1.33. Manager.....	6
1.34. Member.....	6
1.35. Membership.....	6
1.36. Mortgage, Mortgagee, First Mortgage, First Mortgagee, Mortgagor.	6
1.37. Notice and Hearing.	7
1.38. Notice of Lien.....	7
1.39. Owner.....	7
1.40. Owner Parties.....	7
1.41. Person.....	7
1.42. Preservation Site.	7
1.43. Project or Project Site.	7
1.44. Proprietary Lot Lease.....	7
1.45. Reconstruction Assessment.	8
1.46. Record, Recorded, Recording, Recordation.....	8
1.47. Reserves.	8
1.48. Restrictions.	8
1.49. Rules and Regulations.	8
1.50. Site Plan.	8
1.51. Special Assessment.....	8
1.52. Supplemental Declaration.....	9
ARTICLE II DEVELOPMENT; LAND CLASSIFICATIONS;	9
2.1. Land Classifications.....	9
ARTICLE III COMMON PROPERTY; USES AND RESTRICTIONS.....	10
3.1. Owners' Rights of Enjoyment.....	10
3.2. Delegation of Use.....	11

3.3.	Parking and Traffic Control.....	11
3.4.	Easements for Pedestrian and Vehicular Traffic.....	11
3.5.	Waiver of Use.	12
3.6.	Title to the Common Property.....	12
3.7.	Taxes.....	12
3.8.	Communications Systems.....	12
3.9.	Easements for Clustered Mailboxes.....	12
3.10.	Declarant Easements.	13
3.11.	Regular Inspection.....	13
ARTICLE IV COOP		14
4.1.	Organization.....	14
4.2.	Membership and Ownership of the Coop	14
ARTICLE V COOP FUNCTIONS		15
5.1.	Permitted Functions.....	15
5.2.	Powers and Duties.....	16
5.3.	Rules and Regulations.	18
5.4.	Prohibited Activities.	18
5.5.	Safety and Security.	19
5.6.	Provision of Services.....	19
ARTICLE VI IMPLIED RIGHTS: BOARD AUTHORITY		19
ARTICLE VII INDEMNIFICATION OF OFFICERS, DIRECTORS AND OTHERS.....		20
ARTICLE VIII FUNDS AND ASSESSMENTS		20
8.1.	Obligation and Declarant's Option to Fund Budget Deficits.....	20
8.2.	Coop Funds.....	21
8.3.	Disbursements.....	21
8.4.	Common Property Damage or Neglect.....	21
8.5.	Common Assessments.....	21
8.6.	Commencement of Common Assessments.....	21
8.7.	Remedies of the Coop.	21
8.8.	Lien for Assessments.....	22

8.9. Notice of Lien.....	22
8.10. Curing of Default	22
8.11. Cumulative Remedies.....	22
8.12. Mortgage Protection - Liens	22
8.13. Priority of Assessment Lien.....	23
ARTICLE IX SPECIFIC REGULATORY USE RESTRICTIONS AND REQUIREMENTS.....	23
9.1. Historic Preservation Plan.....	23
9.2. Preservation Requirements.....	23
9.3. Undiscovered Sites Including Undiscovered Burials.....	24
ARTICLE X GENERAL USE RESTRICTIONS AND REQUIREMENTS	24
10.1. Agricultural Use.....	24
10.2. Improvements.....	24
10.3. Insurance Rates.....	24
10.4. No Further Subdivision.....	25
10.5. Signs.....	25
10.6. Animals.....	25
10.7. Nuisances.....	25
10.8. Exterior Maintenance and Repair.....	26
10.9. Drainage.....	26
10.10. Water Systems.....	26
10.11. No Hazardous Activities.....	26
10.12. Unsightly Articles.....	26
10.13. No Mining or Drilling.....	27
10.14. Views.....	27
10.15. Rights of Handicapped.....	27
10.16. Damage to Buildings-Reconstruction.....	27
10.17. Hazardous Materials.....	27
ARTICLE XI PROJECT SITE FARM USE CONTROL.....	28
11.1. Farmer's Committee.....	28
11.2. Compensation of Members.....	28
11.3. Limitation of Liability.....	28

ARTICLE XII DESTRUCTION OR CONDEMNATION OF COMMON PROPERTY.....	28
12.1. Damages by Owners.	28
12.2. Repair of Damages.....	29
12.3. Condemnation.	29
12.4. Notice to Owners and Listed Mortgagees.....	29
ARTICLE XIII DECLARANT EXEMPTION.....	30
13.1. Interest of the Coop.	30
13.2. Exemptions.	30
ARTICLE XIV INSURANCE	30
14.1. Commercial General and Umbrella Liability Insurance.	30
14.2. Automobile and Umbrella Liability Insurance.	31
14.3. Coop Agents.....	31
14.4. Commercial Property Insurance.	31
14.5. Other Insurance.	32
14.6. General Insurance Provisions.....	32
14.7. Additional Insurance Provisions.	33
14.8. Other Property.....	33
14.9. Insurance Obligations of Owners.....	34
14.10. Waiver of Subrogation.	34
ARTICLE XV EASEMENTS.....	34
15.1. Easements in Common Property.....	34
15.2. Easements of Encroachment.....	35
15.3. Easements for Utilities and Infrastructure Development.	36
15.4. Easements for Maintenance, Emergency and Enforcement.	36
15.5. Easements for Historical Sites and Cultural Practices.....	37
15.6. Easement for Drainage.....	37
15.7. Coop Easement.....	37
ARTICLE XVI WATER SYSTEM	38
16.1. Design and Construction.	38
16.2. Ownership and Operation of the Water System.....	38
16.3. Access to Water System and Rates for Service.	38

16.4. Maintenance and Repair of the Water System.	38
16.5. Limitations on Water Usage.	39
ARTICLE XVII WASTEWATER TREATMENT SYSTEM.....	39
ARTICLE XVIII DISCLOSURES.....	39
18.1. Ongoing Construction and Sales Activities.	39
18.2. Hazardous Materials.	39
18.3. Impacts on Lot.....	40
18.4. View Impairment.	40
18.5. Roadways.....	41
18.6. Wells and Irrigation Systems.....	41
ARTICLE XIX DISPUTE RESOLUTION.....	41
19.1. Dispute Resolution.	41
19.2. AGREEMENT REGARDING DISPUTE RESOLUTION; WAIVER OF JURY TRIAL.....	42
19.3. WAIVER OF PUNITIVE DAMAGES.	42
19.4. Resolution Procedures.	42
ARTICLE XX MISCELLANEOUS	44
20.1. Term and Termination	44
20.2. Amendments.....	44
20.3. Mortgagee Protection-General.	46
20.4. Notices.	47
20.5. Interpretation.	47
20.6. No Public Right of Dedication.	48
20.7. Disclosures.	48
20.8. No Representations or Warranties; Not an Enhanced Protection Agreement.....	48
20.9. Priorities and Inconsistencies.....	48

EXHIBIT “A” - DESCRIPTION OF LAND SUBJECT TO THIS DECLARATION

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR THE
KUNIA LOA RIDGE FARMS AGRICULTURAL SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS ("*Declaration*") is made by Kunia Loa Ridge Farmlands, a Hawaii nonprofit corporation, formed under the Hawaii Nonprofit Corporations Act, Chapter 414D, Hawaii Revised Statutes ("*Coop*" or "*Declarant*"). Except as otherwise specified herein, the capitalized words and phrases used in this Declaration shall have the meanings specified in Article I hereof.

P R E A M B L E:

The Coop is the owner and developer of certain real property in Kunia, City and County of Honolulu, State of Hawaii, more particularly described in *Exhibit "A"* attached hereto and incorporated herein (the "*Project Site*"). All of the Project Site shall be subject to this Declaration.

All of the Project Site will be developed with certain common objectives, and Owners of Lots will have certain common interests. The Project Site will be developed with objectives designed to preserve the value of and to benefit all the property within the Project Site. The common development plan imposes reciprocal burdens and benefits on all of the Project Site, such that each portion and the entirety of the Project Site are both burdened by the provisions of this Declaration for the benefit of each other portion of the Project Site, and benefited by the burdens imposed on each other portion of the Project Site.

The Coop has deemed it desirable to create a common interest agricultural subdivision development which will be a "master planned agricultural community" with the powers and functions of (1) owning, maintaining and administering the Common Property for the use of its Members and authorized guests, (2) administering and enforcing the Restrictions, and (3) collecting and disbursing the assessments and charges hereinafter created.

The Coop hereby declares that all of the Project Site shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the easements, restrictions, covenants, conditions and equitable servitudes contained in this Declaration, all of which are for the purpose of promoting, preserving and protecting the agricultural use and value, of the Project Site, in furtherance of a comprehensive plan for the protection, maintenance, subdivision, improvement and agricultural use of the Project Site. The covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges set forth herein shall (1) run with the Project Site; (2) be binding upon all persons having any right, title or interest in the Project Site, or any part thereof, their heirs, successive owners and assigns; (3) inure to the benefit of every portion of the Project Site and any interest therein; (4) inure to the benefit of and be binding upon Declarant and its successive owners and each Owner and his or her respective successors-in-interest; and (5) may be enforced by the Coop, any Owner and other benefitted parties, if any, under the matters referenced in *Exhibit "A"* attached hereto.

ARTICLE I DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified.

1.1. Agricultural Activities.

Agricultural Activities means activities and uses for agricultural purposes permitted pursuant to Hawaii Revised Statutes Chapter 205 in the State Land Use Commission Agricultural District and the Land Use Ordinance of the City and County of Honolulu.

1.2. Agricultural Lot.

Agricultural Lot shall mean those Lots which are either Common Property or leased to an Owner under a Proprietary Lot Lease, but excepting any roadway lots.

1.3. Articles.

Articles mean the Articles of Incorporation of the Coop, as amended. A copy of the Articles is on file with the DCCA.

1.4. Assessment(s).

Assessment(s) means Common Assessments, Capital Improvement Assessments, Reconstruction Assessments and/or Special Assessments.

1.5. Authorized Vehicle.

Authorized Vehicle means a vehicle licensed by the City and County of Honolulu for use on public highways.

1.6. Board or Board of Directors.

Board or Board of Directors means the Coop Board of Directors elected in accordance with the Coop Bylaws and this Declaration.

1.7. Budget.

Budget means a written, itemized estimate of the Coop's income and Common Expenses prepared pursuant to the Bylaws.

1.8. Building.

Building means a permitted roofed structure the purpose of which is to support the permitted Agricultural Activities.

1.9. Burial Council.

Burial Council means the Burial Council of the Island of Oahu.

1.10. Bylaws.

Bylaws means the Coop's Bylaws adopted or to be adopted by the Board, as amended from time to time.

1.11. Capital Improvement Assessment.

Capital Improvement Assessment means a charge against the Owners and their Lots, representing the Coop's costs to install or construct any Improvements on any portion of the Common Property or any Improvements for the use, enjoyment, or benefit of the Owners and their Lots.

1.12. Close of Escrow.

Close of Escrow means the date on which an agricultural Proprietary Lot Lease for a Lot or other such instrument is executed leasing a Lot in the Project.

1.13. Common Assessment.

Common Assessment means the annual or supplemental charge against each Owner and his or her Lot, representing a portion of the ordinary Common Expenses for maintaining, improving, repairing, replacing, managing and operating the Common Property, which charge shall be levied against all Owners and their respective Lots, as provided herein. Common Assessments shall include all late payment penalties, interest charges, attorneys' fees or other costs incurred by the Coop in its efforts to collect all assessments (other than Special Assessments) authorized pursuant to this Declaration.

1.14. Common Expenses.

Common Expenses means the actual and estimated costs of (i) maintaining, managing, operating, repairing and replacing the Common Property; unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments, including those costs not paid by the Owner responsible for payment; (iv) managing and administering the Coop including, but not limited to, compensation paid by the Coop to Managers, accountants, attorneys and other consultants and employees; (v) all utilities, gardening, and other services benefitting the Common Property; (vi) management and maintenance of internet website(s) and related facilities; (vii) fire, casualty and liability insurance, worker's compensation insurance, and other insurance covering the Common Property; (viii) bonding the Coop Directors, officers, agents, employees and Manager; (ix) taxes paid by the Coop; (x) amounts paid by the Coop for discharge of any lien or encumbrance levied against the Common Property, or portions thereof, including, without limitation, real property taxes or assessments, if any, levied against the Common Property; (xi) all Reserves; and all other items incurred by the Coop pursuant to this Declaration.

1.15. Common Property.

Common Property means all the real and personal property and Improvements which are owned in fee simple at any time by the Coop, or over which the Coop has an easement or encroachment permit for the use, care or maintenance thereof, for the common benefit, use and enjoyment of Owners, as further provided in Article III of this Declaration or which the Coop is required to maintain as provided in Article III and Article V of this Declaration. The Common Property includes (for maintenance purposes but not necessarily fee ownership) without limitation and as applicable (i) all historic sites, walls, median strips, roads, slopes, berms, landscaping, utilities and irrigation and drainage systems in public property or public rights-of-way in or near the Project Site designated for maintenance by the Coop pursuant to this Declaration or any Supplemental Declaration, any agreement between a Local Governmental Agency and Declarant or the Coop, or on any Recorded subdivision map, parcel map or lot line adjustment of the Project Site, the maintenance of which is not the responsibility of a Local Governmental Agency, (ii) the Common Property as hereafter defined, (iii) areas adjacent to or in the vicinity of the Project Site over which the Coop is granted a maintenance or access easement, and (iv) Common Driveways. Title to all or any portion of the Common Property may be subject to a prior dedication to a Local Governmental Agency. Any depiction of the Common Property attached to this Declaration, any Supplemental Declaration or any Deed conveying Common Property is merely for illustrative purposes only and the "as built" condition shall control.

1.16. Coop.

Coop, also referred to herein as the Declarant, means Kunia Loa Ridge Farmlands, a Hawaii nonprofit corporation (formed pursuant to the Hawaii Nonprofit Corporation Act), its successors and assigns.

1.17. Coop Easement.

Coop Easement means the easement granted to the Coop by this Declaration to install, construct, maintain, repair and replace wells, reservoirs, utility lines and facilities. Certain Lots shall be subject to Coop Easements for wells and reservoirs.

1.18. County.

County means the City and County of Honolulu.

1.19. County Planning Director.

Planning Director means the Director of the Department of Planning and Permitting (or such successor department) of the County.

1.20. DCCA.

DCCA means the Department of Commerce and Consumer Affairs of the State of Hawaii or such successor governmental agency of the State of Hawaii which duties include administration of the sale of subdivided lands pursuant to the Uniform Land Sales Act, Hawaii Revised Statutes Chapter 484, or any similar Hawaii statute hereinafter enacted.

1.21. Declarant.

Declarant, also referred to herein as the Coop, means Kunia Loa Ridge Farmlands, a Hawaii nonprofit corporation (formed pursuant to the Hawaii Nonprofit Corporation Act), its successors and assigns.

1.22. Declarant Control Period Expiration Date.

Declarant Control Period Expiration Date means the earlier of (i) the expiration of two (2) years after the first Close of Escrow for a Lot in the Project Site; or (ii) the date on which the Coop records an amendment to the Declaration stating that the Coop elects to terminate the Declarant Control Period.

1.23. Declaration.

Declaration means this Declaration of Covenants, Conditions, Restrictions and Reservation of Easements, as amended from time to time.

1.24. Director.

Director means the Director of the Department of Commerce and Consumer Affairs of the State of Hawaii.

1.25. Farm Rules.

Farm Rules means the Farmer's Committee standards, procedures, rules and guidelines which may be adopted by the Board pursuant to this Declaration, as amended from time to time.

1.26. Farmer's Committee.

Farmer's Committee means the committee created pursuant to Article XI hereof.

1.27. Farmsite Diagram.

Farmsite Diagram means for each Lot, such map for such Lot, as depicted on the Final Plat or other map, showing the lot's boundary, setback areas, transition zones, safety zones, easements, natural areas, any archaeological preservation features and easements, and well or reservoir easements and buffer zones protecting the same and no fill zones as applicable.

1.28. Final Plat.

Final Plat means the Land Court Map to be approved for the Project Site.

1.29. Historic Preservation Plan and Historical Sites.

"Historic Preservation Plan" shall mean a Preservation Plan approved by the State of Hawaii. "Historical Sites" means burial grounds and other historically and/or archaeologically significant sites that are identified and/or existing within the Project.

1.30. Improvement.

Improvement means all structures and appurtenances thereto, including but not limited to buildings, outbuildings, sheds, walkways, clustered mailbox structures, sprinkler pipes, irrigation systems, storm drainage systems, garages, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, windbreaks, fire breaks, poles, antennae, signs, and permanently affixed equipment. Improvement also means the following: (i) all exterior modifications to a Building (including, but not limited to, painting the exterior of any Building or other structure; changing the roof material, windows or exterior doors of any Building or other structure; and building, constructing or erecting any additions and/or demolishing or conducting any exterior remodeling); (ii) the demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind; and (iii) the grading, excavation, filling or similar disturbance of the surface of the land, including, without limitation, change of grade, change of grade level or change of drainage pattern.

1.31. Local Governmental Agency.

Local Governmental Agency means the County and any other regional, local or municipal governmental entity or agency and any special assessment district, maintenance district or community facilities district.

1.32. Lot.

Lot means any lot or parcel of land shown upon any Recorded subdivision map, Land Court map, file plan, parcel map or lot line adjustment of any portion of the Project Site, together with the Improvements, if any, thereon, and shall include, but not be limited to Agricultural Lots and the roadway lots.

1.33. Manager.

Manager means the Person, firm or agent employed as an independent contractor by the Coop to perform functions of the Coop, as limited by the Restrictions and the terms of the agreement between the Coop and such Person.

1.34. Member.

Member means every Person holding a Membership in the Coop.

1.35. Membership.

Membership means the voting and other rights and privileges of Members as provided in the Restrictions, together with the correlative duties and obligations contained therein.

1.36. Mortgage, Mortgagee, First Mortgage, First Mortgagee, Mortgagor.

Mortgage means any Recorded or otherwise perfected instrument, which is not a fraudulent conveyance under Hawaii law, given in good faith and for valuable consideration as security for the performance of an obligation, including without limitation a mortgage, deed of trust or

agreement of sale, but shall not include any instrument creating or evidencing solely a security interest arising under the Hawaii Uniform Commercial Code, Hawaii Revised Statutes Chapter 490, as amended. First Mortgage means a Mortgage which is the first and most senior of all Mortgages upon the same property. Mortgagee means the holder of a note or interest secured by a Mortgage. First Mortgagee means the holder of a First Mortgage. Mortgagor means the party executing a Mortgage and creating the Mortgage Lien. A Declarant First Mortgage means a First Mortgage created by the Declarant. A Declarant First Mortgagee means a First Mortgagee and its successors, successors in trust and assigns, including without limitation any purchaser at a foreclosure sale or a grantee pursuant to a deed in lieu of foreclosure, who receives a First Mortgage from the Declarant.

1.37. Notice and Hearing.

Notice and Hearing means written notice and a hearing before the Board or the Farmer's Committee, as applicable, as further provided in the Bylaws.

1.38. Notice of Lien.

Notice of Lien shall have the meaning set forth in Section 8.9.

1.39. Owner.

Owner means the Person or Persons, including the Coop holding a fee simple or long term proprietary leasehold interest of Record to a Lot. The term "Owner" includes a seller under an executory contract of sale, but excludes Mortgagees.

1.40. Owner Parties.

Owner Parties means the family, guests, tenants, invitees and contract purchaser of an Owner.

1.41. Person.

Person means a natural individual, a corporation, partnership or any other entity with the legal right to hold title to real property.

1.42. Preservation Site.

Preservation Site or Sites shall have the meaning ascribed in Section 9.1.1.

1.43. Project or Project Site.

Project or Project Site means the property described in *Exhibit "A"*.

1.44. Proprietary Lot Lease

Proprietary Lot Lease means those certain long term leases issued by the Coop, its successors and assigns, for an Agricultural Lot in the Project.

1.45. Reconstruction Assessment.

Reconstruction Assessment means a charge against each Owner and such Owner's Lot, representing a portion of the Coop's cost to reconstruct any Improvements on the Common Property, pursuant to the provisions of this Declaration.

1.46. Record, Recorded, Recording, Recordation.

Record, Recorded, Recording, Recordation or a like reference means an instrument of record in, or the act of recording or filing or having recorded or filed an instrument with the Assistant Registrar of the Land Court, Bureau of Conveyances ("**Bureau**") and/or the Department of Commerce and Consumer Affairs of the State of Hawaii, as appropriate for the instrument.

1.47. Reserves.

Reserves means those Common Expenses for which Coop funds are set aside pursuant to Article VIII of this Declaration for funding the periodic resurfacing, painting, maintaining, repairing and replacing of the major components of the Common Property which would not reasonably be expected to recur on an annual or less frequent basis, such amounts to be determined annually by the Board pursuant to maintenance cost guidelines established in accordance with prudent property management practices generally applied for common interest developments throughout the County.

1.48. Restrictions.

Restrictions mean this Declaration, any Supplemental Declarations, the Articles, the Bylaws, the Farmer's Committee Rules, the Rules and Regulations, and the resolutions of the Board.

1.49. Rules and Regulations.

Rules and Regulations means the Rules and Regulations adopted by the Board as provided herein.

1.50. Site Plan.

Site Plan means the Site Plan for the Kunia Loa Ridge Farms Agricultural Subdivision.

1.51. Special Assessment.

Special Assessment means a charge against a particular Owner directly attributable to or reimbursable by such Owner equal to the cost incurred by the Coop for corrective action performed pursuant to the Restrictions, or levied by the Board as a reasonable fine or penalty for noncompliance with the Restrictions, plus interest and other charges on such Special Assessment as provided for in this Declaration.

1.52. Supplemental Declaration.

Supplemental Declaration means any declaration of covenants, conditions and restrictions and reservation of easements or similar document adding real property to the Project Site or supplementing this Declaration which may be Recorded pursuant to Article II of this Declaration.

**ARTICLE II
DEVELOPMENT; LAND CLASSIFICATIONS;**

2.1. Land Classifications.

The Project Site, including each portion of annexed territory described in a Supplemental Declaration, shall be designated according to one or more of the following land classifications:

2.1.1 Agricultural Lots.

The Lots are classified as within the agricultural district. Each Lot must be used only in accordance with the uses permitted in Chapter 205, Hawaii Revised Statutes, as amended from time to time, except that no Farm Dwellings shall be permitted on any of the Lots. Pursuant to Chapter 205, Hawaii Revised Statutes, the Lots are exempt from the subdivision standards of the County and the County will approve the subdivision of the lots for ownership and financing purposes but not for development purposes. The entire Project will be considered a single zoning lot for development and building permit purposes. The Lots may only be used for the agricultural purposes specified in Chapter 205, Hawaii Revised Statutes and by the zoning and permitting requirements of the County. The Agricultural Lots shall be limited to ninety-nine (99) Lots in total. There shall be no subdivision of any Agricultural Lot in order to adhere to the requirement that there shall always be no more than ninety-nine (99) Agricultural Lots. All of the Lots will become subject to and will continue to be subject to a Joint Development Agreement with the County. The Coop, its successors and assigns, shall have the right to submit all of the Lots to an Agreement for Issuance of Conditional Use Permit and a Joint Development, without any requirement of consent from any Proprietary Lot lessees, that will be enforceable by the County. All Proprietary Lot Leases issued by the Coop shall be subordinate to this right of causing all Lots to be subject to such Joint Development.

2.1.2 Common Property.

The real property designated as Lot 48, any improvements to be constructed thereon by the Coop, and the Coop Easement Areas as shown on the Final Plat and other property as described herein.

**ARTICLE III
COMMON PROPERTY; USES AND RESTRICTIONS**

3.1. Owners' Rights of Enjoyment.

Every Owner and, to the extent permitted by such Owner pursuant to the Restrictions, the Owner Parties, employees and other invitees who are farming such Owner's Lot, shall have a right of ingress and egress and of enjoyment in, to and over the Common Property which shall be appurtenant to and shall pass with title to every Lot, subject to the Coop's right to exercise exclusive jurisdiction over and control of the Common Property (other than public property) and the following provisions:

3.1.1 Additional Common Property.

The right of the Coop to designate additional Common Property pursuant to the terms of Article II hereof.

3.1.2 Rules and Regulations.

The Coop's right to establish reasonable Rules and Regulations pertaining to the use of the Common Property and any facilities located thereon, including, but not limited to, the right and obligation of the Coop to enforce all parking restrictions for parking areas within the Common Property as set forth in Section 3.3 below.

3.1.3 Borrowings.

The Coop's right in accordance with the Articles, Bylaws and this Declaration, with the approval of Owners representing at least seventy-five percent (75%) of the Coop voting power, to borrow money for the purpose of improving, repairing or adding to the Common Property and facilities and, to mortgage, pledge, deed of trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred pursuant to this subsection.

3.1.4 Suspension of Rights.

The Coop's right to suspend the Membership rights and other rights and easements of any Owner and Owner Parties to use the Common Property and the facilities and Improvements located thereon, for any period during which any assessment against such Owner's Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any noncontinuing infraction of the Rules and Regulations of the Coop as more fully provided in the Bylaws. Any suspension of Membership rights or right to use any Common Property facilities (i) shall be made only by the Board, after Notice and Hearing, and (ii) shall not limit or preclude pedestrian or vehicular access to such Owner's Lot.

3.1.5 Common Property Transfers.

The Coop's rights set forth in Subsection 5.2.13 and Article XIII of this Declaration.

3.1.6 Use By the Coop.

The right of the Coop (and their employees, sales agents, prospective purchasers, customers and representatives) to enter upon the Common Property, for the benefit of the Coop, to complete the construction of any roadways or other Improvement to be installed thereon, as well as the right to nonexclusive use of the Common Property and the facilities thereof, without charge, for sales, display, access, ingress, egress, exhibition and special events for promotional purposes, which right the Coop hereby reserves; provided, however, that such use rights shall terminate on the Declarant Control Period Expiration Date except that the Coop shall continue to enjoy such rights as an Owner of any Lots the Coop continues to own.

3.1.7 Reconstruction of Improvements.

The Coop's right to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Property.

3.1.8 Maintenance.

The Coop's right to maintain and repair the Common Property, including without limitation the right to plant windbreaks upon any portion of the Common Property.

3.1.9 Restricted Areas.

The Coop's right to reasonably restrict access to water system facilities, maintenance facilities, open space areas and similar areas of the Common Property. A Supplemental Declaration may designate exclusive use areas within the Common Property for the exclusive use or maintenance by one or more Owners (such as common driveway areas). The Coop shall have exclusive control over all of the Common Property except for public property and any exclusive use or maintenance area designated in a Supplemental Declaration or created by the Association pursuant to Subsection 5.2.5 below.

3.2. Delegation of Use.

The Owner of a Lot may delegate, in accordance with the Restrictions, the Owner's right of enjoyment of the Common Property and facilities to Owner Parties who use the Owner's Lot, subject to reasonable regulation by the Board.

3.3. Parking and Traffic Control.

Temporary parking is permitted within the Common Property only within spaces and areas clearly marked for such purpose. The Coop, through the Board, is empowered to establish "parking" and restricted and "no parking" areas within the Common Property.

3.4. Easements for Pedestrian and Vehicular Traffic.

In addition to the general easements for use of the Common Property reserved herein, the Coop hereby reserves to itself, to all future Owners within the Project Site, and to every Owner and their respective agents, employees, guests, tenants, invitees and successors nonexclusive

easements appurtenant to each Lot in the Project Site for vehicular and pedestrian traffic over any and all private streets and walkways, if any, within the Common Property, subject to the parking provisions set forth in Section 3.3 above.

3.5. Waiver of Use.

No Owner may exempt himself or herself from personal liability for assessments duly levied by the Coop, nor release his or her Lot, or other property in the Project Site from the liens and charges hereof, by waiver of the use and enjoyment of the Common Property or any facilities thereon or by abandonment of his or her Lot, or any other property in the Project Site.

3.6. Title to the Common Property.

3.6.1 Transfer.

No Owner shall interfere with the exercise by the Coop of its easement for maintenance over Common Property which is owned in Proprietary Lot Leasehold by such Owner. Neither the fee interest nor the leased fee interest in the Agricultural Lots may be conveyed to any person or entity other than the Coop.

3.6.2 Character of Common Property Improvements.

The nature, design, quantity, quality and all other attributes of the Common Property, and the facilities and amenities thereon, shall be determined in the Coop's sole and absolute discretion. The Coop shall be unconditionally obligated to accept title to and maintenance responsibility for the Common Property.

3.7. Taxes.

Each Owner shall execute such instruments and take such action as may reasonably be specified by the Coop to obtain separate real estate tax assessment of the Owner's Lot. If, in the Coop's opinion, any taxes or assessments constitute a lien on the Common Property, or any part thereof, such taxes or assessments may be paid by the Coop and each Owner shall be obligated to pay or to reimburse the Coop for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against the Common Property and attributable to the Owner's own Lot and interest in the Common Property.

3.8. Communications Systems.

There are no telephone or other such communication systems for the benefit of the Lots.

3.9. Easements for Clustered Mailboxes.

In order to comply with the various requirements if any of the State, County and the United States Postal Service, clustered mailboxes may be installed within the Project Site. Declarant hereby reserves for the benefit of Owners and the United States Postal Service easements on and over the affected portions of the Project Site for delivery, deposit and retrieval of mail.

3.10. Declarant Easements.

The Coop hereby reserves easements and the right to designate new easements for access, ingress and egress, parking, historical or preservation areas, water lines and facilities, sewer lines and facilities, drainage systems and utility purposes over all Common Property, Lots, and the Project Site and for construction, installation, operation, replacement, repair and maintenance of all utility and service lines, systems, parking lots, historical or preservation areas and other devices and Improvements which may be reasonably necessary for the development, operation or use of the Project together with the right to grant said easements to any governmental agency, the Coop, utility companies, owners of lands adjacent to or in the vicinity of the Project or any other party. The Coop also reserves the right to grant easements over the Common Property, or any portion thereof for exclusive use by any Owner or Owners of a Lot or for which Close of Escrow has already occurred.

3.11. Regular Inspection.

3.11.1 Duty to Inspect.

It shall be the duty of the Board to have the Common Property inspected at least once every year.

3.11.2 Purpose of Inspection.

The purpose of the inspection shall be to (i) determine whether the Common Property is being maintained adequately in accordance with prudent maintenance practices appropriate for Improvements such as those comprising the Common Property; (ii) identify the condition of the Common Property and any Improvements thereon including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair; and (iii) recommend preventive actions (such as repainting or vegetation removal) which may be taken to reduce potential maintenance costs to be incurred in the future.

3.11.3 Scope of Inspection.

All of the Common Property and Improvements thereon including, but not limited to, all roadways, structures, walls, walkways, irrigation systems, and drainage devices thereon shall be inspected.

3.11.4 Experts and Consultants.

The Board may employ such experts and consultants as are necessary to perform the inspection and make the report required by this Section.

3.11.5 Report to Owners.

The Board shall have a report of the results of the inspection of the Common Property required by this section prepared. The report shall be furnished to Owners and Declarant within the time set forth for furnishing Owners with the Budget. The report shall include at least the following:

- (a) a description of the condition of the Common Property, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;
- (b) a description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the Budget;
- (c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;
- (d) a summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections;
- (e) a report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and
- (f) such other matters as the Board deems appropriate.

ARTICLE IV COOP

4.1. Organization.

The Coop is organized as a Hawaii non-profit, non-stock corporation under the Hawaii Nonprofit Corporation Law, Hawaii Revised Statutes Chapter 414D, and is charged with the duties and vested with the powers prescribed by law, subject to the limitations and provisions of the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. If there is any ambiguity in any provision of the Articles or Bylaws, then such provision shall be construed, to the extent possible, so as to be consistent with the provisions of this Declaration.

4.2. Membership and Ownership of the Coop .

Members of the Coop are the owners of the Coop holding ownership interests as reflected on the books of the Coop ("Membership Interest). Each Member shall be issued a Certificate of Ownership but in the event of conflict, the books of the Coop shall control. A Member transferring its ownership interest shall comply with the requirements for transfer as provided in the Coop Bylaws. Appurtenant to each Member's ownership interest in the Coop is an inseparable right to the exclusive use and possession of a Lot in the Project Site. The Coop shall designate the Lot that is forever appurtenant to the Membership Interest and for the exclusive use and possession by the Member by issuing a proprietary lot lease for the Lot. Membership in the Coop and all such Proprietary Lot Leases are subject to the Restrictions. All Proprietary Lot Leases shall be permanent appurtenances to the Membership Interest. In all events the Membership Interest and the Proprietary Lot Lease appurtenant thereto shall be inextricably connected and one may not be transferred or assigned without the other. Any financing of an acquisition of a Lot through purchase of a Membership Interest shall require a pledge of the Membership Interest. Such pledge of the Membership Interest shall automatically include the Proprietary Lot Lease appurtenant to the Membership Interest and at the option of the lender, the a separate mortgage of the Proprietary Lot Lease may be included. Neither the mortgage of the

Proprietary Lot Lease nor the pledge of the Membership Interest may be foreclosed upon without the other.

4.2.1 Transfer of Membership.

An Owner's Membership shall not be assigned, transferred, pledged or alienated in any way, except upon the transfer of proprietary leasehold title to the Owner's appurtenant Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited Membership transfer is void and will not be reflected on the books of the Coop. All transfers of Membership interests and assignments of the Proprietary Lot Leases for the appurtenant Lot are subject to the notice provisions provided for in the Bylaws of the Coop. The Coop may levy and collect a transfer fee ("**Transfer Fee**") against the transferring Owner(s) and their Lots (which fee if not paid, shall be added to the Common Assessments chargeable to the Lots being transferred). The fee shall be collected at the closing of the transfer and deposited in a maintenance fund as determined by the Board) to reimburse the Coop for the administrative costs of transferring the Memberships to the new Owners on the Coop's records.

(a) The Transfer Fee shall be set by the Board at prevailing rates for common interest ownership communities. Transfers by or to Declarant, transfers among co-Owners, to an Owner's estate, surviving spouse, or child upon the death of the Owner, or to an entity wholly owned or controlled by the transfesror or to a First Mortgagee upon foreclosure or upon a assignment of Proprietary Lot Lease in lieu of foreclosure shall be exempt from the Transfer Fee.

(b) The obligation to pay the Transfer Fee shall be first payable by the transferring Owner(s) but if not paid shall become part of the Common Assessments charged against the transferred Lot and payable by the new Owner.

4.2.2 Suspension of Membership Rights.

The Board may suspend the Membership rights of any Member, including the right to vote at any meeting of the Members, for any period during which any Assessment against such Member and the Lot owned by such Member is delinquent. Any such suspension for nonpayment of any Assessment shall not constitute a waiver or discharge of the Member's obligation to pay the Assessments provided for herein.

ARTICLE V COOP FUNCTIONS

5.1. Permitted Functions.

The Coop is formed exclusively for those purposes and activities which are specifically and directly related to (i) developing and marketing the Project, (ii) equipping, maintaining, operating and utilizing the Common Property, (iii) collecting assessments to finance the maintenance and utilization of the Common Property, and (iv) administering and enforcing the Restrictions (collectively, the "**Permitted Functions**"). Notwithstanding the foregoing, Permitted Functions do not include those activities prohibited by Section 5.4 below. Except for the costs associated with developing and marketing the Project, the funds and resources of the Coop shall be utilized solely and exclusively for the direct costs of Permitted Functions. Nothing

in this Section 5.1 shall be deemed to preclude the use of the Common Property facilities by the Coop for promotional special events and other purposes as authorized by Subsection 3.1.6.

5.2. Powers and Duties.

The Coop has all of the powers of a Hawaii Nonprofit Corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Restrictions. Subject to the Restrictions, the Coop has the power to perform any and all lawful acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Coop. Subject to the foregoing provisions, the Coop, acting through the Board, has the power to perform the following acts:

5.2.1 Assessments.

The power and duty to levy Assessments on the Owners of Lots and to collect and enforce payment of such Assessments in accordance with the provisions of Article VIII hereof.

5.2.2 Repair and Maintenance.

The power and duty to accept title to and to paint, resurface, plant, maintain and repair in a neat and attractive condition, all Common Property.

5.2.3 Compliance with Regulatory Requirements.

The Project Site is subject to the Specific Regulatory Use Restrictions and Requirements set forth in Article IX hereof. In performing its maintenance obligations pursuant to the Restrictions, the Coop shall comply with the requirements of the regulatory requirements as described in Article IX.

5.2.4 Modifications by Owners.

No Owner shall place or install any sign or other Improvement or alter or remove the Improvements on the Common Property unless such placement, installation or alteration is first approved in writing by the Board.

5.2.5 Easements and Rights-of-Way.

The power but not the duty to grant and convey to any Person easements, licenses, or rights-of-way in, on, over or under the Common Property and fee title to parcels or strips of land which comprise a portion of the Common Property, for purposes consistent with the terms of this Declaration, including without limitation easements for (i) roads, streets, walks, trails, driveways, parkways, landscaping, parking areas, park areas, open space areas and slope areas; (ii) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of power or signals for lighting, heating, television, telephone and other similar purposes; (iii) sewers, storm water drains, retention basins and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, (iv) historical or preservation areas or trails; and (v) exclusive easements or fee title to Owners for wind break or landscaping purposes so long as the Board makes a finding that the use and maintenance of such area is more appropriately placed with the

Owner rather than the Coop; and (v) any similar Improvements, facilities or uses not inconsistent with the use of such property pursuant to this Declaration.

5.2.6 Manager.

Subject to Section 5.4, the power and duty to contract with a professional Manager for the Coop. Except as otherwise provided in this Declaration, any such management agreement shall be for a term not in excess of one (1) year (renewable by agreement of the parties for successive one (1) year periods), and any such agreement shall be terminable by the Coop, acting through the Board, at any time without cause or the payment of a penalty or termination fee upon not more than ninety (90) days' written notice.

5.2.7 Rights of Entry and Enforcement.

The power but not the duty, after Notice and Hearing, to enter any Lot or Common Property without being liable to any Owner, except for physical damage caused by such entry, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such Lot or Common Property, if for any reason whatsoever the responsible Owner fails to maintain and repair any such area as required by the Restrictions; provided that no items of construction on any such Lot or Common Property may be altered or demolished except pursuant to judicial proceedings. The cost of any enforcement action or any maintenance and repair completed in compliance with these provisions is the responsibility of the Owner and may be assessed against the responsible Owner, as a Special Assessment. The responsible Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection. Any physical damage caused by entry upon any Lot or Common Property shall be repaired by the entering party. The Coop may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Restrictions and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Restrictions. If an action is brought by the Coop, the prevailing party is entitled to recover reasonable attorneys' fees.

5.2.8 Legal and Accounting Services.

Subject to Subsection 5.2.10, the power but not the duty, if deemed appropriate by the Board, to retain and pay for legal and accounting services necessary or proper in operating the Common Property, enforcing the Restrictions, and performing any of the other Coop duties or rights.

5.2.9 Audit.

The power and duty to permit any Owner, who may be accompanied by an accountant or other consultant, at said Owner's sole expense to audit or inspect the Coop's books and records; provided that such audit or inspection is made during normal business hours and without unnecessary interference with the operations of the Manager or the Coop.

5.2.10 Litigation.

Subject to Sections 5.4, 20.5, and Article XIX, the power but not the duty to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Coop in matters pertaining to (i) the application or enforcement of the Restrictions and (ii)

damage to the Common Property. Any recovery by the Coop with respect to any damage to or defect in the Common Property shall be utilized solely for the purpose of paying for the costs of correcting such Common Property damage or defect.

5.2.11 Release Security. The power and duty to release security and exonerate bonds posted by the Coop to secure its obligations immediately upon satisfaction of the obligations giving rise to such security.

5.2.12 Website. The power but not the duty to establish and maintain a website and provide internet services to the Owners and other residents within the Project Site.

5.2.13 Acceptances and Conveyances of Property. The power to join with an Owner, a Local Governmental Agency, utility company, or other person or entity in the execution of a lot line adjustment, deed and/or grant of easement for the purpose of accepting or conveying title to property, including without limitation, any portion of the Common Property, and in furtherance thereof to deannex such portion of the Common Property from this Declaration, as necessary to transfer title, provided and on condition that any such lot line adjustment and/or conveyance is made for any of the following purposes: (i) to eliminate encroachments due to engineering errors or errors in construction of any Improvements upon any of the affected property; (ii) to permit changes in the development plan in circumstances where such changes are the result of topography, obstruction, hardship, aesthetic considerations or environmental conditions; (iii) to fulfill the requirement of a Local Governmental Agency; or (iv) to transfer the burden of management and maintenance of any Common Property which in the reasonable judgment of the Board is generally inaccessible or is not likely to be of general use or benefit to the membership at large of the Coop.

5.3. Rules and Regulations.

The Board may adopt such Rules and Regulations as it deems proper for the use, occupancy and maintenance of the Project Site. To be effective, a copy of the Rules and Regulations, as adopted, amended or repealed, must be posted in a conspicuous place in the Common Property or must be mailed or otherwise delivered to each Owner. When mailed, delivered or posted, the Rules and Regulations shall have the same force and effect as if they were set forth herein; provided, however, that the Rules and Regulations shall be enforceable only to the extent that they are consistent with this Declaration, any applicable Supplemental Declaration, the Articles and the Bylaws, and may not be used to amend any of such documents.

5.4. Prohibited Activities.

Notwithstanding any other provisions of this Declaration or the other Restrictions, the Coop is expressly prohibited from undertaking or performing any of the following activities, or expending or otherwise utilizing Coop funds or resources therefor, and the following activities shall not constitute Permitted Functions of the Coop:

5.4.1 Political Activities. The Coop shall not (i) participate in Federal, State and local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Project Site (*e.g.*, endorsement or support of (1) legislative or administrative actions by a Local Governmental Agency or state or federal agency which affect

persons or property outside the Project Site, (2) candidates for elected or appointed office, and (3) ballot proposals) or (ii) conduct, sponsor, participate in or expend funds or resources on any activity, campaign or event, including without limitation any social or political campaign, event or activity, which does not directly and exclusively pertain to a Permitted Function.

5.5. Safety and Security.

All Owners and users of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Project. The Coop may, but shall not be obligated to, maintain or support certain activities within the Project designed to enhance the level of safety or security which each Person provides for himself and his property. Neither the Coop nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Project, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Project, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges and understands that the Owner shall be responsible for informing the Owner's tenants and all occupants of the Owner's Lot that the Coop, its Board and committees are not insurers or guarantors of security or safety, and that each Person within the Project assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

5.6. Provision of Services.

The Coop may provide or provide for amenities, services, and/or facilities for the Members and/or their Lots, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Persons affiliated with the Coop, to provide such services and facilities. The Board may charge use or service fees for any such amenities, services and/or facilities provided at the option of an Owner, or may include the costs thereof in the Coop's budget as a Common Expense and assess it as part of the Common Assessments if provided to all Lots. By way of example, such services and facilities might include recreational amenities (located at the Project Site or elsewhere), landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar amenities, services and/or facilities.

ARTICLE VI IMPLIED RIGHTS: BOARD AUTHORITY

The Coop may exercise any right or privilege expressly conferred upon it by the Restrictions, or reasonably implied from therefrom, or where reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Restrictions, or by law, all rights and powers of the Coop may be exercised by the Board without a vote of the membership. The Board may institute, defend, settle, or intervene on behalf of the Coop in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters

pertaining to the Common Property or Common Property, enforcement of the Restrictions, or any other civil claim or action. However, the Restrictions shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Coop or its members. In exercising the Coop's rights and powers, making decisions on the Coop's behalf, and conducting the Coop's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the Bylaws.

ARTICLE VII INDEMNIFICATION OF OFFICERS, DIRECTORS AND OTHERS

Subject to Hawaii law, the Coop shall indemnify every officer, director, and committee member against all damages and expenses, including attorneys fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such Person may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles, and Hawaii law. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Coop, except to the extent that such officers or directors may also be Members of the Coop. The Coop shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. As a Common Expense, the Coop shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

ARTICLE VIII FUNDS AND ASSESSMENTS

8.1. Obligation and Declarant's Option to Fund Budget Deficits.

The Coop for each Agricultural Lot owned by the Coop which is subject to Assessment, hereby covenants and every other Owner of any Lot, by acceptance of a Proprietary Lot Lease or other conveyance therefor, whether or not it shall be so expressed in such Proprietary Lot Lease or such other instrument, is deemed to covenant to pay to the Coop (i) annual Common Assessments for Common Expenses; (ii) Capital Improvement Assessments; (iii) Special Assessments; and (iv) Reconstruction Assessments; such assessments to be established and collected as hereinafter provided. All Assessments other than Special Assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. The personal obligation of assessments shall not pass to the successors-in-title to any Owner, unless expressly assumed by them. Until the Declarant Control Period Termination Date, the Coop may satisfy its obligation, if any, for Common Assessments by paying such assessments in the same manner as any other Owner, or by paying the difference between the amount of Common Assessments levied on all other Owners subject to assessment and the amount of actual

expenditures by the Association during the fiscal year. The Coop's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After the Declarant Control Period Termination Date, the Coop shall pay assessments on its Lots in the same manner as any other Owner.

8.2. Coop Funds.

The Board shall cause appropriate financial statements and budgets, including reserve and operating funds to be prepared as provided in the Coop Bylaws.

8.3. Disbursements.

All disbursements shall be made as provided in the Coop Bylaws.

8.4. Common Property Damage or Neglect.

If any maintenance, repair or replacement of the Common Property is necessitated in the sole judgment of the Board as a result of the willful or negligent act or neglect of an Owner or Owner Parties, such maintenance, repairs or replacements shall be performed, to the extent not covered by insurance, at the expense of the applicable Owner, after Notice and Hearing, and a Special Assessment therefor shall be levied against such Owner; provided, however, that the liability of an individual Owner for such damage to the Common Property shall not be absolute, but shall only be that for which the Owner is legally responsible under Hawaii law. The foregoing shall include, without limitation, any settlement damage to any Common Property caused by any excavation, construction or excess irrigation occurring on such adjacent Lot, or Common Property.

8.5. Common Assessments.

Sums sufficient to pay Common Expenses shall be assessed as Common Assessments against the Owners and their Lots as provided in the Coop Bylaws.

8.6. Commencement of Common Assessments.

Common Assessments shall commence as to each Lot on the first day of the first month following the month in which the first Close of Escrow occurs for the sale of a Lot; provided, however, at the Coop's election, the commencement of Common Assessments may be delayed to a date specified for the commencement of Assessments in any written notice provided by the Coop. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year established pursuant to the Bylaws.

8.7. Remedies of the Coop.

Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment, or Reconstruction Assessment not paid by an Owner will be subject to the remedies provided in the Coop Bylaws.

8.8. Lien for Assessments.

The Coop shall have a lien to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Hawaii law), and costs of collection (including court costs and attorneys fees) as provided in the Coop Bylaws. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; and (b) the lien or charge of any Recorded First Mortgage (meaning any Recorded Mortgage with first priority over other Mortgages) on a Proprietary Lot Lease made in good faith and for value and recorded prior to the recordation of the Notice of Lien by the Coop. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

8.9. Notice of Lien.

No action may be brought to enforce any Assessment lien herein, unless at least thirty (30) days have expired following the date a Notice of Lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot, and a copy thereof has been Recorded by the Coop. The Notice of Lien shall be in such form and shall contain such information as may be required by Hawaii law and must be signed and acknowledged by an officer of the Coop or such other Person expressly authorized by the Board to sign Notices of Liens. The lien shall continue until fully paid or otherwise satisfied.

8.10. Curing of Default.

Upon the timely curing of any default for which the Coop filed a Notice of Lien, the Coop shall Record an appropriate release of lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Board to cover the cost of preparing and Recording such release. A certificate, executed and acknowledged by any officer of the Coop, or such other person expressly authorized by the Board, stating the indebtedness secured by the liens upon any Lot created hereunder, shall be conclusive upon the Coop and the Owners as to the amount of such indebtedness as of the date of the certificate in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, to be determined by the Board.

8.11. Cumulative Remedies.

The Assessment lien and the rights of foreclosure and sale thereunder are in addition to and not in substitution for all other rights and remedies which the Coop and its assigns may have against any delinquent Owner hereunder and by law, including a suit to recover a money judgment for unpaid Assessments, as above provided.

8.12. Mortgage Protection - Liens.

Subject to Section 8.13 below, no lien created under this Article VIII, nor any breach of this Declaration, nor the enforcement of any provision hereof or of any Supplemental Declaration hereto defeats or renders invalid the rights of the Mortgagee under any Recorded Mortgage upon a Lot, made in good faith and for value. After a Mortgagee or other Person obtains title to a Lot by judicial foreclosure or by means of a power of sale set forth in such Mortgage, the Lot shall

remain subject to the Restrictions and the payment of all installments of Assessments and other obligations, accruing after the date the Mortgagee or other Person obtains title.

8.13. Priority of Assessment Lien.

Mortgages Recorded before Recordation of a Notice of Lien have lien priority over the Notice of Lien. The sale or transfer (including any "assignment of Proprietary Lot Lease in lieu" of foreclosure) of any Lot does not affect the Assessment lien; except that the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage Recorded prior to a Notice of Lien extinguishes the lien of such Assessment as to payments which became due prior to such foreclosure sale or transfer. No sale or transfer relieves such Lot from lien rights for any Assessments thereafter becoming due. No Person who obtains title to a Lot through judicial or nonjudicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Lot which became due prior to the acquisition of title to such Lot by such Person.

ARTICLE IX SPECIFIC REGULATORY USE RESTRICTIONS AND REQUIREMENTS

The following specific use restrictions and requirements apply, without exception, to the Coop, all Owners and all other Persons.

9.1. Historic Preservation Plan.

A *heiau* exists on a portion of the Project Site. Heiau and other such historic sites may be designated in the Historic Preservation Plan for mandatory preservation ("**Preservation Site**"). Other Identified Sites may be designated for data recovery ("**Data Recovery Sites**"). A survey has been conducted of the Project Site in a reasonable effort to identify all Historical Sites on the Project Site as reflected in the Historic Preservation Plan. Historical Sites may exist on the Project Site that have not been identified ("**Undiscovered Sites**"). Historical Sites may impact the manner in which an Owner may improve or use his or her Lot. The Preservation Site shall not be disturbed or removed. The Coop shall be obligated to protect and preserve the Preservation Site as required by the State of Hawaii Department of Land and Natural Resources regulations at the time this Declaration is recorded. The cost of maintaining such protection and preservation measures shall be a Common Expense of the Coop. Data Recovery Sites may be disturbed or disrupted only after data recovery activities have been completed. Historic Sites to be preserved that are identified are shown on each Lot's Farmsite Diagram as a buffer zone and all Owners, lessees and all other persons shall not disturb the land within such buffer zones for any purposes whatsoever.

9.2. Preservation Requirements.

Prior to undertaking any Improvements, including grading, clearing or planting on a Lot, the Owner of the Lot shall take into account any Historic Site on the Lot when designing and constructing Improvements or planting crops on the Lot. In the event that any Historic Site exists on the Lot, the Owner shall avoid disruption of the site. Under no circumstances may any

Owner or Member, or their licensees, guests, invitees, agents, employees, contractors, representatives, or any other Person deposit construction waste, refuse, or any other material on or in any Preservation Site, damage, disrupt, or destroy a Preservation Site, or remove material of any kind from a Preservation Site.

9.3. Undiscovered Sites Including Undiscovered Burials.

In the event an Owner discovers the existence of an Undiscovered Historic Site after commencing construction of an Improvement, or clearing, grading or planting the Lot, the Owner shall cease such activities or construction and notify the Coop immediately of the existence and location of the Undiscovered Site. The Owner shall then grant the Coop, its agents, employees, and any governmental officials and inspectors access to the site to conduct any required evaluation, testing, data recovery, preservation, and mitigation that may be required by Ordinance, the State of Hawaii Department of Land and Natural Resources regulations as of the date this Declaration is recorded, or Hawaii law. The Coop does not give any warranty, or make any representation, that all Historical Sites that exist within the Project have been discovered. Undiscovered Sites may affect the manner in which Lots within the Project may be used. The Coop shall have no liability for any damages, increased construction or operating costs, or delays caused by the existence of, or the discovery of, a Historical Site.

**ARTICLE X
GENERAL USE RESTRICTIONS AND REQUIREMENTS**

The provisions of this Article X do not apply to the Coop during subdivision or development activities or any Improvements they construct, but this Article X will apply to any alteration, reconstruction or repair of such Improvements by Owners.

10.1. Agricultural Use.

All Lots shall be improved and used solely for agricultural use, including animal husbandry. This provision does not preclude any Owner in the Project Site from renting or leasing for agricultural use purposes all of his or her Lot in accordance with Section 10.7 below.

10.2. Improvements.

No Lot may be improved except with a Building or structure designed to support the agricultural activities as approved by the County.

10.3. Insurance Rates.

Nothing shall be done or kept in the Project Site which will increase the rate of insurance on any Lot, Common Property or other portion of the Project Site without the approval of the Board, nor shall anything be done or kept in the Project Site which would result in the cancellation of insurance on any Lot, Common Property or other portion of the Project Site or which would be in violation of any law.

10.4. No Further Subdivision.

Except as otherwise provided in Section 20.3.1 hereof, no Lot may be further subdivided (including division into time-share estates or time-share uses) without the prior written approval of the Board. Any sublease on a Lot shall provide that the tenant and all occupants of the subleased Lot are bound by and obligated to comply with the Restrictions.

10.5. Signs.

No sign, poster, billboard, balloon advertising device or other display of any kind ("*Displays*") may be displayed within the Project Site except (i) such Displays (regardless of size, configuration or content) as may be used by the Coop in connection with the development of the Project Site and the sale, lease or other disposition of Lots; or (ii) entry monuments and similar community identification signs maintained by the Coop.

10.6. Animals.

No animals, fowl, reptiles, poultry, fish or insects of any kind ("*Animals*") may be raised, bred or kept on any Lot except in compliance with Chapter 205, Hawaii Revised Statutes. So long as the use is in compliance with Chapter 205, Hawaii Revised Statutes, animal husbandry, game and fish propagation, raising of livestock, including poultry, bees, fish or other animal or aquatic life propagated for economic or personal use shall be allowed.

10.7. Nuisances.

No rubbish or debris of any kind may be placed or permitted to accumulate anywhere within the Project Site, and no odor may be permitted to arise therefrom so as to render the Project Site or any portion thereof unsanitary, unsightly, or offensive from any public or private street or road or from any other Lot in the vicinity thereof or to its occupants, subject to what is reasonable for an agricultural subdivision. No noise or other nuisance shall be permitted to exist upon or emanate from any portion of the Common Property or any portion of a Lot or Common Property within the Project Site so as to be offensive or detrimental to any other Lot or Common Property in the Project Site or to its occupants. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes and commercially designed and reasonably used exterior speakers), live bands, noisy, unsightly, unusually painted or smoky vehicles, large noisy power equipment or tools, unlicensed off-road motor vehicles, transmissions which may unreasonably interfere with television or radio reception within the Project Site, or other items which may unreasonably disturb other Owners or their tenants may be located, used or placed on any portion of the Project Site without the prior written approval of the Farmer's Committee. No vehicles may be operated upon any portion of the Common Property not improved as a street or parking area without the prior written approval of the Farmer's Committee, which approval may be withheld for any reason whatsoever. Alarm devices used exclusively to protect the security and contents of a vehicle, Lot or Common Property, are permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms.

10.8. Exterior Maintenance and Repair.

No Improvement shall be permitted to fall into disrepair, and each such Improvement must at all times be kept in good condition and repair.

10.9. Drainage.

There shall be no interference with the drainage systems originally installed by the Coop, or alteration or interference with the established drainage pattern over any Lot or Common Property, unless an adequate alternative provision is made for proper drainage. For the purpose hereof, "established" drainage means the drainage pattern and drainage Improvements which exist at the time the Lot or Common Property, as the case may be, is conveyed to the Owner by the Coop. There shall be no violation of the drainage requirements of the applicable Local Governmental Agency or other applicable Local Governmental Agency, notwithstanding any approval by the Farmer's Committee. Each Owner, by accepting a Proprietary Lot Lease to his or her Lot, acknowledges and understands that in connection with the development of the Project Site, the Coop may have installed one or more "subdrains" beneath the surface of such Owner's Lot. The subdrains and all appurtenant Improvements constructed or installed by the Coop ("*Drainage Improvements*"), if any, provide for subterranean drainage of water from and to various portions of the Project Site. To ensure adequate drainage within the Project Site, it is essential that the Drainage Improvements, if any, not be modified, removed or blocked without having first made alternative drainage arrangements. Therefore, any damage or injury resulting from or arising in connection with the alteration, modification, removal or replacement of any Drainage Improvements on a Lot shall be the responsibility of the Owner of such Lot.

10.10. Water Systems.

No individual water supply system is permitted on any Lot, except crop irrigation systems that connect to the irrigation water that is delivered to the Lot boundaries. No other individual water supply system is permitted on any Common Property.

10.11. No Hazardous Activities.

No activities may be conducted, nor may any Improvements be constructed, anywhere in the Project Site which are or might be unsafe or hazardous to any Person, Lot, or Common Property in the Project Site.

10.12. Unsightly Articles.

At all times refuse, garbage and trash must be kept in covered, sanitary containers designed for such purpose and located within enclosed areas or areas reasonably screened from the view of any other Lot, or Common Property. No exterior fires whatsoever are permitted within the Project Site, except barbecue fires contained within receptacles commercially designed therefor, fire pits in enclosed areas designed so that they do not create a fire hazard, and other fires specifically authorized in writing by the Coop, all of which are also subject to applicable ordinances and fire regulations.

10.13. No Mining or Drilling.

No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind may be conducted upon the Project Site, nor are oil, water or other wells, tanks, tunnels, mineral or geothermal excavations or shafts permitted upon or within five hundred feet (500') of the surface of any portion of the Project Site.

10.14. Views.

There are no views in the Project Site which are protected to any extent by this Declaration, and no Owner who becomes subject to the terms hereof shall thereby obtain any view rights whatsoever. Notwithstanding any other provision of this Declaration, each Owner by accepting a Proprietary Lot Lease to a Lot acknowledges that any construction or installation or planting by the Coop or by other Owners may impair the view of such Owner and each Owner hereby consents to such impairment.

10.15. Rights of Handicapped.

Subject to the provisions of Article XI hereof, each Owner may modify his or her Lot, at his or her sole cost and expense, in order to facilitate access by persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to such persons, in accordance with applicable laws or ordinances.

10.16. Damage to Buildings-Reconstruction.

If all or any portion of any Lot or Building is damaged or destroyed by fire or other casualty, the Owner of such Lot or Building shall rebuild, repair or reconstruct the Lot or Building in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by the Farmer's Committee. The Owner of any damaged Lot or Building and the Farmer's Committee shall proceed with all due diligence, and the Owner shall cause reconstruction to commence within six (6) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond such Owner's reasonable control. A transferee of the Lot which is damaged or upon which is located a damaged Building shall commence and complete reconstruction in the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the Lot. However, no such transferee may be required to commence or complete such reconstruction in less than thirty (30) days from the date such transferee acquired title to the Lot.

10.17. Hazardous Materials.

No hazardous waste, substance or material (as defined in any federal, state or local law, ordinance or regulation) shall be stored or permitted upon any portion of the Project Site, except in compliance with all applicable laws, ordinances and regulations of all applicable public agencies. Without limiting the generality of the foregoing, the Project Site is subject to all federal, state, and local requirements adopted pursuant to the Federal Clean Water Act. In accordance therewith, the Coop, and all Owners may not dispose of any hazardous waste,

substance or material into any storm drain or other drainage device located anywhere within the Project Site in violation of applicable laws, ordinances, or regulations.

ARTICLE XI PROJECT SITE FARM USE CONTROL

11.1. Farmer's Committee.

At the option of the Board, a Farmer's Committee may be appointed and if appointed shall consist of three (3) members; provided, however, that such number may be changed by resolution of the Board of Directors so long as the Farmer's Committee never consists of greater than five (5) nor fewer than three (3) members. The Farmer's Committee, at the option of the Coop, may be granted jurisdiction over any buildings or improvements to be built on any Lot and may be granted the power and authority to promulgate rules for farming and agricultural activities.

11.2. Compensation of Members.

The Farmer's Committee members shall receive no compensation for services rendered, other than reimbursement by the Coop for expenses incurred by them in performing their duties. The foregoing shall not preclude payment of compensation approved by the Board to architects or similar professionals engaged to assist the Farmer's Committee or the Farmer's Committee Representative or to perform the function of the Farmer's Committee Representative.

11.3. Limitation of Liability.

The Coop, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work, or any defects in plans revised or approved hereunder; any loss damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Board, the Farmer's Committee, and the members of each shall be defended and indemnified by the Coop as provided in Article VII.

ARTICLE XII DESTRUCTION OR CONDEMNATION OF COMMON PROPERTY

Damage to, destruction or condemnation of all or any portion of the Common Property shall be handled in the following manner:

12.1. Damages by Owners.

To the extent permitted by law, each Owner is liable to the Coop for any damage to the Common Property not fully reimbursed to the Coop by insurance (including any insurance policy deductible amounts) if the damage is sustained because of the negligence, neglect, willful misconduct or unauthorized or improper installation or maintenance of any Improvement by the Owner, his or her family, guests, tenants or invitees, or any other Persons deriving their right and

easement of use and enjoyment of the Common Property from the Owner or its Owner Parties. However, the Coop, acting through the Board, may determine whether any claim will be made upon the insurance maintained by the Coop, and after Notice and Hearing the Coop may levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Owner or the Person for whom the Owner may be liable as described above. In the case of joint ownership of a Lot, the liability of the Owners is joint and several, except to the extent that the Coop has previously contracted in writing with the joint Owners to the contrary. After Notice and Hearing, the cost of correcting the damage, to the extent not reimbursed to the Coop by insurance, shall be a Special Assessment.

12.2. Repair of Damages.

If Common Property Improvements which are the maintenance responsibility of the Coop are damaged by fire or other casualty, any insurance proceeds payable by reason thereof shall be paid to the Coop, which thereupon shall contract for the repair or replacement of all the Common Property Improvements so damaged. The Coop shall levy a Reconstruction Assessment on Owners to satisfy any deficiency between insurance proceeds and the actual cost of repair or replacement in the same manner and proportion that Common Assessments are levied against and collected from. Any restoration or repair of the Common Property Improvements after damage due to an insurable hazard will be performed substantially in accordance with the original plans and specifications unless other action is approved as may be provided herein.

12.3. Condemnation.

If all or any portion of the Common Property, or any interest therein, is taken by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the Coop and deposited in the appropriate operating fund. No Member (other than a Person on whose Lot a Common Property easement affected by a condemnation may be located) may participate as a party, or otherwise, in any proceedings relating to such condemnation. The Coop has the exclusive right to participate in such proceedings and shall, in its name alone, represent the interests of all Members.

12.4. Notice to Owners and Listed Mortgagees.

The Board of Directors immediately upon learning of any taking by eminent domain of any Common Property, or any threat thereof, shall promptly notify all Owners whose Lots are subject to Common Assessments for the maintenance of such Common Property, and all Record holders of first Mortgages on such Owners' Lots. The Board, immediately upon learning of any damage or destruction affecting a material portion of the Common Property, shall promptly notify all Owners whose Lots are subject to Common Assessments for the maintenance of such Common Property, and all holders, insurers, and guarantors of first Mortgages on Lots who have filed a written request for such notice.

ARTICLE XIII DECLARANT EXEMPTION

13.1. Interest of the Coop.

The Coop in cooperation with the applicable Local Governmental Agency, has created a comprehensive plan for the development of the Project for the common good and promotion of agricultural uses of the property and the preservation of property values within the community. Each Owner of a Lot which is part of the Project Site acknowledges by acceptance of a Proprietary Lot Lease or other conveyance therefore, whether or not it shall be so expressed in any such Proprietary Lot Lease or other instrument, that the Coop has a substantial interest in assuring compliance with and enforcement of, the covenants, conditions, restrictions and reservations contained in this Declaration and any amendments thereto and any Supplemental Declarations Recorded pursuant to this Declaration.

13.2. Exemptions.

Nothing in the Restrictions limits and no Owner will interfere with the right of the Coop, either directly or through their respective agents and representatives, to subdivide, re-subdivide, sell, resell, rent or re-rent any portion of the Project Site, or the right of the Coop to complete excavation, grading, construction of Improvements or other development activities to and on any portion of the Project Site owned by the Coop.

ARTICLE XIV INSURANCE

The Coop acting through the Board or its duly appointed agent shall obtain and maintain insurance of the types and in the amounts described below, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as are reasonably available. Using 2010 as a base year, the Board may adjust the limits specified based on increases in the U.S. consumer price index or other reasonable inflation index as selected by the Board.

14.1. Commercial General and Umbrella Liability Insurance.

The Board shall maintain commercial general liability insurance ("*CGL*") and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000.00 each occurrence and in the aggregate.

14.1.1 CGL insurance shall be written on ISO occurrence form CG 00 01 96 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) in connection with the Coop's activities or with respect to the Common Property.

14.1.2 Each Owner, the Board, and the Coop Manager shall be included as an insured under the CGL, using the applicable ISO additional insured endorsement providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as

primary insurance and there shall be no endorsement or modification of the CGL to make it excess over other available insurance; alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured.

14.1.3 Insurance coverage for liability arising from pollution or employment-related practices that the Board, in its business judgment, determines to be appropriate and available, shall be obtained.

14.2. Automobile and Umbrella Liability Insurance.

The Board shall maintain automobile liability insurance for Coop owned vehicles and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000.00 per accident.

14.2.1 Such insurance shall cover liability arising out of any automobile accident (including owned, hired, and non-owned automobile).

14.2.2 Coverage as required in Section 14.2 above shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

14.2.3 Pollution liability coverage at least as broad as that provided under the ISO pollution liability such as broadened coverage for covered automobiles endorsement (CA 99 48) shall be provided and the Motor Carrier Act endorsement (MCS 90) shall be attached.

14.2.4 Physical damage coverage shall include collision and comprehensive coverage with respect to the leased automobile with deductibles of no more than \$1,000.00.

14.3. Coop Agents.

14.3.1 Directors and officers liability coverage shall be obtained and provided.

14.3.2 Commercial crime insurance, including fidelity insurance covering all persons responsible for handling Coop funds in an amount determined in the Board's business judgment. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation.

14.4. Commercial Property Insurance.

Commercial property insurance shall be provided, which covers the Improvements installed by the Coop on the Common Property for the full replacement cost thereof without deduction for depreciation or coinsurance, and the Board may obtain insurance against such other hazards and casualties as the Coop may deem desirable.

14.4.1 Commercial property insurance shall be provided, which at minimum, covers the perils insured under the ISO special causes of loss form (CP 10 30), if commercially

reasonably available; if not commercially reasonably available, then the broad causes of loss form (CP 10 20) may be substituted.

14.4.2 Flood coverage may be provided, at the discretion of the Board, with a limit as close to the full replacement cost of the Improvements as is reasonably available. This requirement is subject to annual review and modification in recognition of changes in the insurance marketplace.

14.4.3 Earthquake coverage may be provided, at the discretion of the Board, with a limit as close to the full replacement cost of the Improvements as is reasonably available.

14.4.4 Hurricane coverage may be provided, at the discretion of the Board, to the extent commercially reasonably available.

14.4.5 The amount insured shall equal the full estimated replacement cost of the property insured except as provided in Subsections 14.4.2 and 14.4.3 with respect to flood and earthquake coverage.

14.4.6 Any coinsurance requirement in the policy shall be eliminated through the attachment of an agreed amount endorsement, the activation of an agreed value option, or as is otherwise appropriate under the particular policy form.

14.5. Other Insurance.

Such additional insurance, such as worker's compensation insurance and employer's liability insurance that the Board, in its business judgment, determines to be appropriate and available, or as required by law, shall be provided.

14.6. General Insurance Provisions.

All insurance coverage obtained by the Board shall:

(a) be written with a company authorized to do business in Hawaii which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the Coop's name as trustee for the benefitted parties; policies on the Common Property shall be for the benefit of the Coop and its Members;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) contain an inflation guard endorsement;

(e) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(f) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Property as a Member in the Coop (provided, this provision shall not be construed as giving an Owner any interest in the Common Property other than that of a Member);

(g) provide a waiver of subrogation under the policy against any Owner or household member of a Owner;

(h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Coop to cure the defect or violation and allowance of a reasonable time to cure; and

(i) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Coop.

14.7. Additional Insurance Provisions.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(a) a waiver of subrogation as to any claims against the Coop's Board, officers, employees, manager, the Owners and their tenants, servants, agents, and guests;

(b) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(c) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(d) an endorsement requiring at least thirty (30) days' prior written notice to the Coop of any cancellation, substantial modification, or non-renewal;

(e) a cross-liability provision; and a provision vesting in the Board exclusive authority to adjust losses; provided that no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

14.8. Other Property.

The Coop may also insure any other real or personal property it owns against loss or damage by fire and such other hazards as the Coop may deem desirable, with the Coop as the owner and beneficiary of such insurance. The policies insuring the Common Property must be written in the name of, and the proceeds thereof must be payable to the Coop. Unless the applicable insurance policy provides for a different procedure for the filing of claims, all claims made under such policy must be sent to the insurance carrier or agent, as applicable, by certified mail and be clearly identified as a claim. The Coop shall keep a record of all claims made and shall use

insurance proceeds to repair or replace the property for which the insurance was carried. Costs incurred for premiums for all insurance carried by Coop shall be a Common Expense.

14.9. Insurance Obligations of Owners.

Each Owner is responsible for insuring his or her personal property and all other property and Improvements within his or her Lot as required by this Declaration or the applicable Supplemental Declaration. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Coop, and duplicate copies of such other policies shall be deposited with the Board upon the Board's request. If any loss intended to be covered by insurance carried by or on behalf of the Coop occurs and the proceeds payable thereunder are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of such insurance to the Coop, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

14.10. Waiver of Subrogation.

All policies of physical damage insurance the Coop maintains must provide, if reasonably possible, for waiver of: (i) any defense based on coinsurance; (ii) any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Coop; (iii) any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Coop, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured; (iv) any rights of the insurer to repair, rebuild or replace, and, if any Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured; (v) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Lot; (vi) any denial of an Owner's claim because of negligent acts by the Coop or other Owners; or (vii) prejudice of the insurance by any acts or omissions of Owners that are not under the Coop's control. As to each policy of insurance the Coop maintains which will not be voided or impaired thereby, the Coop hereby waives and releases all claims against the Board, the Owners, the Coop Manager, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by such Persons, but only to the extent that insurance proceeds are received in compensation for such loss.

ARTICLE XV EASEMENTS

15.1. Easements in Common Property.

The Coop grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Property, subject to:

- (a) The Restrictions and any other applicable covenants;
- (b) Any restrictions or limitations contained in any lease or other document conveying or granting such real property or interest in real property to a third-party;

- (c) Those limitations set forth in Section 3.1 of this Declaration; and
- (d) The Board's right to:
 - (i) adopt rules regulating use and enjoyment of the Common Property, including rules limiting the number of guests who may use the Common Property;
 - (ii) suspend the right of an Owner to use facilities within the Common Property (A) for any period during which any charge against such Owner's Lot remains delinquent, and (B) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation, of the Restrictions after notice and a hearing pursuant to the Bylaws;
 - (iii) dedicate or transfer all or any part of the Common Property, subject to such approval requirements as may be set forth in this Declaration;
 - (iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational or storage facility situated upon the Common Property;
 - (v) permit use of any recreational facilities situated on the Common Property by Persons other than Owners, their families, lessees, and guests upon payment of use fees established by the Board and designate other areas and facilities within the Common Property as open for the use and enjoyment of the public; and
 - (vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend the Owner's right of use and enjoyment to the members of the Owner's family, lessees, and guests, as applicable, subject to reasonable regulation by the Board. An Owner who leases the Owner's Lot shall be deemed to have assigned all such rights to the lessee of such Lot for the period of such lease.

15.2. Easements of Encroachment.

The Coop grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Property and between adjacent Lots due to the unintentional placement or settling or shilling of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

15.3. Easements for Utilities and Infrastructure Development.

15.3.1 Installation and Maintenance. The Coop reserves for itself the following described rights and the right to grant to any governmental entity, third-party or utility providers (including, but not limited to, privately owned and operated utilities), perpetual non-exclusive easements throughout the Project (but not through a structure) to the extent reasonably necessary, for the purpose of:

(a) installing utilities and infrastructure to serve areas within or within the vicinity of the Project Site, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights and signage on property which the Coop owns or within public rights-of-way or easements reserved for such purpose on Recorded plats, including without limitation the development of water resources, and the installation and maintenance of facilities and equipment to capture, treat and transport ground water, surface water and storm water runoff;

(b) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other Improvements described in Subsection 15.3.1(a); and

(c) access to read utility meters.

15.3.2 Specific Easements. The Coop also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in the Coop's sole discretion, in connection with the orderly development of any property within the Project Site. The Owner of any property to be burdened by any easement granted pursuant to this Section 15.3 shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

15.3.3 Minimal Interference. All work associated with the exercise of the easements described in Subsections 15.3.1 and 15.3.2 shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. Exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

15.4. Easements for Maintenance, Emergency and Enforcement.

The Coop reserves easements over each Lot, including, but not limited to, the Coop Easements as may be designated on the Plat Map, for access to and from and to construct, repair, maintain and replace wells and reservoirs, utility lines and facilities and over the Project as necessary to enable the Coop to fulfill its maintenance responsibilities under Article III. The Coop shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Restrictions. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties.

Except in an emergency situation, entry shall only be during reasonable hours and after forty-eight (48) hours prior notice to the Owner. The Coop reserves for itself and others, and may designate, the right to inspect, monitor, test, redesign, and correct any structure, Improvement, or condition which may exist on any portion of the Project Site, including Lots, and a perpetual, nonexclusive easement of access throughout the Project Site to the extent reasonably necessary to exercise such right. Except in an emergency, no entry into a Building shall be permitted without the Owner's consent, and entry onto a Lot shall occur only after reasonable notice to the Owner.

15.5. Easements for Historical Sites and Cultural Practices.

The Coop reserves for itself a nonexclusive, perpetual easement over the Project Site, including the Lots, to (i) travel to and from the Historical Sites; and (ii) inspect, evaluate, perform data recovery, maintain and preserve the Historical Sites identified on the Project Site from time to time. Such easement shall affect only such portions of the Common Property and Lots as the Coop deems reasonably necessary for such purposes. The Coop further reserves the right to designate and grant nonexclusive easements over the Common Property and Lots to (i) travel to and from such Historical Sites; (ii) inspect, evaluate, perform data recovery, maintain and preserve such Historical Sites; and/or (iii) perform traditional, cultural and/or religious practices at such Historical Sites. Such easements shall affect only such portions of the Common Property and Lots as the Coop deems reasonably necessary for such purposes and may be subject to such reasonable terms, conditions and restrictions that the Coop may impose, consistent with Hawaii law.

15.6. Easement for Drainage.

The Project Site is burdened with a perpetual and nonexclusive easement over, through, and across the Project Site as necessary to accommodate drainage from or across the Project Site in its currently existing and natural pattern and flow. No Owner shall erect any structure or obstruction that interrupts the existing and normal drainage of the land. Each Owner assumes all liability for damage to persons or Project Site caused by interference with the natural flow of drainage from, over, through, or across the Lot in connection with Owner's activities on all or any part of the Lot, and agrees to indemnify, defend, and hold harmless the Coop from and against any liability, claim, demand, action, or suit arising out of, or in connection with, any such interference with drainage.

15.7. Coop Easement.

The Coop reserves the nonexclusive right and easement to the portion of each Lot that is designated a Coop Easement for the purposes of constructing, installing, maintaining and repairing wells, reservoirs, utilities, widening roads, installing structures and Improvements, installing and maintaining landscaping and windbreaks, and any other reasonable purpose as may be determined in the discretion of Coop. No Owner may remove, damage, or destroy any Improvement, structure, landscaping, plants, or trees that are within the Coop Easement unless given express, written consent by the Board of Directors. Any Owner that constructs any Improvement or installs any landscaping or crops on a portion of his or her Lot that is designated as Coop Easement shall be required, upon notice from the Board, to remove such Improvement

or landscaping or crops at such Owner's expense and restore the Coop Easement to substantially the same condition as existed prior to the construction or installation of such Improvement or landscaping. In the event an Owner fails to take such action as required by the Board, the Coop shall have the right to remove such landscaping or Improvement or crops and restore the Coop Easement, without liability to the Owner. The costs for such action may be levied against such Owner's Lot as a Specific Assessment.

ARTICLE XVI WATER SYSTEM

16.1. Design and Construction.

The Project is dependent on the availability of irrigation water from the Kunia Water Association established pursuant to that certain Amended and Restated Declaration of Covenants Regarding Water Allocation and Easements more particularly described in Exhibit A attached hereto (the "**KWA Declaration**"). The Kunia Water Association intends to allocate and distribute irrigation water as provided in the KWA Declaration. The Coop shall construct the Project Site water distribution system which shall consist of a water system (the "**Water System**") for the purpose of providing irrigation and non potable water for service within the Project. The water system will be designed to provide water for the Coop and individual Owners. All of the initial components of the water system relating to water service to the Project, including all wells, lines, pumps, reservoirs, water towers or tanks, and other facilities and appurtenances serving the Project developed or to be developed by the Coop have been or will be paid for, constructed, and installed by the Coop. Owners are required to utilize the water system.

16.2. Ownership and Operation of the Water System.

The Coop will own, operate, maintain and repair the facilities constituting the Water System. The costs of development of the Water System will be included in the price of the Lots and not in the water usage charges and other costs charged by the Coop.

16.3. Access to Water System and Rates for Service.

If the Kunia Water Association delivers water to the Project for further distribution to the Lots, then water service shall be provided by the Coop to Owners and the Variable Operating Costs (as defined in the KWA Declaration) charged by the Kunia Water Association to the Project shall be allocated among and shall be paid by the Owners in direct proportion to the usage by the individual Lots. Fixed Operating Costs and Capital Recovery Costs (as defined in the KWA Declaration) charged by the Kunia Water Association shall be allocated among and paid by the Owners in accordance with their percent interests.

16.4. Maintenance and Repair of the Water System.

Upon satisfaction of the conditions described in Section 16.1 above and the development of the Water System by the Coop, the Coop shall be obligated to maintain and repair the Water System. The costs associated with maintenance and repair of the Water System will be recovered by the Coop from the Owners in accordance with their percent interests. To complete the required maintenance and repair of the Water System, the Coop, shall be granted easements as provided

in Article XV over, under, and across the Project Site to the extent necessary to conduct such maintenance and repair. Such easements shall include a right of ingress and egress over Common Property, roads, easements and Lots as reasonably necessary.

16.5. Limitations on Water Usage.

The availability of water and the amount of available water is dependent on water provided by the Kunia Water Association.

**ARTICLE XVII
WASTEWATER TREATMENT SYSTEM**

There is no wastewater treatment system and each Owner shall be responsible for the installation of an individual waste water system in accordance with the requirements and regulations of the Hawaii State Department of Health and shall be subject to the County permitting requirements and any requirements imposed by the Board and/or the Coop.

**ARTICLE XVIII
DISCLOSURES**

18.1. Ongoing Construction and Sales Activities.

Construction activity by the Coop or other Lot Owners may continue within the Project and within the vicinity of the Project. Such construction activity may result in the transmission, discharge, or emission of surface water runoff, smoke, noise, dust, odors, noxious vapors, chemicals, vibrations, and other annoyances, as well as pose certain risks of injury to an Owner and the Owner's guests and visitors, and may limit the Owner's access to portions of the Project. Additionally, the Coop's sales activities, including the use of signs and sales displays and activities, will continue in the Project until the sale of the last Lot in the Project.

The Coop shall have an easement over and upon each Owner's Lot and over the Project for the transmission, discharge, or emission of surface water runoff, smoke, noise, dust, noxious vapors, odors, chemicals, vibrations, or other substances or nuisances over the Project which are created by or result from such construction activities. The Coop may perform such measures as may be reasonably required in connection with such construction activities, including, but not limited to, grading; excavation; depositing fill material; installing drainage systems; and installing sewer, water, electrical, gas, telephone, and/or television cable lines..

18.2. Hazardous Materials.

Each Owner assumes all risks of Hazardous Materials (as used herein, the term "*Hazardous Materials*" means all substances identified, listed, or defined as a "hazardous substance" under any federal, state or local environmental laws or otherwise regulated as a dangerous, hazardous, toxic, or carcinogenic substance) existing on, about, around, under, over, or within the Owner's Lot, including all risks of (i) any and all enforcement, clean up, or other governmental or regulatory actions instituted or threatened pursuant to any Hazardous Materials Law affecting the

Lot; (ii) all claims made or threatened by any third party against an Owner or the Coop relating to damage, contribution, compensation, loss, or injury resulting from any Hazardous Materials; and (iii) having sole responsibility for, and defending, indemnifying, and holding harmless the Coop and its officers, directors, employees, agents, successors, and assigns (each of said parties herein called an "*Indemnatee*"), from and against all claims, demands, actions, lawsuits, proceedings, fines, penalties, damages, liabilities, judgments, awards, expenses, and costs (including attorneys' fees and costs) which may arise out of or may directly or indirectly be attributable to the use, generation, manufacture, treatment, handling, refining, production, storage release, discharge, disposal, or presence of any Hazardous Materials on, about, around, over, or within the Lot or the Project Site. This indemnification shall not apply to claims, demands, actions, losses, damages, liabilities, costs, and expenses caused by any Indemnatee's proven gross negligence, willful misconduct, or violation of applicable laws, established by a final, nonappealable judgment of a court of competent jurisdiction. This provision shall not apply to any institutional lender, investor, or federal housing agency (including any successors or assigns) who holds a Mortgage covering the Lot or who takes title to the Lot upon foreclosure or by way of assignment of proprietary lot lease in lieu of foreclosure or otherwise.

18.3. Impacts on Lot.

Each Lot and the Improvements thereon, may be affected periodically by various hazards and by noise, dust, smoke, earthshock, soot, ash, odor, noxious vapors, transmission of pollutants or other hazardous materials, surface water runoff, or other adverse environmental conditions created by or attributable to surrounding farming, construction, development, pasture, and other non-residential uses and activities, including, but not limited to:

- (a) fertilization and pest and weed control;
- (b) cattle and other livestock grazing;
- (c) real estate development and other changes in use (due to zoning changes or other governmental authorization or otherwise), construction, grading, improvement and maintenance of adjacent and surrounding Project Site, including roadways;
- (d) irrigation of any and all surrounding lands with reclaimed water, treated effluent, or other non-potable water sources; and
- (e) Portions of the Project being designated as a critical habitat under the federal Endangered Species Act and being subject to regulation by the U.S. Fish and Wildlife Service.

18.4. View Impairment.

The activities conducted on the Project Site pursuant to Article V and Article X may diminish or impair views within the Project Site. There are no express or implied view easements. Therefore, views within the Project are not protected, and any negative impact to any Owner's view caused by such activities shall not provide a basis for any claim or right of action. Trees

and landscaping need not be pruned, and may be relocated. There is no express or implied easements for view or for passage of light and air.

18.5. Roadways.

The roadways located in the Project Site are private roadways and the Coop shall be responsible for the maintenance and repair of the roadways unless and until such roadways may be dedicated to the County or other governmental agency; however, there currently is no plan to dedicate the roadways to any governmental agency. The Coop reserves the right to grant non-exclusive easements over and upon the roadways to any governmental agency, utility provider, adjacent landowner or any other person or entity. These roadways and access rights thereon will inure to the benefit of all Owners and occupants of the Project Site as set forth in Section 3.1 Owners' Rights of Enjoyment.

18.6. Wells and Irrigation Systems.

No Owner or Member may construct, drill, install, or maintain any wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Project, except that the Coop shall have the right to draw water from such sources.

ARTICLE XIX DISPUTE RESOLUTION

19.1. Dispute Resolution.

All disputes involving (i) the Coop and/or (ii) any "Declarant Parties" (defined below) which arise out of, or relate to, the Restrictions (excluding any action for delinquent Assessments) or which relate to the Project Site, shall be resolved as provided in this Section. For purposes of this Section, the term "**Declarant Parties**" means and collectively refers to the Coop, its members, officers, directors and each of their respective members, managers, shareholders, directors, officers and employees, and the term "**Declarant Party**" refers to any of the foregoing individually. The dispute resolution procedure in this Article XIX shall control all disputes involving the Coop and/or other Declarant Parties.

(a) **Construction Defect Disputes.** Prior to the commencement of any legal action by the Coop, or any Owner(s) against the Coop or any other Declarant Party based upon a claim for defects in the design or construction of any Building, Common Property or Improvements thereon, the Coop, or Owner must first comply with the requirements of the Contractor Repair Act, Chapter 672E of the Hawaii Revised Statutes, as amended. If the parties are unable to resolve their dispute, the dispute shall be resolved in accordance with Section 19.2 below and the parties shall each be responsible for their own attorneys' fees, expert witness fees and similar or related costs and fees.

(b) **Other Disputes.** Any other disputes involving (a) the Coop and/or (b) any Declarant Parties which arise out of, or relate to, the Restrictions (excluding any action for delinquent Assessments) or which relate to the Project Site shall be resolved in accordance with Sections 19.2 and 19.4 below.

(c) **Statutes of Limitations.** Nothing in this Article XIX shall be considered to toll, stay, reduce or extend any applicable statute of limitations, provided, however, that the Coop, the Declarant Parties, and any Owner may commence a legal action which in the good faith determination of that Person is necessary to preserve that Person's rights under any applicable statute of limitations so long as no further steps in processing the action are taken except those authorized in this Section 19.1.

19.2. AGREEMENT REGARDING DISPUTE RESOLUTION; WAIVER OF JURY TRIAL.

THE COOP AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS ARTICLE XIX TO RESOLVE ALL DISPUTES WHICH ARE COVERED UNDER THIS ARTICLE XIX AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. THE COOP AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE XIX THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JURY. THIS ARTICLE XIX MAY NOT BE AMENDED WITHOUT THE COOP'S PRIOR WRITTEN CONSENT.

19.3. WAIVER OF PUNITIVE DAMAGES.

BY ACCEPTANCE OF A PROPRIETARY LOT LEASE OR OTHER CONVEYANCE OF A LOT, OR COMMON PROPERTY, EACH OWNER AND THE COOP SHALL BE DEEMED TO HAVE WAIVED, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, ALL RIGHT TO RECOVER PUNITIVE OR OTHER EXEMPLARY DAMAGES FROM AND ANY OR ALL DECLARANT PARTIES.

19.4. Resolution Procedures.

19.4.1 **Notice of Claim.** Any party asserting a Claim ("*Claimant*") against another party ("*Respondent*") shall give written notice (the "*Notice of Claim*") to each Respondent and to the Board stating plainly and concisely:

- (a) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- (b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (c) the Claimant's proposed resolution or remedy; and

(d) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

19.4.2 Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

19.4.3 Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice of Claim (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Coop (if the Coop is a party to the Claim) or to an independent agency providing dispute resolution services in Hawaii. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

19.4.4 Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by each of the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one noncomplying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

19.4.5 Initiation of Litigation by Coop. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Coop shall not initiate any judicial or administrative proceeding unless first approved by a vote of Voting Members entitled to cast 75% of the total votes in the Coop, except that no such approval shall be required for actions or proceedings:

- (a) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (b) initiated to challenge property taxation or condemnation proceedings;

(c) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(d) to defend claims filed against the Coop or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

ARTICLE XX MISCELLANEOUS

20.1. Term and Termination

This Declaration shall continue in full force until a Declaration of Termination satisfying the requirements of an amendment to this Declaration as set forth in Section 20.2 is recorded.

20.2. Amendments.

20.2.1 By the Board. Notwithstanding any other provision herein to the contrary, including without limitation, any requirement for approvals by other parties, during the Declarant Control Period, this Declaration may be amended or terminated unilaterally by the Board in its sole discretion by Recording a written instrument signed by the Board setting forth such amendment or termination. Notwithstanding any other provisions of this Declaration, for so long as the Coop owns any portion of the Project Site, the Board may unilaterally amend this Declaration (i) to conform this Declaration to the requirements of the County, City, State or any other governmental agency or entity then in effect or to otherwise comply with or implement any state, federal or local law, regulation or ordinance (ii) to correct typographical or inadvertent errors and (iii) to update or supplement the disclosures contained in Section 20.9 below.

20.2.2 By Owners. The provisions of this Declaration may be amended by Recording an instrument, signed and acknowledged by two (2) officers of the Coop, setting forth the amendment and certifying that such amendment has been approved by Owners representing seventy-five percent (75%) of the voting power of the Coop and the requisite percentage of holders and insurers of first Mortgages, in the case of those amendments which this Declaration requires to be approved by first Mortgagees. This Declaration may be amended by a Declarant First Mortgagee, without the joinder of any other person or entity, to partially terminate this Declaration as to any Lots owned by the Declarant First Mortgagee and to withdraw such Declarant First Mortgagee owned Lots from this Declaration. Such amendment and partial termination and withdrawal shall not affect any Lots not subject to the lien of the Declarant First Mortgage. Amendments shall be effective upon Recordation.

20.2.3 Approval of First Mortgagees. Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved by fifty-one percent (51%) of the first Mortgagees who have requested the Coop to notify them of proposed action requiring the

consent of a specified percentage of first Mortgagees, based upon one (1) vote for each Lot pledged as security for the respective first Mortgage:

(a) **Rights of Lenders.** Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protections granted to beneficiaries, insurers and guarantors of first Mortgages as provided in Articles VIII, XII, XIII, XIV and XX hereof.

(b) **Lien Priority.** Any amendment which would necessitate a Mortgagee after it has acquired a Lot through foreclosure to pay more than its proportionate share of any unpaid Assessment or Assessments accruing after such foreclosure.

(c) **Forfeitures and Taxes.** Any amendment which would or could result in (a) an encumbrance being canceled by forfeiture, or (b) an individual Lot not being separately assessed for tax purposes.

(d) **Insurance and Condemnation.** Any amendment relating to the insurance provisions as set out in Article XIV hereof, or to the application of insurance proceeds as set out in Article XII hereof, or to the disposition of any money received in any taking under condemnation proceedings.

(e) **Termination and Subdivision.** Any amendment which would or could result in termination or abandonment of the Project Site or partition or subdivision, in any manner inconsistent with the provisions of this Declaration; provided that termination of the legal status of the Project Site as a common interest development for reasons other than substantial destruction or condemnation of the Project Site must be approved by the institutional Record holders of sixty-seven percent (67%) of the first Mortgages at the time of such amendment.

Any approval by a holder, insurer or guarantor of a first Mortgage required under this Subsection 20.2.3, or required pursuant to any other provisions of the Restrictions, must either be given in writing, or is deemed given if, within thirty (30) days after receipt of written notice of the proposed action sent via registered or certified mail, return receipt requested, the holder, insurer or guarantor does not submit a written response to the notice.

20.2.4 Certification. A certificate, signed and sworn to by two (2) officers of the Coop that Owners representing seventy-five percent (75%) of the voting power of the Coop have voted for any amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The certificate reflecting any termination or amendment which requires the consent of any of the record holders, guarantors or insurers of first Mortgages shall include a certification that the requisite approval of the County, and such holders, guarantors or insurers of first Mortgages has been obtained or waived. The Coop shall maintain in its files the record of all such votes and Mortgagee consent solicitations and disapprovals for a period of at least four (4) years.

20.3. Mortgage Protection-General.

Notwithstanding any other provision of this Declaration, no amendment or violation of this Declaration will defeat or render invalid the rights of the Mortgagee under any Mortgage (or the beneficiary under any Deed of Trust) made in good faith and for value, and Recorded prior to the Recordation of such amendment (or a Notice of Lien Recorded pursuant to Section 8.9). After the foreclosure of any such Mortgage (or Deed of Trust) such Lot remains subject to this Declaration, as amended. Notwithstanding any and all provisions of this Declaration to the contrary, the following provisions are added hereto (and to the extent these added provisions, pertaining to the rights of Mortgagees conflict with any other provisions of this Declaration or any other of the Restrictions, these added restrictions shall control):

20.3.1 Declarant First Mortgagee Rights. A Declarant First Mortgagee, shall have the right, notwithstanding any provision to the contrary herein, to acquire title to the Lots, to consolidate the Lots that are acquired which consolidation may include the Lots in the Project not acquired and to re-subdivide the acquired Lots as may be determined by such entity in its sole discretion and may seek all governmental approvals to the same; provided, however that any Lots (including any Proprietary Leases for such Lots) that have been released from and are not subject to the lien of the Declarant First Mortgage shall in no event be re-subdivided despite the consolidation.

20.3.2 Notice of Default. Each Mortgagee, insurer and guarantor of a first Mortgage encumbering any Lot, upon filing a written request for notification with the Board, is entitled to written notification from the Coop of (i) any condemnation or casualty loss which affects either a material portion of the Project Site or the Lot securing the respective first Mortgage; (ii) any delinquency of sixty (60) days or more in the performance by the Owner of such Lot of any obligation arising pursuant to this Declaration, including without limitation the payment of Assessments or charges owed by the Owner of the Lot securing the respective first Mortgage, which notice each Owner hereby consents to and authorizes; (iii) a lapse, cancellation, or material modification of any policy of insurance or fidelity bond maintained by the Coop; and (iv) any proposed action of the Coop which requires consent by a specified percentage of first Mortgagees.

20.3.3 Lien Priority. Each first Mortgagee of a Mortgage encumbering any Lot and Recorded prior to a Notice of Lien which obtains title to such Lot pursuant to judicial foreclosure or the powers provided in such Mortgage takes title to such Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such Mortgagee acquires title to such Lot in accordance with Section 8.13.

20.3.4 Books and Records. All beneficiaries, mortgagees, insurers and guarantors of first Mortgages on Lots, upon written request to the Coop, may examine current copies of the Coop's books, records and financial statements and the Restrictions during normal business hours, and may require the Coop to submit an annual audited financial statement for the preceding fiscal year without expense to the entity requesting the statement within one hundred twenty (120) days of the end of the fiscal year.

20.3.5 Mortgagee Notices. All beneficiaries, mortgagees, insurers and guarantors of first Mortgages of Lots who have filed a written request with the Coop shall be given (i) thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles or Bylaws, and prior to the effective date of any termination of an agreement for professional management of the Project Site following a decision of the Owners to assume self-management of the Project Site; (ii) written notice of all meetings of the Owners and the right to designate in writing a representative who shall be authorized to attend all such meetings; and (iii) immediate written notice as soon as the Board receives notice or otherwise learns of any damage to the Common Property whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000.00), and as soon as the Board receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition, with respect to any portion of the Project Site.

20.3.6 Common Property Taxes. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Coop.

20.4. Notices.

Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered two (2) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any Person at the address given by such Person to the Coop for the purpose of service of such notice. Such address may be changed from time to time by notice in writing to the Coop.

20.5. Interpretation.

20.5.1 Restrictions Construed Together. The Restrictions shall be liberally construed to effectuate the fundamental concepts of the Project Site as set forth in the Preamble to this Declaration. The Restrictions shall be interpreted so as to be consistent with applicable laws and regulations, including ordinances and regulations of applicable Local Governmental Agencies. The Restrictions shall be construed and governed by the laws of the State of Hawaii.

20.5.2 Restrictions Severable. Notwithstanding the provisions of Subsection 20.5.1, each of the provisions of the Restrictions is independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

20.5.3 Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

20.5.4 Captions. All captions and titles in this Declaration are solely for convenience of reference and do not affect that which is set forth in any of the provisions hereof.

20.5.5 Time Periods. Except as otherwise expressly provided herein, any reference in this Declaration to time for performance of obligations or to elapsed time means consecutive calendar days, months, or years, as applicable.

20.6. No Public Right of Dedication.

Nothing in this Declaration is a gift or dedication of all or any part of the Project Site to the public, or for any public use.

20.7. Disclosures.

Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Project Site agrees to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Project Site. Each Owner, by acceptance of a Proprietary Lot Lease or other conveyance of a Lot, whether or not it shall be so expressed in any such lease or other instrument, acknowledges and understands the following:

20.8. No Representations or Warranties; Not an Enhanced Protection Agreement.

No representations or warranties of any kind, express or implied, have been given or made by the Coop or its agents or employees in connection with the Project Site or any portion of the Project Site, or any Improvement thereon, its physical conditions, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration and except as may be filed from time to time with any governmental authority.

20.9. Priorities and Inconsistencies.

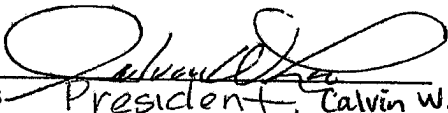
If there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or the Bylaws of the Coop, the terms and provisions of this Declaration shall prevail.

[SIGNATURE ON FOLLOWING PAGE]

The undersigned has executed these presents as of the day and year set forth below.

Dated: March 17, 2010

KUNIA LOA RIDGE FARMLANDS,
a Hawaii nonprofit corporation

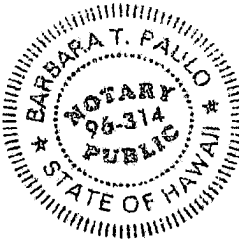
By: 
Its President, Calvin W. Lui
"COOP" AND "DECLARANT"

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)
) SS.
)

On this 9th day of March 2010, in the First Circuit of the State of Hawaii, before me personally appeared Calvin W. Lui, to me personally known or proved to be the person whose name is subscribed hereto, who acknowledged executing the foregoing 53 page DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE KUNIA LOA RIDGE FARMS AGRICULTURAL SUBDIVISION dated Undated at execution as his ~~or her~~ free act and deed and if applicable in the capacity shown, with due authorization to execute such instrument in such capacity.



Barbara T. Paulo

Name:

Notary Public, State of Hawaii

My commission expires: Barbara T. Paulo
Expiration Date: June 14, 2012

EXHIBIT "A"

DESCRIPTION OF PROJECT SITE

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawaii, more particularly described as follows:

LOT M-8-B (area 854.23 acres), as shown on Map 5, filed in the Office of the Assistant Registrar of the Land Court to the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, Deceased.

BEING all of the land described in and covered by **Certificate of Title No. 975,762** issued to Kunia Loa Ridge Farmlands, a Hawaii nonprofit corporation.

SUBJECT, HOWEVER, to the following:

1. Easement "49" (40 feet wide), as shown on Map 10, as set forth by Land Court Order No. 4113, filed August 5, 1940, as amended by Land Court Order No. 17969, filed April 1, 1960, to reduce the width from 40 feet to 30 feet, as shown on Map 23.
2. Access rights in favor of Lot 17534, over Easement "49", as set forth by Land Court Order No. 172495, filed October 22, 2007.
3. Trustees Limited Warranty Deed dated November 1, 2006, by and between the Trustees under the Will and of the Estate of James Campbell, Deceased, as grantor, and James Campbell Company LLC, as grantee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3505988.
4. Declaration of Site Access; Joinder (undated), made by James Campbell Company LLC, as Declarant, with joinder and consent of the United States Environmental Protection Agency and Del Monte Fresh Produce (Hawaii), Inc., filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3676945.
5. Declaration of Environmental Restrictions (Well Restriction Area); Joinder (undated), made by James Campbell Company LLC, as Declarant, with joinder and consent of the United States Environmental Protection Agency and Del Monte Fresh Produce (Hawaii), Inc., filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3676946.
6. Declaration of Covenants Regarding Water Allocation and Easements dated December 13, 2007, made by James Campbell Company LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3694441, as amended and restated by instrument dated August 21, 2008, filed in said Office of the Assistant Registrar as Document No. 3782044, and as further amended by instrument dated February 24, 2010, filed in said Office of the Assistant Registrar as Document No. 3942984.
7. Grant of Private Waterline Easement dated September 3, 2008, in favor of Syngenta Hawaii, LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3785842.

8. Grant of Nonexclusive Easement (Access Only) dated December 10, 2008, in favor of Army Hawaii Family Housing LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3812213.

9. Grant of Nonexclusive Easement (Access and Utility Purposes) dated September 30, 2009, in favor of Gill-Olson Joint Venture, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3903239, affecting Easement "49".

10. Grant of Nonexclusive Easement (Access and Utility Purposes) dated September 30, 2009, in favor of Edmund C. Olson, Trustee of the Edmund C. Olson Trust No. 2 under agreement dated August 21, 1985, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3903245, affecting Easement "49".

11. Grant of Nonexclusive Easement (Access and Utility Purposes) dated September 30, 2009, in favor of The Trust for Public Land, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3903249, affecting Easement "49".

12. Grant of Nonexclusive Easement (Access Only) dated September 30, 2009, in favor of The Trust for Public Land, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3903251.

13. Limited Warranty Deed with Covenants, Reservation of Rights and Agreements dated March 17, 2010, by and between James Campbell Company LLC, as grantor, and Kunia Loa Ridge Farmlands, as grantee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3948038.

14. Grant of Nonexclusive Easement (Access Purposes Only) between James Campbell Company LLC, as grantor, and Kunia Loa Ridge Farmlands, as Grantee, dated March 17, 2010, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 3948040.

15. Grant of Nonexclusive Easement (Access and Utility Purposes) between James Campbell Company LLC, as grantor, and Kunia Loa Ridge Farmlands, as Grantee, dated March 17, 2010, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 3948039.

16. Unrecorded Assignment and Assumption of Grantee's Rights and Obligations dated as of March 17, 2010 by and between James Campbell Company LLC, as assignor, and Kunia Loa Ridge Farmlands, as assignee, assigning assignor's right, title and interest in and to that certain unrecorded Grant of Nonexclusive Easement (Access Only) dated March 17, 2010 by and between Army Hawaii Family Housing LLC, as grantor, and James Campbell Company LLC, as grantee.

END OF EXHIBIT A



R-179

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

SEP 06, 2011 08:01 AM

Doc No(s) 2011-141744

/s/ NICKI ANN THOMPSON
REGISTRAR

20 1/1 Z1

DR 2011-133200

LAND COURT SYSTEM

Return by Mail ☐ Pickup ☒ To:SCHLACK ITO
A Limited Liability Law Company
Raymond S. Iwamoto, Esq.
745 Fort Street, Suite 1500
Honolulu, Hawaii 96813
Phone: (808) 523-6060

REGULAR SYSTEM

TITLE GUARANTY OF HAWAII HAS
FILED THIS DOCUMENT FOR RECORD
AS AN ACCOMMODATION ONLY. THIS
DOCUMENT HAS NOT BEEN
REVIEWED OR IN ANY WAY EXAMINED
AS TO ITS EFFECT ON REAL PROPERTY.

TGA 429205-S (RS)

Total Pages: 8

TMK: (1) 9-2-004:013

**FIRST AMENDMENT OF
DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVATION
OF EASEMENTS FOR
THE
KUNIA LOA RIDGE FARMS AGRICULTURAL SUBDIVISION**

**FIRST AMENDMENT OF
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR THE
KUNIA LOA RIDGE FARMS AGRICULTURAL SUBDIVISION**

THIS FIRST AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS ("***Amendment***") is made by Kunia Loa Ridge Farmlands, a Hawaii nonprofit corporation, formed under the Hawaii Nonprofit Corporations Act, Chapter 414D, Hawaii Revised Statutes (hereafter referred to as "***Coop***" or "***Declarant***"). Except as otherwise specified herein, the capitalized words and phrases used in this Amendment shall have the meanings specified in Article I of the Declaration defined below.

P R E A M B L E:

The Coop is the owner and subdivider of certain real property in Kunia, City and County of Honolulu, State of Hawaii (the "***Project Site***"), more particularly described in ***Exhibit "A"*** attached to the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for the Kunia Loa Ridge Farms Agricultural Subdivision, dated March 17, 2010, and recorded in the Office of the Assistant Registrar of the Land Court as Document No. 3948041 and noted on Certificate of Title No. 975,762. The Land has been deregistered from the Land Court and Certificate of Title No. 975,762 has been recorded in the Bureau of Conveyances of the State of Hawaii.

All of the Project Site will be used by farmers and ranchers with certain common objectives, and Owners of Lots will have certain common interests. All agricultural activities conducted on the Project Site will be conducted with objectives and restrictions designed to preserve any and all historic sites located within the Project Site. All Agricultural activities will also be conducted to protect the ground water source underlying the Project Site and to coordinate the conservation efforts of all of the Owners and users of the Lots. The purpose of the restrictions set forth in this Amendment is to promote the conservation of historic properties in accordance with State law and regulations, to implement conservation practices and Best Management Practices as set forth herein.

A large part of the Project Site has been subjected to past land disturbances by the plantation use but there are portions of the Project Site that have not had the same degree of land disturbance and there may be historic sites located on these portions. As provided in the Declaration, the Declarant reserved the right to grant easements to preserve historic sites. The Declarant now desires to amend the Declaration to grant such easements and for other purposes as set forth herein.

NOW THEREFORE, the Declarant pursuant to the rights reserved in the Declaration does hereby amend the Declaration by adding or amending as follows:

1. ARTICLE I, DEFINITIONS, is amended by changing the following sections to read as follows:

1.22 Declarant Control Period Expiration Date.

Declarant Control Period Expiration Date means the earlier of (i) the expiration of four (4) years after the first Close of Escrow for a Lot in the Project Site; or (ii) the date on which the Coop records an amendment to the Declaration stating that the Coop elects to terminate the Declarant Control Period.

1.28 Final Plat.

Final Plat means the Subdivision Map prepared by R.M. Towill Corporation for the Project Site.

1.29 Historic Preservation Plan and Historical Sites.

“Historic Preservation Plan” shall mean a Preservation Plan approved by the Declarant. “Historical Sites” means burial grounds and other historically and/or archaeologically significant sites that are identified and/or existing within the Project.

1.32 Lot.

Lot means any lot or parcel of land shown upon the Final Plat or lot line adjustment of any portion of the Project Site, together with the Improvements, if any, thereon, and shall include, but not be limited to Agricultural Lots and the roadway lots.

Article I is further amended by amending the title of section 1.33 to Management, renumbering the existing section 1.33 to 1.33.a., and adding the following new section 1.33.b:

1.33 Management

a. Manager.

b. Best Management Practices. Best Management Practices means agricultural Best Management Practices (BMP) which are intended to prevent or reduce movement of sediment, nutrients, pesticides, and other pollutants from the land to surface water bodies or groundwater. For the Project Site, Best Management Practices shall include the practices mandated by the Project Site’s Soil Conservation Plan on file with the United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), the EPA (Environmental Protection Agency) Source Water Protection Practices Bulletin factsheet on fertilizer applications EPA 919-F-01-028 Dated July 2001, and the EPA Source Water Protection Practices Bulletin factsheet on Pesticides dated EPA 919-F-01-030 Dated July 2001.

2. ARTICLE II, DEVELOPMENT; LAND CLASSIFICATIONS, is amended as follows:

2.1.1 Agricultural Lots is amended by adding the following at the end:

No dwelling unit of any kind is permitted. The lots have been subdivided in accordance with State of Hawaii law and the City and County of Honolulu has not been asked to approve the Subdivision as authorized by State law. Therefore, for development purposes and permitting

purposes. all of the Lots shall be Lots under State law but shall continue to be considered to be one Zoning Lot under City Subdivision Rules And Regulations.

2.1.2 Common Property is amended by adding the following at the end:

The Common Property shall include without limitation, Easements 1 through 15 for access purposes, Easement 16 for parking purposes, and Easement 17 for water line purposes as shown on the Final Plat.

3. ARTICLE IX, SPECIFIC REGULATORY USE RESTRICTIONS AND REQUIREMENTS, is amended by adding the following new sections:

9.4 Lots Restricted to Ranching. In order to insure the preservation and protection of any historic sites that may be inadvertently located on any of the following lots, the following restrictive easements are placed on the following lots. The following designated lots are lots with steep slopes and are located in gulches and ravines located on the Project Site and the use of the following lots shall be restricted and limited to ranching activities only. There shall be no grading, plowing, or disturbance of the soil within and on the following designated lots. Minor clearing of vegetation and overgrowth and any minor disturbance of the soil in connection therewith will be permitted so long as all historic sites are preserved. There shall be no farming on the following lots and the following lots are restricted to ranching use only.

Lot numbers 79, 80, 81, and 82.

9.5 Portion of Lots Restricted to Ranching. In order to insure the preservation and protection of any historic sites that may be inadvertently located on any of the following gulches located on the following lots, the following restrictive easements are placed on the following lots. The following designated lots with steep slopes located in gulches and ravines located on the lot shall be restricted and limited to ranching activities only in the gulches and ravines. There shall be no grading, plowing, or disturbance of the soil within and on the gulches and ravines in the following designated lots. Minor clearing of vegetation and overgrowth and any minor disturbance of the soil in connection therewith will be permitted so long as all historic sites are preserved. There shall be no farming on the following lots and the following lots are restricted to ranching use only, except that farming activities may be conducted on those portions of the lots that are outside the gulches and ravines. The term "outside the gulches and ravines" shall be deemed to mean the portion of the lots where the slope is less than 35 degrees.

Lot numbers 36, 37, 39, 40, 42, 55, 57, 58, 63, 78, 84, 86, 91, 93, and 95.

9.6 Cultural Advisory Committee. In furtherance of the objective of preserving all historic and cultural sites and artifacts, a Cultural Advisory Committee will be appointed for the purpose of advising the Board of the Developer in connection with historic and cultural issues. If at any time prior to tilling the soil, grubbing, grading, planting, or during or after such activities, any item is discovered by the Owner that may or could be a historic artifact or structure or other historic feature, the Owner shall adhere to the requirements of this Declaration and cease all activity around such discovered item or site and shall immediately notify one of the members of the Cultural Advisory Committee who will then investigate and make

recommendations to the Board as to the proper treatment of the item. The item will either be preserved in place or proper archaeological survey shall be made.

Since Kunia Loa Ridge Farmlands have been fallow for some time and is overgrown with grass and other shrubs, there may be items that have not been located. Upon clearing shrubbery, if any man-made item is located, such as rock formations, rock walls or enclosures, or tools other than modern tools, or any other artifacts that are not modern, then the owner finding these must take steps to protect and preserve the same and must notify the Cultural Advisory Committee.

The owner of the Lot where the artifact or site is located shall be respectful of the artifact or site and shall take measures to protect and preserve the same until the Cultural Advisory Committee makes its recommendations and the Board makes its decisions. The Cultural Advisory Committee may consult with the Office of Hawaiian Affairs and others. Depending on the item or site, the Board may consult with a professional archaeologist and the State Office of Historic Preservation.

9.7 Grading Activities. Section 15.6 of the Declaration, entitled Easement for Drainage, is amended to provide as follows:

The Project Site is burdened with a perpetual and nonexclusive easement over, through, and across the Project Site as necessary to accommodate drainage from or across the Project Site in its currently existing and natural pattern and flow. No Owner shall grade or fill any portion of the Owner's Lot or erect any structure or obstruction that interrupts the existing and normal drainage of the land. Each Owner assumes all liability for damage to persons or Project Site caused by interference with the natural flow of drainage from, over, through, or across the Lot in connection with Owner's activities on all or any part of the Lot, and agrees to indemnify, defend, and hold harmless the Coop from and against any liability, claim, demand, action, or suit arising out of, or in connection with, any such interference with drainage.

Section 10.9 of the Declaration provides as follows:

There shall be no interference with the drainage systems originally installed by the Coop, or alteration or interference with the established drainage pattern over any Lot or Common Property, unless an adequate alternative provision is made for proper drainage. For the purpose hereof, "established" drainage means the drainage pattern and drainage Improvements which exist at the time the Lot or Common Property, as the case may be, is conveyed to the Owner by the Coop. There shall be no violation of the drainage requirements of the applicable Local Governmental Agency or other applicable Local Governmental Agency, notwithstanding any approval by the Farmer's Committee.

In order to fulfill the requirements of this section, each Owner of a Lot shall fully comply with the recommended conservation practices set forth by the overall NRCS Conservation Plan that is or will be associated with Kunia Loa Ridge Farmlands. Until the NRCS Conservation Plan is approved, there shall be no grading or grubbing of any lot. Where required, all permits from the City and County of Honolulu will be obtained prior to any grading.

4. Article X, GENERAL USE RESTRICTIONS AND REQUIREMENTS, is hereby amended by adding section 10.18 as follows:

10.18 Best Management Practices.

The Coop, all Owners and users of the Project Site shall use Best Management Practices to avoid contamination of ground water from the use of the Project Site and to prevent leaching any contaminants into the ground water table. The Project Site shall be operated and maintained in accordance with all of the plans, procedures, and requirements of the Best Management Practices. As part of Best Management Practices, the Coop has a Soil Conservation Plan on file with the United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS). The Coop is a cooperator with the West Oahu Soil Conservation District (WOSCD) and utilizes their expertise to keep current on the latest developments in agricultural best management practices and natural resource conservation. Without limiting the generality of Best Management Practices, the following describes portions of Best Management Practices. The EPA fact sheets require soil sampling and precise procedures and equipment for fertilizer and pesticide application. Copies of the EPA fact sheets will be made available to all Owners and users of the Project Site. Each Owner and user of the Lots are required to follow the EPA fact sheets mandates (as the same may be amended by the EPA) for source water protection practices for fertilizer and pesticide applications. Each Lot Owner will be subject to audit to determine compliance with these requirement and violations will be subject to the levy and collection of fines.

5. Article XX, MISCELLANEOUS, is amended by adding section 20.2.5 as follows:

20.2.5 No Amendment.

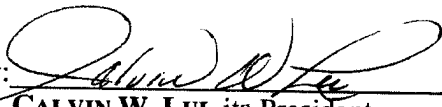
These covenants and restrictions are encumbrances that shall run with the land. No amendments or termination of these encumbrances shall be possible unless and until the land is reclassified to a land use other than an agricultural district.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

The undersigned has executed these presents as of the day and year set forth below.

Dated: July 19, 2011

KUNIA LOA RIDGE FARMLANDS,
a Hawaii nonprofit corporation

By: 

CALVIN W. LUI, its President

"DECLARANT"

STATE OF HAWAII

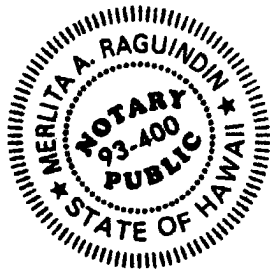
)

) ss.

CITY AND COUNTY OF HONOLULU

)

On this 19th day of July, 2011, before me personally appeared CALVIN W. LUI, to me known, who, ~~being~~ by me duly sworn or affirmed, did say that such person executed this 8-page FIRST AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE KUNIA LOA RIDGE FARMS AGRICULTURAL SUBDIVISION dated July 19, 2011, as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.





Print Name: Merlita A. Raguindin

Notary Public, State of Hawaii

First Judicial Circuit

My Commission expires: January 25, 2012

This is a copy of Bureau of Conveyances
Document No. A 46950537, and / or
Land Court Document No. _____
affecting Certificate of Title No. _____
recorded on 11-8-12 at 8:01 o'clock am.
TITLE GUARANTY OF HAWAII, INCORPORATED

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ☐ Pickup ☒ To:

SCHLACK ITO
A Limited Liability Law Company
Raymond S. Iwamoto, Esq.
745 Fort Street, Suite 1500
Honolulu, Hawaii 96813
Phone: (808) 523-6060

Total Pages: 5

TMK: (1) 9-2-004:013

**SECOND AMENDMENT OF
DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVATION
OF EASEMENTS FOR
THE
KUNIA LOA RIDGE FARMS AGRICULTURAL SUBDIVISION**

**SECOND AMENDMENT OF
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR THE
KUNIA LOA RIDGE FARMS AGRICULTURAL SUBDIVISION**

THIS SECOND AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS ("***Amendment***") is made by Kunia Loa Ridge Farmlands, a Hawaii nonprofit corporation, formed under the Hawaii Nonprofit Corporations Act, Chapter 414D, Hawaii Revised Statutes (hereafter referred to as "***Coop***" or "***Declarant***"). Except as otherwise specified herein, the capitalized words and phrases used in this Amendment shall have the meanings specified in Article I of the Declaration defined below.

P R E A M B L E:

The Coop is the owner and subdivider of certain real property in Kunia, City and County of Honolulu, State of Hawaii (the "***Project Site***"), more particularly described in ***Exhibit "A"*** attached to the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for the Kunia Loa Ridge Farms Agricultural Subdivision, dated March 17, 2010, and recorded in the Office of the Assistant Registrar of the Land Court as Document No. 3948041 and noted on Certificate of Title No. 975,762 9 (the "Declaration of CC&Rs"). The Land has been deregistered from the Land Court and Certificate of Title No. 975,762 has been recorded in the Bureau of Conveyances of the State of Hawaii. The Declaration of CC&Rs has been amended by First Amendment of Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for the Kunia Loa Ridge Farms Agricultural Subdivision, dated July 19, 2011 (the "First Amendment of Declaration") and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2011-141-1744.

In the First Amendment of Declaration, the Declaration of CC&Rs was amended to provide that the Declarant Control Period Expiration Date means the earlier of (i) the expiration of four (4) years after the first Close of Escrow for a Lot in the Project Site; or (ii) the date on which the Coop records an amendment to the Declaration stating that the Coop elects to terminate the Declarant Control Period. The Coop now desires to amend the Declaration to terminate the Declarant Control Period and for other purposes as set forth herein.

NOW THEREFORE, the Coop pursuant to the rights reserved in the Declaration does hereby amend the Declaration as follows:

1. **ARTICLE I, DEFINITIONS**, is amended by changing the following sections to read as follows:

1.22 **Declarant Control Period Expiration Date.**

Declarant Control Period Expiration Date means the date that the members of the Coop hold their organizational meeting to elect their board of directors.

1.10 Bylaws.

Bylaws means the Coop's Bylaws attached hereto as EXHIBIT "A" to this Second Amendment and made a part hereof which Bylaws have been adopted by the Coop's Board.

2. ARTICLE II, DEVELOPMENT; LAND CLASSIFICATION, is amended by amending section 2.1.2 to read as follows:

2.1.2. Common Property.

The Common Property shall include without limitations, any Lots designated by alphabetical description such as Lots "A", "B", "C", etc., Easements 1 through 15 for access purposes, Easement 16 for parking purposes, and Easement 17 for water line purposes as shown on the Final Plat.

3. ARTICLE XX, MISCELLANEOUS, is amended by amending section 20.2.5 to read as follows:

20.2.5 No Amendment.

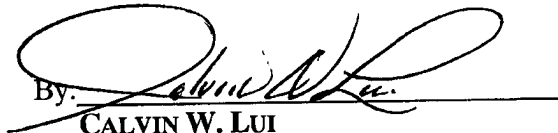
These covenants and restrictions are encumbrances that shall run with the land. No amendments or termination of these encumbrances shall be possible except in conformance with the existing governmental land use restrictions and regulations or any land use restrictions and regulations in connection with any reclassification of the land to a district other than an agricultural district.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

The undersigned has executed these presents as of the day and year set forth below.

Dated: October 30, 2012

KUNIA LOA RIDGE FARMLANDS,
a Hawaii nonprofit corporation

By. 
CALVIN W. LUI
ITS, PRESIDENT

“DECLARANT”

STATE OF HAWAII

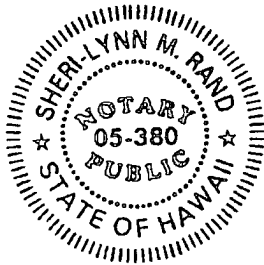
)

) ss.

CITY AND COUNTY OF HONOLULU

)

On this 30th day of October, 2012, before me personally appeared CALVIN W. LUI, to me known, who, being by me duly sworn or affirmed, did say that such person executed this 4-page SECOND AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE KUNIA LOA RIDGE FARMS AGRICULTURAL SUBDIVISION dated October 30, 2012, as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Sheri-Lynn M. Rand

Print Name: SHERI-LYNN M. RAND

Notary Public, State of Hawaii

First Judicial Circuit **My commission expires: June 19, 2013**

My Commission expires: _____

Doc. Date: _____ # Pages: 4
Notary Name: Sheri-Lynn M. Rand First Circuit
Doc. Description: Second Amendment to Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for the Kunia Loa Ridge Farms Agricultural Subdivision
Sheri-Lynn M. Rand _____
Notary Signature Date
NOTARY CERTIFICATION

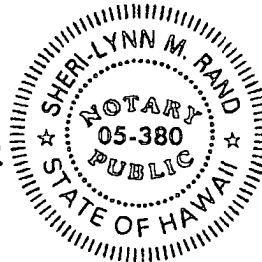


EXHIBIT "A"

BYLAWS OF KUNIA LOA RIDGE FARMLANDS (the "Corporation")

ARTICLE I PURPOSE AND ACTIVITIES

The purpose of the Corporation is to own, maintain, and operate, on a mutual or cooperative basis for the use and benefit of its Members, the real property described as Tax Map Key (1) 9-2-004-013, located near Kunia Road, Kunia, Hawaii, and known as Kunia Loa Ridge Farmlands ("Kunia Loa"), and the roads and other infrastructure improvements and equipment owned by the Corporation. The Corporation is a farmer's incorporated non-profit corporation and will be operated solely for the ownership, use, and maintenance of Kunia Loa, its agricultural lots, common areas, and common property. It is not the objective of the Corporation to make any profit or gain from ownership and operation of Kunia Loa. The Corporation shall not engage in any business or any revenue-generating activity. The Corporation will not issue any dividends. The financial operating policy of the Corporation is that the Members shall pay, in proportion to their respective ownership of Membership Interests in the Corporation, all expenses connected with ownership, operation, and maintenance of Kunia Loa and the Corporation, including reasonable reserves for major maintenance and capital requirements, operating, and replacement and repair costs of Kunia Loa and excepting only those expenses that are the obligations of each Member under their proprietary lot lease.

ARTICLE II OFFICES

Section 2.1 Principal Office.

The principal office of the Corporation shall be at such place in the State of Hawaii as the Board of Directors shall from time-to-time determine. The initial principal and registered office of the Corporation is 1188 Bishop Street, Suite 1201, Honolulu, Hawaii 96813.

Section 2.2 Other Offices.

The Corporation may have such other offices within the State of Hawaii as the Board of Directors may designate.

ARTICLE III MEMBERS

Section 3.1 General.

The Members of the Corporation shall consist of all persons admitted to membership in accordance with these Bylaws. Membership in the Corporation shall be evidenced by the membership book of the Corporation.

Section 3.2 Admission of Members.

The initial Member is C & C Farmlands LLC ("C&C"). C&C is the subdivider of the Project defined in section 9.1 (a) below and the Declarant of the Project Declaration defined in section 9.7 below. C&C shall admit Members with the issuance of or assignment of the Proprietary Lot Leases defined in section 11.1 below (the "Proprietary Lot Lease" or "Proprietary Lot Leases"). Thereafter Members shall be admitted as Membership Interests together with Proprietary Lot Leases are transferred.

Section 3.3 Fees.

Members of the Corporation shall be required to pay such fees, dues, fines, assessments, or other charges prescribed by the Board of Directors from time-to-time.

ARTICLE IV MEETING OF MEMBERS

Section 4.1 Annual Meeting.

The Annual Meeting of the Members shall be held each year at such time and place as the Board of Directors determines for the purposes of electing directors and transacting such other business as may come before the meeting.

Section 4.2 Special Meetings.

Special Meetings of the Members for any purpose or purposes may be held at any time upon the call of the President or any Vice President or upon the written request of Members entitled to vote at such meeting who own at least 25% of the total outstanding Membership Interests.

Section 4.3 Place of Meeting.

The Board of Directors may designate any place as the place of meeting for any Annual or Special Meeting of the Members. If no designation is made, the place of meeting shall be the principal office of the Corporation.

Section 4.4 Notice of Meetings.

Notice of all meetings of the Members, Annual or Special, stating the place, day, and hour of the meeting and whether it is Annual or Special, and in case of a Special meeting, stating the purpose or purposes thereof, shall be given personally, by electronic mail or facsimile transmission, or by mail at least ten (10) days before the meeting. If by mail, such notice shall be deemed to be delivered when deposited in the United States mail postage prepaid and addressed to the Member at his or her address as it appears on the membership roll of the Corporation.

Section 4.5 Waiver of Notice.

Notice of any meeting may be waived before or after the date and time of the meeting in a writing signed by the Member entitled to notice and delivered to the Secretary for inclusion in the minutes of the meeting or filing with the corporate records.

Section 4.6 Adjourned Meetings and Notice Thereof.

Any meeting of the Members, Annual or Special, whether or not a quorum is present, may be adjourned from time-to-time by the vote of a majority of the Members present, but in the absence of a quorum, no other business may be transacted at any such meeting. When any Members' meeting, either Annual or Special, is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Otherwise, it shall not be necessary to give any notice of an adjourned meeting other than by announcement at the meeting at which such adjournment is taken.

Section 4.7 Voting.

At all meetings of Members, every Member entitled to vote shall have the right to vote in person or by written proxy as described in Section 4.11. Each Member shall be entitled to one vote depending on the size of the lot covered by the Member's Proprietary Lot Lease as designated on the Final Plat for the Project as follows. For lots from 5 to 7.5 acres, one vote, for lots greater than 7.5 acres to 12.5 acres, two votes, for lots greater than 12.5 acres to 17.5 acres, three votes and for lots greater than 17.5 acres 4 votes. Assessments will be allocated among the Members as provided in Section 9.2 notwithstanding the number of votes that an Owner has.

Section 4.8 Quorum.

A majority of the Membership Interests shall be necessary to constitute a quorum for the transaction of business. If a quorum is present, then action on a matter is approved by a majority of votes, either in person or by proxy, unless a greater vote is required by the Articles of Incorporation, these Bylaws, or Hawaii law.

Section 4.9 Action Without Meeting.

Any action required or permitted to be taken at any meeting of the membership may be taken without a meeting if all the Members sign a written consent setting forth the corporate action being taken.

Section 4.10 Conduct of Meetings.

The President, or in his absence a Vice President, if any, shall act as chairman of and preside over meetings of the Members. If no such officer is present, the meeting shall elect a chairman. The Secretary, or in his absence an Assistant Secretary, if any, shall act as the secretary of such meetings. If no such officer is present, the chairman shall appoint a secretary of the meeting. The procedure at meetings of the Members shall be determined by the chairman of the meeting, and the vote on all questions before any meeting shall be taken in such manner as the chairman prescribes.

Section 4.11 Proxies.

A Member may appoint a proxy to vote or otherwise act for him by signing and dating an appointment form, either personally or by his attorney-in-fact. No appointment of proxy shall be valid after the expiration of 11 months from the date of its execution, unless otherwise provided therein. Every appointment of proxy shall be revocable by the Member executing it, unless the appointment form conspicuously states that it is irrevocable and that it is coupled with an interest in accordance with law.

**ARTICLE V
BOARD OF DIRECTORS**

Section 5.1 Number and Qualification of Directors.

The number of directors shall be fixed and the directors shall be elected by the Corporation's Members at each annual meeting of the Members or at any Special Meeting of the Members called for that purpose. Notwithstanding anything herein to the contrary, until the expiration of the Declarant Control Period defined in the Project Declaration, the Declarant acting alone may elect the Members of the Board of Directors. Upon the expiration of the Declarant Control Period, the Members of the Board shall be elected at the next annual meeting of the Members.

Section 5.2 Term of Office.

All directors shall hold office until their respective successors are elected.

Section 5.3 Vacancies.

Any vacancy occurring in the Board of Directors shall be filled for the unexpired term by majority vote of the remaining Members of the Board of Directors. A director elected to fill such a vacancy shall be elected for the unexpired term of such director's predecessor in office and shall be eligible to one or more additional full terms.

Section 5.4 Removal.

Any director may be removed from office with or without cause by the affirmative vote of a majority of the Members present at a meeting called for such purpose and at which a quorum is present. Notice for a meeting called for any purpose that includes the removal of a director shall include written notification that one of the purposes of the meeting is to remove a director and such notice shall be provided not less than ten (10) days in advance of such meeting. Such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 5.5 Reduction.

No reduction of the number of directors, or term of office, shall have the effect of shortening a director's term of office.

Section 5.6 Conflicts of Interest.

The Corporation shall have a conflicts of interest policy adopted by Board resolution. The Board of Directors shall resolve any question of any conflict of interest in accordance with the conflicts of interest policy. Notwithstanding the policy, a director may attend any Board meeting and participate in discussions of matters including the matter as to which the director has a conflict of interest, except that the director shall be precluded from attending any portion of a meeting at which the Board, in executive session, discusses any transaction in which the director has a conflict of interest. A director shall not vote on any issue as to which such director has a conflict of interest and shall disclose such conflict of interest prior to any vote by the other directors. A conflict of interest exists with respect to any matter where a director has a direct personal or pecuniary interest not common to other Members of the Corporation.

**ARTICLE VI
MEETINGS OF THE BOARD OF DIRECTORS**

Section 6.1 Annual Meetings.

The Annual meeting of the Board of Directors of the Corporation shall be held in Honolulu each year at such time and place as the Board of Directors determines, for the purpose of electing officers and transacting such other business as may be brought before the meeting.

Section 6.2 Regular Meetings.

Regular meetings of the Board of Directors shall be held, at least monthly, at such times and places as the Board of Directors may provide by resolution. No notice other than such resolution need be given.

Section 6.3 Special Meetings.

Special meetings of the Board of Directors may be called by or at the request of the President, the Vice-President, or any two (2) directors. The person or persons authorized to call special meetings of the Board of Directors may fix the place for holding any special meeting of

the Board of Directors called by them. Notice of each special meeting shall be given in accordance with Section 6.4 of these Bylaws.

Section 6.4 Notice.

The Secretary shall give notice of each meeting of the Board of Directors (for which notice is required): (i) in writing by mailing the same not less than five (5) business days before the meeting, or (ii) by giving notice personally, by telephone, fax or email not less than forty-eight (48) hours before the meeting. Notice need not be given to any director who shall, either before or after the meeting, submit a signed waiver of notice or attend such meeting without protesting, prior to or at its commencement, the lack of notice to him or her. Except as otherwise provided by law, the Articles of Incorporation, or these Bylaws, a notice or waiver of notice need not state the purposes of such meeting.

Section 6.5 Quorum, Voting and Adjournment.

A majority of the number of directors fixed pursuant to Section 5.1 of these Bylaws shall constitute a quorum. No action taken, other than the appointment of directors to fill vacancies, shall bind the Corporation unless it shall receive the concurring vote of a majority of the directors present at a meeting at which a quorum is present. In the absence of a quorum, the presiding officer or a majority of the directors present may adjourn the meeting from time-to-time without further notice until a quorum is present.

Section 6.6 Telephone Meetings.

Subject to the notice requirements in Section 6.4 hereof, members of the Board of Directors or any committee designated thereby may participate in a meeting of the Board or of such committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other simultaneously. Participation by such means shall constitute presence in person at a meeting.

Section 6.7 Action Without Meeting.

Any action required or permitted to be taken at any meeting of the Board of Directors, or any committee designated thereby, may be taken if all the directors or all of the members of the committee, as the case may be, sign a written consent setting forth the action taken or to be taken at any time before or after the intended effective date of such action. Such consent shall be filed with the minutes of the Board of Directors or committee, as the case may be, and shall have the same effect as a unanimous vote.

Section 6.8 Presumption of Assent.

A director of the Corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless such director's dissent or refusal to vote is entered in the minutes of the meeting or unless the director either files a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or forwards such dissent by certified

mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 6.9 Executive Session.

With the approval of a majority of a quorum of the members of the Board of Directors, any meeting may be adjourned and reconvened in executive session to discuss and vote upon matters concerning personnel or litigation involving the Corporation.

ARTICLE VII
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 7.1 Powers.

The corporate powers of this Corporation shall be vested in the Board of Directors to the fullest extent permitted by the laws of the State of Hawaii, except as otherwise provided or reserved to the Members by the Articles of Incorporation, these Bylaws, or law. The Board of Directors shall have general charge of the affairs, funds, and property of the Corporation, and shall have full power, and it shall be their duty to enforce the Bylaws. Subject to the Board's oversight, the Board may appoint professional management and employ managers, legal and accounting advisers. The Board shall have the power to create Farming rules and to modify the same from time-to-time. The Members by majority vote may repeal or change the Farming rules.

Section 7.2 Duties.

It shall be the duty of the Board of Directors to conduct, manage, and control the affairs and business of the Corporation and to promulgate and enforce rules and regulations therefore not inconsistent with law, the Articles of Incorporation, or the Bylaws of the Corporation.

Section 7.3 Committees.

The Board of Directors, by resolution adopted by a majority of the directors in office, may designate one or more board committees and appoint directors to serve on such committees that shall, to the extent provided in such resolution, have and exercise all the authority of the Board of Directors, except as otherwise provided by law, the Articles of Incorporation, or these Bylaws. The Corporation may also have such advisory committees as the Board of Directors may provide from time-to-time. Such advisory committees shall not have authority to act on behalf of the Corporation, but shall only advise the Board of Directors.

ARTICLE VIII OFFICERS

Section 8.1 Offices.

The officers of the Corporation shall be the President, one or more Vice Presidents, the Secretary, the Treasurer, and such other officers as the Board of Directors shall from time-to-time elect with such duties as from time-to-time may be prescribed by the Board of Directors or the Bylaws. One person may hold more than one office, other than the office of the President.

Section 8.2 Election and Term of Office.

All officers shall be elected by the Board of Directors at the annual meeting of the Board of Directors and shall serve until their successors are elected. Any two or more offices may be held by the same person, provided that the Corporation shall have not fewer than two persons as officers. All officers shall be subject to removal at any time by the Board of Directors whenever in the judgment of the Board of Directors the best interests of the Corporation will be served thereby. The Board of Directors may, in its discretion, elect officers to fill vacancies occurring for any reason whatsoever, and limit or enlarge the duties and powers of any officer elected by it. Officers need not be directors of the Corporation.

Section 8.3 President.

The President shall preside at all meetings of the Board of Directors. Unless otherwise determined by the Board of Directors, the President shall have general charge and supervision of the Corporation. The President shall perform such other duties as are incident to the office or are required by the Board of Directors.

Section 8.4 Vice-President.

In the absence, or disability, or refusal to act by the President, the Vice President or Vice Presidents shall, in the order designated by the Board of Directors, perform all of the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice President or Vice Presidents shall have such powers and perform such other duties as from time-to-time may be prescribed by the President, the Board of Directors, or the Bylaws.

Section 8.5 Treasurer and Assistant Treasurer.

The Treasurer shall be the chief financial officer of the Corporation and exercise general supervision over the receipt, custody, and disbursement of corporate funds. The Treasurer shall perform all other duties assigned by the Board of Directors. The Assistant Treasurer or Assistant Treasurers, if elected, shall, in the order designated by the President or the Board of Directors, perform all of the duties and exercise all of the powers of the Treasurer during the absence or disability of the Treasurer or whenever the office is vacant and shall perform all of the duties assigned by the President or the Board of Directors.

Section 8.6 Secretary and Assistant Secretaries.

The Secretary shall keep the minutes of all meetings of the Board of Directors. The Secretary shall keep or cause to be kept a register showing the names of the directors and officers with their addresses. The Secretary shall give notice in conformity with the Bylaws of all meetings of the Board of Directors. The Secretary shall also perform all other duties assigned by the Board of Directors. The Assistant Secretary or Assistant Secretaries, if elected, shall, in the order designated by the President or the Board of Directors, perform all of the duties and exercise all of the powers of the Secretary during the absence or disability of the Secretary or whenever the office is vacant, and shall perform all of the duties assigned by the President or the Board of Directors.

**ARTICLE IX
ANNUAL BUDGETS, ASSESSMENTS**

Section 9.1 Adoption of Annual Budgets.

Not less than 31 days prior to the beginning of each fiscal year, by resolution, the Board of Directors shall estimate the sum of money that in its judgment will be required during such fiscal year (taking into account the funds, if any, available from the preceding year):

(a) to cover the anticipated costs of upkeep, maintenance and operation of, and charges to be incurred upon, the Kunia Loa Ridge agricultural subdivision project ("the Project") in order to maintain it in accordance with the financial operating policies in Article I of these Bylaws, including, but not limited to, the salaries and benefits of management and service personnel; repairs, replacements, and maintenance; utilities; insurance, including deductibles; taxes and special real estate assessments; and reserves for unanticipated operating needs (collectively, the "Operating Budget");

(b) to establish and maintain reasonable reserves for estimated future costs of major maintenance, capital improvements and replacement of the Project operating assets having an estimated useful life of more than one year and not more than 30 years (hereinafter, the "Capital Maintenance Budget"); and

(c) to provide for the amount of any deficit in the amount fixed for such purposes for the preceding year.

Section 9.2 The Annual Assessment.

Based on the Operating and Capital Maintenance Budgets determined as provided in Section 9.1(a) and (b) above, and the additional amount, if any, required pursuant to Section 9.1(c) above, the Board of Directors shall levy an assessment (hereinafter, the "Annual

Assessment") on each of the outstanding Membership Interests of the Corporation for such forthcoming fiscal year, determined by dividing the amount determined in this Section 9.2 by the total number of Membership Interests to be outstanding at the commencement of such fiscal year, to be payable, without notice (other than as provided in the next section), in equal monthly installments in advance on the first day of each and every month during said fiscal year.

Section 9.3 Notice and Obligation to Pay.

Subject to the last sentence of this Section, not less than 30 days prior to the beginning of each such fiscal year, the Board of Directors shall send to each Member, a copy of the Operating Budget and the Capital Maintenance Budget for such year, together with the amount of the Annual Assessment on each Membership Interest percentage share to be paid during such fiscal year in order to operate the Project within such Operating and Capital Maintenance Budgets, and to provide for payment of any deficit from a prior period as contemplated by Section 9.1(c) above. Each Member shall pay that portion of the Annual Assessment applicable to the Membership Interest percentage share owned by such Member, without further notice, in equal monthly installments in advance on the first day of each month during said fiscal year. Any omission or delay by the Board of Directors in fixing the amount of the Annual Assessment shall not relieve the Members from the obligation to pay the amount eventually so determined, or to continue to pay assessments based on the most recently adopted Operating and Capital Maintenance Budget.

Section 9.4 Authority to Change Annual Assessment.

From time-to-time during any such fiscal year, upon not less than 30 days prior written notice, the Board of Directors may increase or decrease the amount of any such Annual Assessment in order to address shortfalls or excess estimates in the Operating or Capital Maintenance Budgets.

Section 9.5 Special Assessments; Notice and Obligation to Pay.

In addition to the Annual Assessment, if at any time the Board of Directors shall declare that maintenance of the financial operating policies in Article I of these Bylaws requires, or that an emergency exists that requires, or that there is required by virtue of Section 9.7(d) below, additional funds not included in the Annual Budgets provided for above, the Board of Directors may make a supplemental estimate of the additional amount to be required to satisfy such standard, such emergency or such requirement, and may levy an assessment (hereinafter, a "Special Assessment") on each of the outstanding Membership Interests, determined by dividing the amount so required by the number of Membership Interests then outstanding, and payable in such manner (which may be in a single sum, or in increments), as shall be determined by the Board of Directors. Not less than 30 days prior to the date on which such Special Assessment, or the first increment thereof, is payable, the Board of Directors shall send to each Member, written notice, specifying in reasonable detail the reasons for such Special Assessment; the amount of the Special Assessment; and the terms with respect to payment of such Special Assessment. Each Member shall pay that portion of the Special Assessment due with respect to the number of Membership Interests owned by such Member according to the terms of such notice.

Section 9.6 Borrowing Authority.

The Board of Directors may, from time-to-time, borrow amounts for the operation or improvement of the Project. In connection with any such borrowing:

(a) Encumbering the Project Property. With the affirmative vote of not less than two-thirds (2/3) of the Corporation's outstanding Membership Interest, approving the terms of each transaction, at a meeting of the Members called for such purpose, the Board of Directors shall have the right and power to mortgage, assign as security, and otherwise encumber the Project's land and other improvements, equipment and personal property (hereinafter, collectively referred to as an "Encumbrance"), as security for any debt of the Corporation. Whenever the Corporation creates such an Encumbrance in accordance with this Section, thereupon, without the necessity for further action or agreement by any Proprietary Lot Lessee of a Lot, each Proprietary Lot Lessee's estate and interest in and to a Lot, including all Proprietary Lot Lessees' interests under their respective Proprietary Lot Leases, shall, concurrently with the effectiveness of such Encumbrance, become subordinated to the lien of such Encumbrance, to the same extent and in like manner as though each Proprietary Lot Lessee, and such Proprietary Lot Lessee's spouse, if any, and all persons claiming by, through or under each Proprietary Lot Lessee, had joined with the Corporation in making, signing, sealing, delivering, and acknowledging such Encumbrance and as though such Encumbrance had expressly provided that each Proprietary Lot Lease was subject to and subordinate to the lien of such Encumbrance.

(b) Granting A Security Interest in Assessment Proceeds. In addition to its authority confirmed in Section 9.6(a) above, but without the necessity for the vote of the Members required in that Section (and whether or not the Board proposes to create an Encumbrance on the Corporation's real property, as permitted by Section 9.6(a) above), the Board of Directors shall have the right and power, from time-to-time, to pledge or otherwise grant a security interest in the proceeds to be received from its past and future levy of Annual and Special Assessments pursuant to these Bylaws, and the other items payable under the Corporation's outstanding Proprietary Lot Leases, as security for any debt of the Corporation

Section 9.7 Insurance

Subject to the terms of this Section, the Corporation shall purchase and shall use commercially reasonable efforts to maintain, in effect, property and liability insurance coverage for the Corporation, in accordance with the terms set forth in the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for the Kunia Loa Ridge Agricultural Subdivision ("the Project Declaration").

(a) Substitute Coverage. If in the determination of the Board of Directors and its insurance advisor, any portion of the insurance being carried by the Corporation, or the reasonable equivalent, thereafter cannot be obtained, or is not available on a commercially reasonable basis despite commercially reasonable efforts to obtain such insurance, the Board of Directors shall obtain such insurance, if any, as is then available, in its determination, on a commercially reasonable basis.

(b) Deductibles and Co-Insurance Provisions. Any such policy of insurance obtained pursuant to the foregoing authority may include a deductible amount and/or a coinsurance provision, if in the judgment of the Board of Directors, upon advice of its insurance advisor, such terms are commercially reasonable in the circumstances. In the case of a claim for damage under a policy containing a deductible amount, the Board may: (i) pay the deductible amount as an expense of the Corporation; (ii) after notice and the opportunity for a hearing, assess the deductible amount against the Member/Proprietary Lot Lessee(s) who caused the damage or from whose Lot(s) the damage or cause of loss originated; or (iii) require the Member/Proprietary Lot Lessee(s) of the Lot(s) affected to pay the deductible amount.

(c) Use of Insurance Proceeds. Unless the holders of at least seventy-five percent (75%) of the issued and outstanding Membership Interests of the Corporation approve by resolution, at a meeting called for that purpose: (i) the replacement of the Corporation's common property; or (ii) other action, insurance proceeds received by the Corporation from destruction of any portion of the common property shall be used as provided in the Project Declaration.

(d) Insufficient Insurance Proceeds. If the insurance proceeds payable to the Corporation are insufficient to cover the costs of repairs that are the obligation of the Corporation under these Bylaws or a Proprietary Lot Lease, the Board of Directors is authorized to pay such costs in excess of the insurance proceeds from any operating or capital maintenance reserves, and if such funds are insufficient for this purpose, to levy a Special Assessment, pursuant to Section 9.5 above, to provide for the payment of such costs.

Section 9.8 Disbursements.

Disbursements of the funds of the Corporation for the purposes for which it is organized shall be made by the Board of Directors in its discretion. The Board of Directors may, from time-to-time, authorize checks, drafts, bills of exchange, notes, orders for the payment of money, agreements, instruments, or other documents to be executed and delivered by such officers, employees, or agents of the Corporation, or anyone of them, as the Board of Directors determines. In the absence of such determination, any such instruments, agreements, and other documents shall be executed by two officers, including, in the case of checks, drafts, bills of exchange, notes, and orders for the payment of money, by the Treasurer, or an Assistant Treasurer.

Section 9.9 Limitations on Disbursements.

The Board of Directors shall not make any disbursements or contributions of the funds or assets of the Corporation to or for the benefit, directly or indirectly, of any director or officer of the Corporation, except for reasonable payments for services actually rendered to the Corporation by such director or officer as an employee of the Corporation. Further, the Corporation shall not loan money to or guaranty the obligations of any director or officer of the Corporation.

ARTICLE X MEMBERSHIP INTEREST

Section 10.1 Ownership of Membership Interest as Basis For Leasing a Lot.

In light of the Corporation's Purpose and financial operating policy, as set forth in Article I of these Bylaws, the Board of Directors shall have authority to lease Lots, as provided in Article VII of these Bylaws, only to holders of record of membership interests in the Corporation (herein referred to as "Membership Interest").

Section 10.2 Manner of Taking Title to Membership Interest.

The Original issuance of Membership Interests shall be made by the Corporation to purchasers of Lots or to the subdivider of the Lots for assignment to the Lot purchasers.

Section 10.3 Limitation Upon Transfers of Membership Interest.

A Member may transfer all (but not less than all) of the Corporation's outstanding Membership Interest held of record by such Member, including by gift, bequest, inheritance or operation of law provided that a complete copy of the transfer is promptly provided to the Board of Directors and subject to the consent requirements for transfer or assignment during the Declarant Control Period as set forth in the Project Declaration and the Proprietary Lot Lease appurtenant to the Membership Interest being transferred. After the expiration of the Declarant Control Period, then Membership Interests and Proprietary Lot Leases may be transferred without consent provided that the notification requirements set forth below are complied with.

Section 10.4 Transfer of Membership Interest; Procedure.

If a Member, or a Member's executor or administrator (collectively, a "Transferor"), desires to transfer the Member's Membership Interest, the Transferor and the proposed transferee of the Membership Interest (the "Transferee") shall complete, execute, and deliver to the President of the Board, a written notification to the Board in such form, and including such information and undertakings by the proposed Transferee and/or the Primary Occupants that the Board of Directors may require (hereinafter, the "Transfer Notice").

Section 10.5 Consummation of Transfer of Membership Interest.

Upon compliance with the conditions in Section 10.4 above, concurrently with consummation of such transfer of the Membership Interest to the Transferee:

(a) **Cancellation and Issuance of Certificates for Transferred Membership Interest.** If the Corporation has issued to the Transferor a certificate representing the Membership Interest, the Transferor shall surrender the outstanding certificate, endorsed for transfer, to the Corporation. In the event that the Transferor is unable to locate such outstanding certificate, the Transferor shall provide to the Board a written instrument to indemnify the Corporation against adverse claims to such certificate. Whether or not such certificate is surrendered pursuant to this Section, upon compliance with the

conditions in Section 10.4 above, the certificate evidencing such Membership Interest shall be deemed to have been cancelled, and the Membership Interests represented by it shall no longer be deemed to be outstanding for any purpose. Subject to the foregoing, the Corporation shall issue and deliver to the Managing Agent, as custodian for the Transferee, a new certificate, in form and content adopted by the Board of Directors, registered in the name of the Transferee, representing the percentage Membership Interests being transferred, and a copy of such certificate shall concurrently be delivered to the Transferee.

(b) Termination of the Member's Rights Under the Proprietary Lot Lease. The Member's interest under the Proprietary Lot Lease of the Member's Lot shall be assigned to the Transferee, and thereupon, except in connection with a transfer of such Member's interest as security in connection with a financing transaction permitted by the Board of Directors, the Transferor's rights under the Proprietary Lot Lease of the Member's Lot shall terminate.

(c) Member's Remaining Obligations. Completion of the transfer shall not relieve the Member (or this Corporation) from payment of any amounts due pursuant to the terms of these Bylaws prior to the effective date of such transfer, or from liability for any breach of the terms of these Bylaws that occurred prior to such transfer.

Section 10.6 Restriction on Pledges of Membership Interest in the Corporation.

A Member may pledge, mortgage or assign as security, or otherwise create a security interest in such Member's Membership Interests (herein, collectively referred to as a "Pledge"), subject to the consent requirements for transfer or assignment during the Declarant Control Period as set forth in the Project Declaration and the Proprietary Lot Lease appurtenant to the Membership Interest being Pledged and after the termination of the Declarant Control period, compliance with the following procedures. If a Member desires to Pledge such Member's Membership Interest, the Member shall complete, execute, and deliver to the President of the Board, a written notice, in such form, and including such information and undertakings that the Board of Directors may require (hereinafter, the "Pledge Notification").

Section 10.7 Transfer, Registration and Certification of Membership Interest.

(a) Transfer and Registration. All transfers of the Membership Interests of this Corporation shall be made and registered only upon the books of this Corporation, by the corporate Secretary, or the Secretary's designated representative. Unless otherwise expressly agreed, the registration of a transfer of Membership Interests on the books of the Corporation shall operate as a waiver of any lien the Corporation may have at the time of such registration on the Membership Interests so transferred, provided that such registration shall not relieve the Transferor of the obligations provided for in Section 10.5(c) above. Subject to Section 10.6 above, the Corporation shall be entitled to treat the registered holder of any Membership Interest as the absolute owner thereof, and accordingly shall not be bound to recognize any equitable or other claim to or interest in such Membership Interest on the part of any other person or entity, whether or not it shall have express or other notice of such claim or interest.

(b) Certification. The Board of Directors may authorize the issuance of some or all of the Corporation's Membership Interests with or without certificates. Any authorization to issue Membership Interests without certificates shall not affect Membership Interests already represented by certificates until they are surrendered to the Corporation. If Membership Interest are issued without certificates, within a reasonable time after the issuance or transfer of Membership Interests without certificates, the Corporation shall send to the Member to whom such Membership Interest have been issued or transferred, a written statement confirming the issuance of Membership Interests in the name of such Member, the number of Membership Interest issued and the restriction on further transfer of such Membership Interest imposed by these Bylaws.

ARTICLE XI LEASES AND OCCUPATION

Section 11.1 Proprietary Lot Leases.

In order to carry out the Purpose and Financial Operating Policy of the Corporation, each of the Lots, shall be leased to a Member (referred to herein as the "Proprietary Lot Lessee" of such Lot), under a lease (herein referred to as a "Proprietary Lot Lease" in the form and content approved by the Board as hereafter amended pursuant to this Section. Use of each agricultural lot shall be governed by the Project Declaration, the Proprietary Lot Lease and the Farmer's Rules duly adopted by the Board of Directors.

Section 11.2 Hold-Over Right.

Upon termination of a Member's Proprietary Lot Lease by lapse of time, such Member shall also be entitled to the continued use and occupancy of the Lot under a lease or other agreed documents in such form and for such term as shall be recommended by the Board of Directors and approved by the holders of at least a majority of the issued and outstanding Membership Interests of the Corporation at a special meeting called for that purpose, unless the holders of at least seventy-five percent (75%) of the issued and outstanding Membership Interests of the Corporation approve by resolution, the sale or lease of the Corporation's land; or (iii) other action. The proportionate value of each Lot shall be fixed and expressed in terms of a fixed number of Membership Interests in the Corporation as required by Article X of these Bylaws.

Section 11.3 Manner of Taking Title and Limitation of Occupancy.

Title to the Proprietary Lot Lessee's interest in a Proprietary Lot Lease shall only be held in the same manner as title to the Membership Interests associated with such Lease, as provided in Section 10.7 above. Occupancy of the Lot represented by such Proprietary Lot Lease shall be limited to the Primary Occupants and only such other persons as are permitted by these Bylaws, the Proprietary Lot Lease, and the Farm Rules.

ARTICLE XII
DEFAULT, REMEDIES, FORECLOSURE OF THE CORPORATION'S LIEN

Section 12.1 Default.

A Member shall be deemed to be In "Default" of such Member's obligations under these Bylaws at any time that:

(a) Failure to Pay Indebtedness When Due. The Member is indebted to the Corporation, including for Rent under the terms of the Proprietary Lot Lease of such Member's Lot, and such indebtedness has not been paid for a period of ten (10) days after it was due; or

(b) Execution or Other Process of Law. The Member's Membership Interest or interest under the Proprietary Lot Lease of such Member's Lot shall be taken on execution or by other process of law; or

(c) Bankruptcy or Assignment for Creditors. The Member shall petition to be, or shall be declared, bankrupt or insolvent according to law, or shall make an assignment for the benefit of creditors;

(d) Failure to Perform Agreements. The Member shall fail or neglect to keep, observe, and perform any of that Member's agreements with the Corporation, including under such Member's Proprietary Lot Lease, and such failure and neglect shall continue for a period of thirty (30) days after the Corporation has given to such Member written notice of such failure and neglect and such failure and neglect has not been cured during such period, provided that if such failure to observe or perform any of such Member's agreements with the Corporation involves a violation of law that could subject the Corporation to potential civil or criminal liability or forfeiture, Member will be in Default under the terms of this Section immediately, and without the need for a 30-day notice period.

Section 12.2 The Corporation's Remedies Other Than Foreclosure.

In the event that a Member is in Default, the Corporation shall be entitled to all of the rights and remedies after Default provided under these Bylaws (including foreclosure of its Lien under Section 12.3 below), under the Proprietary Lot Lease of such Member's Lot, and under the Project Declaration and applicable law. Without waiving or irrevocably electing any such rights and remedies, immediately, or at any time during the continuation of such Member's Default, without further notice or demand, the Corporation may exercise any of the following rights, in any order:

(a) Right to Perform Member's Obligations. If such Member's Default includes the failure to perform any action or actions required under these Bylaws or under the terms of the Proprietary Lot Lease of such Member's Lot that may be performed by a

third party under the direction of the Board of Directors on such Member's behalf, the Board of Directors may cause such action or actions to be performed for the account and at the expense of such Member, including for interest on any funds expended by the Corporation, in order to cure such aspect of such Default.

(b) Right to Demand Payments From A Sub Proprietary Lot Lessee. Without terminating the Proprietary Lot Lease of such Member's Lot, or such Member's continuing obligations, including to pay Rent, under such Proprietary Lot Lease, the Corporation may make demand on any existing Sub Proprietary Lot Lessee of such Member's Lot to make all further payments due under the Sublease of such Lot to the Corporation for so long as such Default continues and shall apply all such payments so received in the order of priority provided in Section 12.3(c) below. Such Sub Proprietary Lot Lessee shall be fully relieved of any further obligation to such Member, as Proprietary Lot Lessee of such Lot, for any payments made to the Corporation pursuant to this Section.

(c) Commencement of Legal Action. The Corporation may commence legal action (i) for equitable relief to enjoin any continuing Default; and/or (ii) for collection of all amounts due, including interest and late charges determined by the Board of Directors (and if either remedy is not then sought, may at a later time, seek either such equitable relief to enjoin any continuing Default or such collection of any such amounts due) under the terms of these Bylaws and the Proprietary Lot Lease of such Member's Lot.

(d) Right to Take Possession of the Lot. The Corporation may enter and take possession of such Member's Lot, fully and absolutely, without such reentry, or the exercise of the Corporation's rights in connection with such re-entry working a forfeiture of the Rents due and to become due under the terms of the Proprietary Lot Lease of such Member's Lot, or relieving such Member of other continuing obligations under the Proprietary Lot Lease of the Lot, until such Default has been cured, or for the full Term.

(e) Right to Sublease Member's Lot. At its election, the Corporation may sublease such Member's Lot on such terms and conditions, and for such term, as the Corporation may elect. The Corporation shall apply the rent actually collected from such subletting in the order of priority provided in Section 12.3(c) below. After applying the rent collected against such amounts, the Corporation shall continue to have the right to collect from such Member any balance remaining due from time-to-time under these Bylaws and the Proprietary Lot Lease of such Member's Lot. So long as any Default continues under these Bylaws or the Proprietary Lot Lease of such Member's Lot, the Corporation shall hold, for such Member's account, any amount remaining from such subleasing after payment of the amounts due pursuant to this Section.

Section 12.3 Foreclosure of The Corporation's Lien.

The Corporation shall have a lien upon all of the Membership Interests of the Corporation registered in the name of each Member and upon each Member's interest in the Proprietary Lot Lease of such Member's Lot to secure such Member's payment of all amounts due, and the performance of such Member's other obligations to the Corporation, under the terms of these

Bylaws, the Project Declaration and such Member's Proprietary Lot Lease (the "Corporation's Lien"). Notice of Lien shall be recorded as provided in Section 8.10 of the Project Declaration and the priority of the Lien and the rights and remedies of the Corporation as well as mortgage protections shall be as set forth in the Project Declaration. Subject to the provisions of any consent provided by the Corporation, the Corporation may, at its election, enforce the Corporation's Lien by causing such Member's Membership Interests to be sold pursuant to this Section.

(a) Notice of Intent to Foreclose. Not less than sixty (60) days prior to conducting such sale, the Corporation shall give written notice of its intention to sell such Member's Membership Interests pursuant to its authority under this Section, to such Member, or to such Member's executor or administrator, as may be applicable. Giving such notice shall constitute "reasonable notice" under any notice provisions of applicable law.

(b) Power of Non-Judicial Sale; Effect of Sale. Subject to the further requirements of applicable law, the Corporation may cause such Member's Membership Interests to be sold, as a whole, but not in part, in public or private sale, or in such other commercially reasonable manner, taking into account the nature of the Membership Interest, as it shall determine, and may thereupon cancel the Proprietary Lot Lease of such Member's Lot, and thereupon, without any further action by the Corporation, any Sublease then in effect with respect to such Lot shall terminate and be of no further force or effect. Upon concluding such sale, the Corporation shall enter into a new Proprietary Lot Lease with the purchaser of such Member's Membership Interest, free and clear of any rights and claims of such Member, and of any Sub Proprietary Lot Lessee of such Lot, other than as expressly provided in these Bylaws.

(c) Application of Proceeds of Sale. The net proceeds from the sale of such Member's Membership Interest shall be applied to satisfaction of all amounts to which the Corporation is entitled in connection with enforcement of its rights following such Member's Default and to cure such Default, in the following order of priority: (i) first to recover the Corporation's costs and reasonable attorneys' fees incurred by it in enforcing its Lien and in connection with any other proceedings undertaken by it following Member's Default under these Bylaws or the Proprietary Lot Lease of such Member's Lot; and then (ii) to recover all amounts due to the Corporation, including interest and late fees established by the Board of Directors, under these Bylaws and the Proprietary Lot Lease of such Member's Lot. Such Member shall be entitled to receive the net proceeds, if any, remaining after applying such proceeds to satisfaction of all amounts provided for above in this Section.

(d) Member's Right to Cure. At any time prior to recordation of the Proprietary Lot Lease of Member's Lot in favor of the purchaser of Member's Membership Interests upon foreclosure of the Corporation's Lien, the Member may cure any continuing Default by paying to the Corporation all amounts then due as provided in Section 12.3(c), and performing any other obligations of Member under the terms of these Bylaws or the Proprietary Lot Lease of such Member's Lot.

(e) No Election of Remedies. Commencement of sale proceedings pursuant to this Section shall not constitute an election of remedies or otherwise preclude the Corporation from abandoning such proceedings at any time prior to sale, and exercising, or continuing to exercise, its other rights and remedies under these Bylaws, under the Proprietary Lot Lease of such Member's Lot, or under applicable law.

Section 12.4 The Corporation's Rights in Connection With Taking Possession.

In the event the Corporation takes possession of a Member's Lot pursuant to this Article, whether by summary proceedings or any other means, the Corporation, or any officer of the court, may evict and remove all persons and property from the Lot. Any property of Member so removed may be stored in any public warehouse or elsewhere, at the cost of and for the account of the Member, and the Corporation shall not be responsible for the care or safekeeping of any such property, except for losses resulting from the Corporation's gross negligence.

**ARTICLE XIII
MISCELLANEOUS**

Section 13.1 Inspection of Corporate Records.

The books of account and minutes of proceedings of the Members and Directors shall be open to inspection upon the written demand of any Members or any Director, at a reasonable time and place, and for a purpose reasonably related to such Member's or Director's interests as a Member or Director. Such inspection may be made in person, or by an agent or attorney, and shall include the right to make copies. Demand for inspection must be made in writing upon the President, the Secretary, or any Assistant Secretary of the Corporation at least two (2) days before the date on which the Member or Director wishes to inspect and/or copy the documents.

Section 13.2 Execution of Instruments.

(a) All checks and other orders for the payment of money, drafts, notes, bonds, acceptances, contracts, and all other instruments, except as otherwise provided in these Bylaws, shall be signed by such person or persons as shall be provided by general or special resolution of the Board of Directors, and in the absence of any provision in these Bylaws or any such general or special resolution applicable to any such instrument, then such instrument shall be signed by the President or a Vice-President, and by the Treasurer or the Secretary. Unless authorized by the Board of Directors, no officer, agent, or employee of the Corporation shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

(b) The Board of Directors may provide for the execution of checks by the printed, lithographed or engraved facsimile signature or signatures of the person or persons authorized to sign checks.

Section 13.3 Inspection of Bylaws.

The Corporation shall keep in its principal office the original or a copy of the Bylaws as amended, certified by the Secretary, which shall be open to inspection by the members and directors at all reasonable times during office hours.

**ARTICLE XIV
SEAL**

The Corporation shall have no seal unless the Directors decide to have a seal.

**ARTICLE XV
AMENDMENTS**

The Bylaws may be amended or repealed in accordance with the provisions of the Articles of Incorporation.

Adopted: Effective February 11, 2010.


Secretary