

Of Counsel:
ALSTON HUNT FLOYD & ING
Attorneys at Law, a Law Corporation

LAND USE COMMISSION
STATE OF HAWAII

2014 OCT 29 A 11: 35

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muhl@ahfi.com

Attorneys for
HG KAUAI JOINT VENTURE, LLC

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of:

KAPA'A HIGHLANDS PHASE II

To Amend the Land Use District Boundary of
Certain Lands Situated at Kapa'a, Island of
Kauai, State of Hawai'i, consisting of
approximately 97 Acres, from the
Agricultural Land Use District to the Urban
Land Use District, Kauai Tax Map Key 4-3-
03: por 01.

)
) DOCKET NO. A11-791
)

)
) **MOTION TO SUBSTITUTE**
) **PETITIONER, DESIGNATE THE**
) **LAND USE COMMISSION AS**
) **APPROVING AGENCY FOR**
) **ENVIRONMENTAL IMPACT**
) **STATEMENT, AND APPEARANCE**
) **OF COUNSEL FOR PETITIONER;**
) **MEMORANDUM IN SUPPORT OF**
) **MOTION; AFFIDAVIT OF**
) **THERESA M. ROCHE; EXHIBIT A;**
) **CERTIFICATE OF SERVICE**
)
)

**MOTION TO SUBSTITUTE PETITIONER, DESIGNATE THE
LAND USE COMMISSION AS APPROVING AGENCY FOR ENVIRONMENTAL
IMPACT STATEMENT, AND APPEARANCE OF COUNSEL FOR PETITIONER**

HG KAUAI JOINT VENTURE, LLC, a Hawaii limited liability company ("HG
Kauai"), by and through its attorneys, Alston Hunt Floyd & Ing, hereby moves the Land Use
Commission ("Commission") for an order substituting HG Kauai as Petitioner for this Petition


because HG Kauai is the owner of the property that is the subject of this petition and successor in interest to Petitioner Three Stooges, LLC.

HG Kauai further moves the Commission to be the approving agency for
Petitioner's Environmental Impact Statement.

Finally, NOTICE IS HEREBY GIVEN that WILLIAM W. L. YUEN and
MELISSA M. UHL hereby appear as counsel for HG Kauai for this Petition.

This Motion is brought pursuant to HRS § 205-4(a), HRS Chapter 343, and HAR
Chapter 11-200, HAR § 15-15-35(b), HAR § 15-15-46(3), HAR § 15-15-50(c)(5)(A) and (C),
and HAR § 15-15-71. Pursuant to HAR § 15-15-70(c), HG Kauai requests a hearing on this
motion.

DATED: Honolulu, Hawai'i, October 29, 2014.



WILLIAM W. L. YUEN
MELISSA M. UHL
Attorneys for
HG KAUAI JOINT VENTURE, LLC

OF THE STATE OF HAWAII

**MEMORANDUM IN SUPPORT OF
MOTION**

10/29/2014 11243-2 914403v1 Motion to Sub Petitioner,
LUC Accept, and Notice of Appearance

II. DESCRIPTION OF THE PETITION AREA

The Petition Area is within the Kawaihau Planning District and is identified as Kauai Tax Map Key No. 4-3-03: por 01. The Property is surrounded by remnant sugar lands and residential uses. A solar farm is located on Kapa`a Highlands I and is producing 1.18 megawatts of energy which is feeding into the Kauai electric distribution grid. Across Olohena Road are single family residential neighborhoods as well as commercial areas. The Property and much of its surrounding areas have been in sugar cultivation for nearly over fifty years. Cultivation of sugar ceased approximately 15 years ago. Since the closure of the Lihu`e Plantation, much of the Property has been vacant.

III. HG KAUAI'S INTEREST IN THE PROPERTY

HG Kauai purchased the Property at foreclosure sale on March 6, 2013. Affidavit of Theresa M. Roche ("Roche Affidavit") at ¶ 3. Title to the Property was previously held by Three Stooges, LLC (58%), Allen Family, LLC (32%), and Molokai Bay Ventures, LLC (10%). *See* Exhibit A at page 11. Following the foreclosure sale, the Property was conveyed to HG Kauai by Commissioner's Deed dated September 25, 2013, recorded in the Bureau of Conveyance of the State of Hawai'i as Document No. A-50180429 on September 27, 2013. Pursuant to HAR § 15-15-50(c)(5)(A), attached as Exhibit A is a true copy of the Commissioner's Deed conveying title to the subject Property to HG Kauai. *See also* Roche Affidavit at ¶ 4. As the owner of the Property, HG Kauai should be substituted as the Petitioner for this Petition.

HAR § 15-15-71 provides that the Commission may order the substitution of parties upon motion and good cause shown. There is good cause to substitute HG Kauai as petitioner, because HG Kauai is presently the owner of the Property with standing to prosecute this Petition pursuant to HRS § 205-4(a) and HAR § 15-15-46(3).

HG Kauai's legal name and location of its principal place of business is:

HG KAUAI JOINT VENTURE, LLC
c/o OAR Management, Inc.
9911 S. 78th Avenue
Hickory Hills, IL 60457
United States

IV. LUC AS APPROVING AGENCY FOR EIS

Pursuant to HRS Chapter 343 and HAR Chapter 11-200, HG Kauai, as applicant, requests that the Commission be the accepting authority for an EIS for this Petition.

Ho'okuleana LLC has almost completed preparation of an Environmental Impact Statement Preparation Notice (the "EISPN") for Kapa'a Highlands Phase II. HG Kauai believes an EIS is required for the Kapa'a Highlands Phase II because development of Kapa'a Highlands Phase II will require use of state or county lands or the use of state or county funds, *i.e.*, connections to and repair and improvements to a wastewater transmission line and the wastewater treatment system operated by the County of Kauai. Use of state or county lands or state or county funds is an action described under Section 343-5(a)(1), HRS. Filing of this Petition is the earliest practicable time to determine whether an EIS shall be required to assess Kapa'a Highlands Phase II pursuant to Section 343-5(b), HRS. HG Kauai requests that the Commission determine: (a) that the Commission is the appropriate accepting authority for the Environmental Assessment pursuant to Section 343-5(c), HRS, and (b) issue an EISPN for Kapa'a Highlands Phase II pursuant to Section 343-5(c), HRS.

V. APPEARANCE OF COUNSEL

HG Kauai authorizes William W. L. Yuen, Esq., Melissa M. Uhl, Esq., and the law firm Alston Hunt Floyd & Ing to represent it for this Petition. Roche Affidavit at ¶ 4. The name title and address of the persons to whom correspondence or communications in regard to this Petition are to be served are as follows:

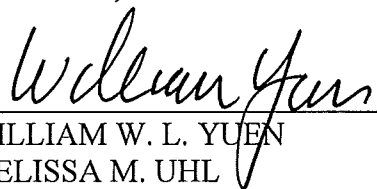
Petitioner: HG KAUAI JOINT VENTURE, LLC
c/o OAR Management, Inc.
9911 S. 78th Avenue
Hickory Hills, IL 60457
Attention: Theresa M. Roche, President
Telephone: (708) 430-9337
Email: theresa@oaroffice.com

Petitioner's
Attorney: ALSTON HUNT FLOYD & ING
WILLIAM W. L. YUEN, ESQ.
MELISSA M. UHL, ESQ.
1001 Bishop Street, Suite 1800
Honolulu, HI 96813
Telephone: (808) 524-1800
Facsimile: (808) 524-4591
Email: wyuen@ahfi.com
muhl@ahfi.com

VI. CONCLUSION

For the foregoing reasons, HG Kauai respectfully requests that the Commission issue an order substituting HG Kauai as Petitioner and that the Commission be the approving agency for the EIS. HG Kauai further requests the above-mentioned attorneys and firm be permitted to represent its interests in this Petition.

DATED: Honolulu, Hawai'i, October 29, 2014.



WILLIAM W. L. YUEN
MELISSA M. UHL
Attorneys for
HG KAUAI JOINT VENTURE, LLC

In the Matter of the Petition of:

DOCKET NO. A11-791

**AFFIDAVIT OF THERESA M.
ROCHE**

To Amend the Land Use District Boundary of Certain Lands Situated at Kapa`a, Island of Kauai, State of Hawai`i, consisting of approximately 97 Acres, from the Agricultural Land Use District to the Urban District, Kauai Tax Map Key 4-3-03: por 01.

STATE OF ILLINOIS

SS:

COUNTY OF COOK

1. I am a Manager of HG Kauai Joint Venture, LLC (“HG Kauai”).

testify to the matters set forth in this affidavit.

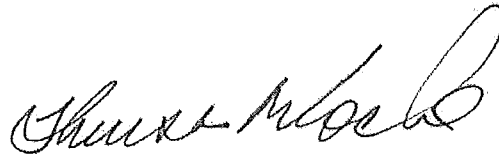
PHASE II To Amend the Land Use District Boundary of Certain Lands Situated at Kapa'a, Island of Kauai, State of Hawai'i, consisting of approximately 97 Acres, from the Agricultural Land Use District to the Urban District, Kauai Tax Map Key 4-3-03: por 01.

Hunt Floyd & Ing are authorized to represent HG Kauai in the above captioned petition.

5. HG Kauai purchased the subject property at foreclosure sale on March 6, 2013.

6. Attached as Exhibit A is a true copy of the Commissioner's Deed dated September 25, 2013, and recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. A-50180429, vesting title of the subject property in HG Kauai ("HG Kauai Deed").

Further Affiant Sayeth Naught.



THERESA M. ROCHE

Subscribed and sworn to before me
this 28th day of October, 2014.

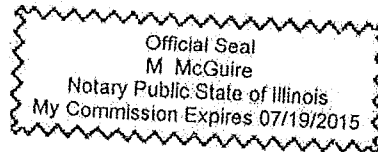


Notary Public, State of Illinois

Melissa McGuire

Printed Name of Notary

My commission expires: July 19, 2015



THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII
OFFICE OF
BUREAU OF CONVEYANCES

Received for record this 27th
day of September, A.D., 2013
at 8:01, o'clock a m. and
Document No. A-50180429

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by: Mail () Pickup ()

HG KAUAI JOINT VENTURE, LLC

TG: 201312008

C/O OAR MANAGEMENT, INC.

TGE: 24213023524

9746 ROBERTS ROAD

Jeri Miyaji-Ventura

PALOS HILLS IL 60465

TYPE OF DOCUMENT:

COMMISSIONER'S DEED

PARTIES TO DOCUMENT:

GRANTOR: CURTIS H. SHIRAMIZU, as Commissioner.

GRANTEE: HG KAUAI JOINT VENTURE, LLC, a Hawaii limited liability company
c/o Oar Management, Inc.
9746 S. Roberts Road, Palos Hill, Illinois 60465

TAX MAP KEY FOR PROPERTY:

(4) 4-3-003-001

COMMISSIONER'S DEED

THIS INDENTURE executed this 24th day of September, 2013, by and between CURTIS H. SHIRAMIZU, as Commissioner, duly appointed as hereinafter set forth, hereinafter called the "Grantor", and HG KAUAI JOINT VENTURE, LLC, a Hawaii limited liability company, whose mailing address is c/o Oar Management, Inc., 9746 S. Roberts Road, Palos Hills, Illinois 60465, hereinafter referred to as "Grantee",

WITNESSETH THAT:

WHEREAS, CURTIS H. SHIRAMIZU, was duly appointed as Commissioner pursuant to that certain Findings Of Fact, Conclusions Of Law And Order Granting Plaintiff's Motion For Summary Judgment And Decree Of Foreclosure As To Count I Of The Complaint For Foreclosure Filed July 2, 2012; Exhibit "A" (hereinafter referred to as "Findings of Fact"), filed on November 26, 2012, in Civil No. 12-1-0234 in the Circuit Court of the Fifth Circuit, State of Hawaii;

WHEREAS, pursuant to said Findings of Fact, Grantor herein duly held a public auction on March 6, 2013, wherein the property hereinafter described was offered for sale, and wherein Grantee was the purchaser of said property, subject to the confirmation of said Court;

WHEREAS, said sale has been confirmed by that certain Order Approving Report Of Commissioner, Granting Defendants The Three Stooges, LLC, Allen Family, LLC, Greg L. Allen, Sr. and Greg L. Allen, Jr's Motion For Confirmation Of Sale, And Directing Distribution Of Proceeds, filed on August 1, 2013, in the aforesaid proceeding, and in and by the terms of said Order, the Grantor herein was directed to make a quitclaim conveyance of the property hereinafter described to Grantee herein, or its nominee;

NOW, THEREFORE, Grantor, as Commissioner, for and in consideration of the sum of FOUR MILLION AND NO/100 DOLLARS (\$4,000,000.00), paid by the Grantee, the receipt of which is hereby acknowledged, and in compliance with said Court Order as hereinafter set forth, does hereby remise, release and quitclaim unto the Grantee, as a tenant in severalty, its successors and assigns, the property described in Exhibit "A" attached hereto and incorporated herein by reference.

AND the reversions, remainders, rents, issues, and profits thereof, and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with the improvements thereon and all rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith, unto the Grantee, according to the tenancy herein set forth, forever.

This Commissioner's Deed has been executed by CURTIS H. SHIRAMIZU, in his capacity as Commissioner aforesaid, and not in his individual capacity. The Grantee expressly

acknowledges and agrees that no personal liability or obligation under this instrument shall be imposed or assessed against said CURTIS SHIRAMIZU in his individual capacity.

The Grantee confirms that Grantee has inspected the property being conveyed and specifically attests that Grantee is purchasing the property on an "AS IS" basis, without any representations or warranties, express or implied, with a full understanding that only Grantee and not the Grantor will be responsible for any and all imperfections, defects, obsolescence, wear and tear, and all other conditions of said property and hereby waives any claim hereafter against the Grantor for breach of express or implied warranty as to the condition of the property.

This conveyance and the respective covenants of the Grantor and the Grantee shall be binding on and inure to the benefit of the Grantor and the Grantee, respectively. The terms "Grantor" and "Grantee" as and when used herein, or any pronouns used in place thereof, shall mean and include the singular or plural number, individuals, partnerships, trustees and corporations, and each of their respective heirs, personal representatives, successors and assigns. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed herein.

This Commissioner's Deed may be executed in counterparts. Each counterpart shall be executed by one or more of the parties hereinbefore named and the several counterparts shall constitute one instrument to the same effect as though the signatures of all the parties are upon the same document.

IN WITNESS WHEREOF, the Grantor and the Grantee have caused these presents to be duly executed on this 24th day of September, 20 13.

(SIGNATURES CONTINUED ON NEXT PAGE)

GRANTOR:

Curtis H. Shiramizu
CURTIS H. SHIRAMIZU, as Commissioner

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

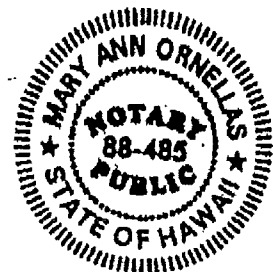
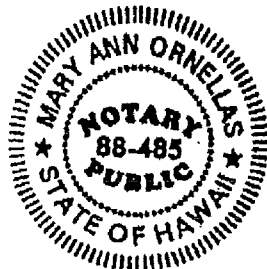
On this 24 day of (September), 2013, before me appeared CURTIS H. SHIRAMIZU, as Commissioner, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing COMMISSIONER'S DEED dated undated, 20 , which document consists of 15 page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Doc Date: undated # Pages: 15
Name: Mary Ann Ornellas 5th Circuit
Doc. Description: Commissioner's Deed
Mary Ann Ornellas 9-24-13
Signature Date

NOTARY CERTIFICATION

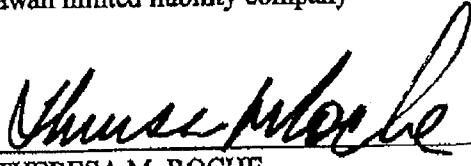
Mary Ann Ornellas
Name of Notary: Mary Ann Ornellas
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: (September) 5, 2016



GRANTEE:

HG KAUAI JOINT VENTURE, LLC,
a Hawaii limited liability company


By 
THERESA M. ROCHE
Its Manager

By _____
GREG ALLEN
Its Manager

GRANTEE:

HG KAUAI JOINT VENTURE, LLC,
a Hawaii limited liability company

By _____
THERESA M. ROCHE
Its Manager

By  _____
GREG ALLEN
Its Manager

STATE OF Illinois)
COUNTY OF Cook) SS:

On this 29th day of September, 20 13, before me appeared THERESA M. ROCHE, to me personally known, who, being by me duly sworn, did say that she is a Manager of HG KAUAI JOINT VENTURE, LLC, a Hawaii limited liability company, that the foregoing COMMISSIONER'S DEED dated September 27, 20 13, which document consists of 15 page(s), was signed in behalf of said entity, and the said THERESA M. ROCHE acknowledged said instrument to be the free act and deed of said entity.



M. McGuire
Name of Notary: Melissa McGuire
Notary Public, in and for said County and State.

My commission expires: July 19, 2015

STATE OF HAWAII)
COUNTY OF KAUAI) SS:

On this _____ day of _____, 20 _____, before me appeared GREG ALLEN, to me personally known, who, being by me duly sworn, did say that he is a Manager of HG KAUAI JOINT VENTURE, LLC, a Hawaii limited liability company, that the foregoing COMMISSIONER'S DEED dated _____, 20 _____, which document consists of _____ page(s), was signed in behalf of said entity, and the said GREG ALLEN acknowledged said instrument to be the free act and deed of said entity.

Name of Notary:
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: _____

STATE OF _____)
COUNTY OF _____) SS:

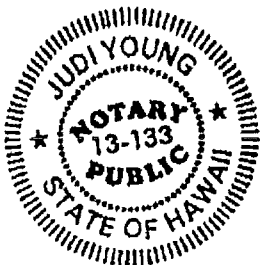
On this _____ day of _____, 20____, before me appeared THERESA M. ROCHE, to me personally known, who, being by me duly sworn, did say that she is a Manager of HG KAUAI JOINT VENTURE, LLC, a Hawaii limited liability company, that the foregoing COMMISSIONER'S DEED dated _____, 20____, which document consists of _____ page(s), was signed in behalf of said entity, and the said THERESA M. ROCHE acknowledged said instrument to be the free act and deed of said entity.

Name of Notary: _____
Notary Public, in and for said County and State.

My commission expires: _____

STATE OF HAWAII)
COUNTY OF KAUAI) SS:

On this 24th day of September, 2013, before me appeared GREG ALLEN, to me personally known, who, being by me duly sworn, did say that he is a Manager of HG KAUAI JOINT VENTURE, LLC, a Hawaii limited liability company, that the foregoing COMMISSIONER'S DEED dated undated, 2013, which document consists of 15 page(s), was signed in behalf of said entity, and the said GREG ALLEN acknowledged said instrument to be the free act and deed of said entity.



Name of Notary: Judi Young
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

JUDI YOUNG
Expiration Date: April 28, 2017

My commission expires: _____

EXHIBIT "A"

All of that certain parcel of land (being portion of the land(s) described in and covered by Parcel 1 of Tax Map Key 4-3-03 (4th Division), being a portion of Grant 5266 to Rufus D. Spalding) situate at Kapaa, Island and County of Kauai, State of Hawaii, and thus bounded and described as per survey dated November 12, 1997, revised September 11, 1998, to-wit:

Beginning at the "+" on a concrete driveway at the east corner of this parcel of land at the north corner of Grant 8216 to Joe Martins on the southwest side of Oloheua Road, the coordinates of which referred to Government Survey Triangulation Station "NONOU" being 5,660.65 feet north and 11,159.65 feet east and running by azimuths measured clockwise from true South:

1. 35° 59' 385.90 feet along Grant 8216 to Joe Martin to a pipe;
2. 22° 52' 212.20 feet along Grant 8216 to Joe Martin; and Kapaa Agricultural Lot 1 to a pipe;
3. 100° 09' 134.70 feet along Kapaa Agricultural Lot 1 to a pipe;
4. 13° 38' 502.70 feet along Kapaa Agricultural Lot 1 to a pipe;
5. 27° 12' 171.70 feet along Kapaa Agricultural Lot 1 to a pipe;
6. 37° 25' 44.50 feet along Kapaa Agricultural Lot 1 to a "+" on the rock;
7. 96° 52' 41.00 feet along Kapaa Agricultural Lot 1 to a pipe;
8. 24° 40' 202.40 feet along Kapaa Agricultural Lot 1 to a pipe;
9. 318° 05' 87.36 feet along Kapaa Agricultural to a pipe;
10. 30° 57' 297.55 feet along Kapaa Agricultural Lot 1 to a pipe;
11. Thence along Kapaa Agricultural Lot 1 on a curve to the right with a radius of 253.97 feet, the chord azimuth and distance being: 62° 33' 30" 266.22 feet to a pipe;
12. 94° 10' 11.52 feet along Kapaa Agricultural Lot 1 to a pipe;
13. 194° 30' 134.28 feet along the Cane Haul Road Right-of-Way (Part 4) and Grant 5237 to Hee Fat to a pipe;

14.	91° 26'	1538.50	feet along Grant 5237 to Hee Fat to a pipe;
15.	34° 24'	140.00	feet along Grant 5237 to Hee Fat and the Cane Haul Road Right-of-Way (Part 4) to a pipe;
16.	124° 24'	109.44	feet along Grant 5237 to Hee Fat;
17.	179° 07'	328.20	feet along Lot 3, Kapaa Rice and Kula Lots to a pipe;
18.	161° 57'	433.00	feet along Lot 3, Kapaa Rice and Kula Lots to a pipe;
19.	174° 26'	278.80	feet along Lot 3, Kapaa Rice and Kula Lots to a pipe;
20.	58° 03'	228.00	feet along Lot 3, Kapaa Rice and Kula Lots to a pipe;
21.	83° 46'	130.50	feet along Lot 3, Kapaa Rice and Kula Lots;
22.	193° 34'	142.10	feet along Lot 3, Kapaa Rice and Kula Lots;
23.	134° 25'	37.50	feet along Lot 3, Kapaa Rice and Kula Lots;
24.	61° 13'	102.60	feet along Lot 3, Kapaa Rice and Kula Lots;
25.	15° 18'	130.60	feet along Lot 3, Kapaa Rice and Kula Lots;
26.	71° 49'	37.10	feet along Lot 3, Kapaa Rice and Kula Lots;
27.	137° 54'	63.20	feet along Lot 3, Kapaa Rice and Kula Lots;
28.	196° 07'	588.10	feet along Lot 3, Kapaa Rice and Kula Lots;
29.	287° 25'	74.30	feet along L.C. Aw. 3554:1 to Keo;
30.	204° 43'	402.60	feet along L.C. Aw. 3554:1 to Keo to a pipe;
31.	191° 23'	213.70	feet along Lot 3, Kapaa Rice and Kula Lots to a pipe;
32.	127° 12'	175.90	feet along Lot 3, Kapaa Rice and Kula Lots to a pipe;
33.	93° 47'	270.70	feet along Lot 3, Kapaa Rice and Kula Lots to a pipe;
34.	139° 40'	130.10	feet along Lot 3, Kapaa Rice and Kula Lots to a pipe;
35.	187° 18'	168.60	feet along Lot 3, Kapaa Rice and Kula Lots to a pipe;

36. 145° 21' 184.30 feet along Lot 3, Kapaa Rice and Kula Lots to a pipe;
37. 71° 54' 211.50 feet along Lot 3, Kapaa Rice and Kula Lots;
38. 115° 21' 123.70 feet along Lot 3, Kapaa Rice and Kula Lots;
39. 166° 33' 92.20 feet along Lot 3, Kapaa Rice and Kula Lots;
40. 216° 24' 260.40 feet along Lot 3, Kapaa Rice and Kula Lots to a pipe;
41. 156° 33' 153.00 feet along Lot 3, Kapaa Rice and Kula Lots to a pipe;
42. 73° 13' 340.60 feet along Lot 3, Kapaa Rice and Kula Lots to a pipe;
43. 122° 08' 107.50 feet along Lot 3, Kapaa Rice and Kula Lots to a pipe;
44. 150° 30' 118.03 feet along Lot 3, Kapaa Rice and Kula Lots to a pipe;
45. 226° 13' 49.22 feet along Olohena Road to a pipe;
46. Thence along Olohena Road on a curve to the left with a radius of 1,115.00 feet, the chord azimuth and distance being: 218° 45' 289.79 feet to a P-K nail;
47. 211° 17' 145.50 feet along Olohena Road to a P-K nail;
48. Thence along Olohena Road on a curve to the right with a radius of 65.00 feet, the chord azimuth and distance being: 268° 48' 30" 109.67 feet to a pipe;
49. Thence along Olohena Road on a curve to the left with a radius of 87.10 feet, the chord azimuth and distance being: 299° 32' 78.54 feet to a pipe;
50. 272° 44' 249.69 feet along Olohena Road to a pipe;
51. 281° 55' 203.91 feet along Olohena Road to a pipe;
52. 291° 21' 251.40 feet along Olohena Road to a pipe;
53. 261° 28' 149.18 feet along Olohena Road to a pipe;
54. 286° 25' 226.46 feet along Olohena Road to a pipe;
55. 325° 04' 288.93 feet along Olohena Road to a pipe;

56.	317° 06'	310.87	feet along Olohena Road to a pipe;
57.	3° 37'	476.50	feet along Lot 2, Olohena Road widening parcel and Lot 1, Kapaa Intermediate School, and along the remainder of Grant 5266 to Rufus P. Spalding to a pipe;
58.	323° 35'	304.65	feet along Lot 1, Kapaa Intermediate School, and along the remainder of Grant 5266 to Rufus P. Spalding to a pipe;
59.	309° 45'	390.14	feet along Lot 1, Kapaa Intermediate School, and along the remainder of Grant 5266 to Rufus P. Spalding to a pipe;
60.	268° 25'	554.33	feet along Lot 1, Kapaa Intermediate School, and along the remainder of Grant 5266 to Rufus P. Spalding to a pipe;
61.	181° 14'	848.53	feet along Lot 1, Kapaa Intermediate School, and Lot 2, Olohena Road widening Parcel and along the remainder of Grant 5266 to Rufus P. Spalding to a pipe;
62.	257° 37'	127.84	feet along Olohena Road;
63.	297° 22'	265.20	feet along Olohena Road to a pipe;
64.	298° 02'	25.00	feet along Olohena Road to a pipe;
65.	Thence along Olohena Road on a curve to the right with a radius of 375.00 feet, the chord azimuth and distance being: 307° 06' 30" 118.30 feet to a pipe;		
66.	316° 11'	29.85	feet along Olohena Road to a pipe;
67.	28° 30'	203.12	feet along TMK: 4-3-03:13 and along the remainder of Grant 5266 to Rufus P. Spalding to a pipe;
68.	335° 00'	100.00	feet along TMK: 4-3-03:13 and along the remainder of Grant 5266 to Rufus P. Spalding to a pipe;
69.	301° 35'	130.00	feet along TMK: 4-3-03:13 and along the remainder of Grant 5266 to Rufus P. Spalding to a pipe;
70.	278° 40'	50.00	feet along TMK: 4-3-03:13 and along the remainder of Grant 5266 to Rufus P. Spalding to a pipe;
71.	246° 30'	140.00	feet along TMK: 4-3-03:13 and along the remainder of Grant 5266 to Rufus P. Spalding to a pipe;

72. 316° 11' 110.00 feet along TMK: 4-3-03:13 and along the remainder of Grant 5266 to Rufus P. Spalding to a pipe;
73. 272° 20' 46.00 feet along TMK: 4-3-03:13 and along the remainder of Grant 5266 to Rufus P. Spalding to a pipe;
74. 300° 02' 135.22 feet along Olohena Road;
75. 307° 00' 566.89 feet along Olohena Road to the point of beginning and containing an area of 163.125 acres, more or less.

Said above described parcel of land having been acquired as follows:

1. By ALLEN FAMILY, LLC, an Arizona limited liability company, as to an undivided thirty-two percent (32%) interest, by the following:

(A) WARRANTY DEED of KAPAA 160 LLC, a Hawaii limited liability company, as to an undivided twenty percent (20%) interest, dated April 13, 2001, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-056858; and

(B) WARRANTY DEED of KAPAA 160 LLC, a Hawaii limited liability company, as to an undivided twelve percent (12%) interest, dated May 17, 2002, recorded as Document No. 2002-098922;

2. By MOLOA'A BAY VENTURES, LLC, a Hawaii limited liability company, as to an undivided ten percent (10%) interest, by WARRANTY DEED of KAPAA 160 LLC, a Hawaii limited liability company, dated April 13, 2001, recorded as Document No. 2001-056859; and

3. By THREE STOOGES LLC, a Hawaii limited liability company, as to an undivided fifty-eight percent (58%) interest, by the following:

(A) WARRANTY DEED of KAPAA 160, LLC, a Hawaii limited liability company, as to an undivided fifty-seven percent (57%) interest, dated December 10, 2003, recorded as Document No. 2004-017361; and

(B) WARRANTY DEED of KAPAA 160, LLC, a Hawaii limited liability company, as to an undivided one percent (1%) interest, dated December 10, 2003, recorded as Document No. 2005-110182.

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. Free flowage of a stream shown on survey map prepared by Ronald J. Wagner, Licensed Professional Land Surveyor with Wagner Engineering Services, Inc., dated November 12, 1997, revised September 11, 1998.
3. Government Survey Registered Map No. 2324, Classification of Lands of Kapaa, Kauai, shows Triangulation Survey Stations "PUEO" and "POINT" being located within the land under search. Attention is invited to the provisions of Section 172-13 of the Hawaii Revised Statutes relating to the destruction, defacing or removal of survey monuments.
4. GRANT to HAWAIIAN TELEPHONE COMPANY, now known as HAWAIIAN TELCOM, INC., dated November 16, 1964, and recorded in said Bureau in Liber 4914 at Page 487, granting an easement for utility purposes.
5. GRANT to HAWAIIAN TELEPHONE COMPANY, now known as HAWAIIAN TELCOM, INCL, dated October 28, 1975, and recorded in said Bureau in Liber 11015 at Page 529, granting a perpetual right and easement for utility purposes.
6. SETBACK (20 feet wide) for future road widening purposes, as shown on survey map prepared by Ronald J. Wagner, Licensed Professional Land Surveyor with Wagner Engineering Services, Inc., dated November 12, 1997, revised September 11, 1998.
7. Easement for the Temporary Kapaa By-Pass Road Right-of-Way (7.859 acres) as shown on survey map prepared by Ronald J. Wagner, Licensed Professional Land Surveyor with Wagner Engineering Services, Inc., dated November 12, 1997, revised September 11, 1998.
8. Dirt roads, as shown on survey map prepared by Ronald J. Wagner, Licensed Professional Land Surveyor with Wagner Engineering Services, Inc., dated November 12, 1997, revised September 11, 1998.
9. DESIGNATION OF EASEMENT "E-1" (60 feet wide) for electrical transmission lines and poles, as shown on survey map prepared by Ronald J. Wagner, Licensed Professional Land Surveyor with Wagner Engineering Services, Inc., dated November 12, 1997, revised September 11, 1998.
10. DESIGNATION OF EASEMENT "E-2" (60 feet wide) for electrical transmission lines and poles, as shown on survey map prepared by Ronald J. Wagner, Licensed Professional Land Surveyor with Wagner Engineering Services, Inc., dated November 12, 1997, revised September 11, 1998.
11. DESIGNATION OF EASEMENT "E-3" (60 feet wide) for electrical transmission lines and poles, as shown on survey map prepared by Ronald J. Wagner, Licensed Professional

Land Surveyor with Wagner Engineering Services, Inc., dated November 12, 1997, revised September 11, 1998.

12. DESIGNATION OF EASEMENT "E-4" (60 feet wide) for electrical transmission lines and poles, as shown on survey map prepared by Ronald J. Wagner, Licensed Professional Land Surveyor with Wagner Engineering Services, Inc., dated November 12, 1997, revised September 11, 1998.

13. GRANT to CITIZENS UTILITIES COMPANY, now known as CITIZENS COMMUNICATIONS COMPANY, whose interest is now held by KAUAI ISLAND UTILITY COOPERATIVE, dated May 12, 1998, and recorded in said Bureau as Document No. 98-161869, granting a perpetual right and easement for utility purposes over said Easements "E-1", "E-2", "E-3" and "E-4", more particularly described therein.

14. EXCEPTING AND RESERVING UNTO THE GRANTOR, its successors and assigns, all of the rights in favor of the Grantor with respect to the "Kapaa Bypass Road" and the "Kapaa Bypass Road License" (as those terms are defined in the Purchase Agreement) affecting the portion of the Property described in Exhibit "B" attached hereto, which rights include, without limitation: (i) the right to receive an allocated portion of the license fee payable under the Kapaa Bypass Road License; (ii) easement rights for access, roadway and utility purposes, and for agricultural equipment operation, over and across such portions of the Kapaa Bypass Road affecting the Property as may be reasonably required or convenient for the Grantor's agricultural activities on the Property or other lands owned or leased by the Grantor or Amfac-Related Entities (as that term is defined in the Purchase Agreement); and (iii) all rights and interests of the "Owner" under the Kapaa Bypass Road License relating to continued use of the Kapaa Bypass Road for the Grantor's agricultural operations; such rights, and related rights and agreements, being more particularly set forth and fully described in Section 9 of the Purchase Agreement, the terms and conditions of said Section 9 being incorporated herein by this reference.

FURTHER EXCEPTING AND RESERVING UNTO THE GRANTOR, its successors and assigns, the right to designate and convey easement rights, within the area cross-hatched on Exhibit "C" attached hereto, to Citizens Utilities Company for electrical transmission and distribution line purposes, such right being more particularly set forth and fully described in Section 10 of the Purchase Agreement, the terms and conditions of said Section 10 being incorporated herein by this reference.

THE GRANTEE, for itself, any person or entity claiming by or through it and their respective successors and assigns, acknowledges that the Property is located near or adjacent to properties (the "Adjacent Properties") which are or may be used for various agricultural and related or ancillary purposes. As such, it is expected that the Property will periodically be affected by noise, dust, smoke, soot, ash, odor or other adverse conditions of any kind created by or resulting from such agricultural activities. The Grantee, for itself, any person or entity claiming by or through it and their respective successors and assigns, further acknowledges and agrees that neither the Grantor, Amfac-Related Entities, the owners of the

Adjacent Properties, nor any of their respective successors in title or assigns, shall be held liable for any nuisance, personal injury, illness or other loss, damage or claim which is caused by or related to the presence, operation and/or use of the Adjacent Properties for agricultural and related or ancillary purposes."; as set forth in DEED AND RESERVATION OF RIGHTS AND EASEMENTS dated as of April 5, 1999, recorded as Document No. 99-051737.

15. The terms and provisions contained in unrecorded COTENANCY AGREEMENT dated April 13, 2001, between ALLEN FAMILY, LLC, an Arizona limited liability company, and KAPAA 160 LLC, a Hawaii limited liability company, as mentioned in instrument dated May 17, 2003, recorded as Document No. 2002-098923.

16. The terms and provisions contained in the LAND USE AGREEMENT dated March 14, 2003, recorded as Document No. 2003-229571, by and between KAPAA 382, LLC, a Hawaii limited liability company, KAPAA 160, LLC, a Hawaii limited liability company; THE HANCOCK AND COMPANY, INC. PROFIT SHARING PLAN AND TRUST, WILLIAM R. HANCOCK, TRUSTEE, and JUNE VAN DAHM and KRIS VAN DAHM, husband and wife; ROBERT VALENTI, husband of Kristen M. Valenti; and KAREN B. COLE, formerly known as Karen Flynn.

17. NOTICE OF DEDICATION dated January 1, 2006 and January 31, 2006, recorded in said Bureau as Document No. 2006-024715, by THREE STOOGES, LLC, ALLEN FAMILY, LLC, and MOLOAA BAY VENTURES, LLC, regarding dedication of the land for agriculture purposes for a period of 10 years.

18. MEMORANDUM OF LEASE AGREEMENT; TMK 4-3-003-001, dated October 18, 2010, recorded in said Bureau as Document No. 2010-158402, memorializes the Lease Agreement dated August 9, 2010, by and between THREE STOOGES LLC, a Hawaii Liability Company, MOLOA'A BAY VENTURES, LLC, a Hawaii Limited Liability Company and ALLEN FAMILY, LLC, an Arizona Limited Liability Company as "Lessor" and KAPAA SOLAR LLC, a Hawaii Limited Liability Company, as "Lessee", as mentioned in instrument dated August 1, 2013, recorded as Document No. A-49950500.

19. GRANT to KAUAI ISLAND UTILITY COOPERATIVE dated March 4, 2011, recorded in said Bureau as Document No. 2011-045886, granting an easement for utility purposes over Easement "U-1" and an easement for access purposes over Easement "A-1", being more particularly described therein.

20. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

21. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

22. Unrecorded Lease effective May 20, 2011, by and between the THREE STOOGES LLC, a Hawaii Limited Liability Company, MOLOA'A BAY VENTURES, LLC, a Hawaii Limited Liability Company and ALLEN FAMILY, LLC, an Arizona Limited Liability Company, as Lessor, and KRB LLC, a Hawaii limited liability company, as Lessee, as mentioned in instrument dated August 1, 2013, recorded as Document A-49950500.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I caused a true and correct copy of the foregoing document to be served on the following persons by facsimile, hand-delivery or U.S. mail, postage prepaid (as indicated below) to their respective addresses:

	HAND- DELIVERED	FAXED	MAILED
Kauai County Planning Department 4444 Rice Street, Suite A473 Lihue, HI 96766			X
State of Hawaii, Office of Planning 235 S. Beretania Street Honolulu, HI 96813	X		
Bryan C. Yee, Esq. State of Hawaii Office of the Attorney General 425 Queen Street Honolulu, HI 96813			X
Office of the County Attorney 4444 Rice Street, Suite 220 Lihue, HI 96766			X
Likookalani Maltin Post Office Box 564 Anahola, HI 96703			X
Sierra Club – Kauai Group of the Hawaii Chapter Post Office Box 3412 Lihue, HI 96766			X
Wailua-Kapaa Neighborhood Association 340 Aina Uka Street Kapaa, HI 96746			X

DATED: Honolulu, Hawai'i, October 29, 2014.

A handwritten signature in black ink, appearing to read 'William W. L. Yuen', is written over a horizontal line.

WILLIAM W. L. YUEN

MELISSA M. UHL

Attorneys for

HG KAUAI JOINT VENTURE, LLC