

**THIRD AMENDMENT  
TO  
AMENDMENT AND RESTATEMENT  
OF  
MEMORANDUM OF UNDERSTANDING**

THIS THIRD AMENDMENT TO AMENDMENT AND RESTATEMENT OF MEMORANDUM OF UNDERSTANDING ("2015 MOU") is made this 28<sup>th</sup> day of July, 2015, by and between CANPARTNERS IV ROYAL KUNIA PROPERTY LLC ("Canpartners"), a Delaware limited liability company, successor in interest to HALEKUA DEVELOPMENT CORPORATION ("Halekua"), and the DEPARTMENT OF AGRICULTURE, STATE OF HAWAII ("DOA");

**RECITALS:**

1. Halekua and DOA entered into that certain *Memorandum of Understanding* ("Original MOU") dated March 30, 1993, for the purpose of setting forth the agreements and understanding by and between Halekua and DOA with respect to establishment and integration into the master plan for the Royal Kunia Phase II development by Halekua of a state agricultural park.
2. Halekua and DOA subsequently amended that Original MOU in writing and entered into that certain *Amendment and Restatement of Memorandum of Understanding* dated March 2, 2007 ("2007 MOU"), for the purpose of restating the agreements and understanding by and between Halekua and DOA with respect to establishment and integration into the master plan for the Royal Kunia Phase II development by Halekua of a state agricultural park.
3. Halekua and DOA further amended that 2007 MOU in writing and entered into that certain *First Amendment to Amendment and Restatement of Memorandum of Understanding* ("2009 MOU") dated February 19, 2009, for the purpose of amending Paragraph E.a. of the 2007 MOU to extend the deadline for completion and submittal of the preliminary site plan to the DOA from December 31, 2008 to December 31, 2009.
4. Canpartners, as successor in interest to Halekua, and DOA subsequently amended that 2009 MOU in writing and entered into that certain *Second Amendment to Amendment and Restatement of Memorandum of Understanding* ("2012 MOU") dated September 20, 2012, for the purpose of amending Paragraph E.a. of the 2009 MOU to extend the deadline for completion and submittal of the preliminary site plan to the DOA from December 31, 2009 to December 31, 2013.
5. Canpartners and DOA now desire to further amend and restate the Original MOU, 2007 MOU, 2009 MOU and 2012 MOU to (a) acknowledge Canpartners as successor in interest to Halekua, (b) acknowledge the conveyance of the 150 acre agricultural park site to the DOA and the acceptance thereof by the DOA in partial satisfaction of the agreements in the MOU, (c) to restate and modify the agreements between Canpartners and the DOA with respect to the timing for design and construction of the off-site infrastructure to the state agricultural park and submittal of a revised master plan pursuant to Paragraph IV(A)(1) and (2) of that certain Order

Granting Successor Petitioner (To Parcel 52), Ho'ohana Solar1, LLC's Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order Filed on October 1, 1996 filed on January 28, 2015 ("Amended Order").

NOW, THEREFORE, in consideration of the Recitals set forth above and other consideration, the receipt and sufficiency of which is hereby acknowledged, Canpartners and DOA do hereby amend and restate Paragraphs A through N of the MOU in their entirety as follows:

A. Confirmation of Conveyance of 150-Acre Parcel. DOA does hereby acknowledge and confirm that by Warranty Deed with Reversion dated February 23, 2004, recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 2004-040601 (the "State Ag Park Deed"), the agreed upon 150 acres of land within the Royal Kunia Phase II development was conveyed by Halekua to the State of Hawai'i, by and through its Board of Land and Natural Resources, for the DOA's use as and to establish a state agriculture park thereon (herein the "State Agricultural Park"). The DOA further confirms that it has accepted the conveyance of the lands comprising the State Agricultural Park by the State Ag Park Deed as being in full and complete satisfaction of the land conveyance component of its agreements with Canpartners notwithstanding the fact that the actual conveyance occurred beyond the original December 31, 1997 deadline date.

B. Use of State Agricultural Park. The State Agricultural Park is intended to benefit the small diversified farmer and use of the State Agricultural Park shall be intended for diversified agricultural production, including, without limitation, floriculture, foliage and orchard production. In addition, the DOA shall have the right and option (but is not required) to develop and construct up to a maximum of fifty (50) related agricultural farm dwellings or farm employee housing units within the State Agricultural Park. If any of these agricultural farm dwellings or farm employee housing units are developed by the DOA on the State Agricultural Park the same shall not at any time be offered for sale by the DOA.

C. Certain Use Prohibitions within State Agricultural Park. Since the State Agricultural Park will be located adjacent to an urban residential community, commercial livestock or other activities associated with or related thereto shall be prohibited within the State Agricultural Park<sup>(A1)</sup>.

D. Canpartners to Include State Agricultural Park in Land Plan. Canpartners has incorporated the State Agricultural Park into its land plan for the Royal Kunia Phase II subdivision and jointly with the DOA has prepared a preliminary site plan for the State Agricultural Park reflecting the locations of the roadway and infrastructure connections to be provided to the boundary of the State Agricultural Park parcel. The DOA has accepted and approved Canpartner's preliminary site plan by letter dated March 31, 2015.

E. Canpartners to Design and Construct Certain Off-Site Infrastructure to the State Agricultural Park. Canpartners shall design and construct off-site infrastructure improvements for the State Agricultural Park including roadway, potable and irrigation water lines (exclusive of water commitment), and sewer lines and utility connections, up to the property boundary of the State Agricultural Park at no cost to the DOA. These off-site infrastructure improvements shall

be sufficient to service the agricultural uses contemplated by the DOA for State Agricultural Park and shall be sufficient to service the maximum of fifty (50) agricultural farm dwellings or farm employee housing units (if the DOA determines that the same shall be a part of the State Agricultural Park). In connection therewith Canpartners and the DOA agree as follows:

a. Following approval of the preliminary site as outlined in Paragraph D above, Canpartners shall arrange for and cause the preparation of design plans for the off-site infrastructure necessary to provide the agreed upon roadway access, water, sewer, and other appropriate utility connections to the boundary of the State Agricultural Park to service the contemplated improvements on the State Agricultural Park in accord with the preliminary site plan and submit the same to the DOA for approval no later than December 31, 2015, or such later date to which Canpartners and the DOA shall mutually agree, which approval by the DOA shall not be unreasonably withheld or delayed. It is understood and accepted that Canpartners shall be entitled to make such changes and modifications to the approved design plans as may be required to address and satisfy any comments made or issues raised by appropriate governmental agencies of the State of Hawai'i and/or City and County of Honolulu, with the further consent or approval of the DOA, which consent or approval shall not be unreasonably withheld or delayed.

b. After the DOA approves the offsite infrastructure plans, Canpartners shall, at its sole cost and expense, (i) obtain all necessary governmental permits and approvals for construction of such off-site infrastructure, and (ii) arrange for and substantially complete the construction and installation of the off-site infrastructure to service the State Agricultural Park no later than December 31, 2016, or such later date to which Canpartners and the DOA shall mutually agree, subject to extension in such substantial completion date for construction industry recognized force majeure events.

F. DOA Responsible for All Other Costs of State Agricultural Park. The DOA shall assume responsibility for the development and payment of all costs (other than those set forth in this Agreement as being assumed by Canpartners) associated with the State Agricultural Park and the agricultural farm dwellings and/or farm employee housing units to be developed thereon.

G. Coordinate Developments. Canpartners and the DOA shall use their best efforts to work jointly to coordinate the development of their respective portions of the Royal Kunia Phase II project.

H. Hawaii Farm Bureau Federation. The DOA, to the extent permitted by law or regulation, shall involve the Hawaii Farm Bureau Federation in the utilization, operation and management of the State Agricultural Park with the intent of maximizing the efficiency and success of the diversified farming efforts at the State Agricultural Park.

I. DOA Support of Land Use Approvals. The DOA shall assist and support Canpartners in its efforts to obtain and maintain the necessary land use approvals for the Royal Kunia Phase II project, as well as in Canpartners' efforts to obtain the necessary off-site infrastructure permit approvals. Any assistance and support by the DOA shall be limited to the extent permitted by the applicable statutes and rules.

J. Restrictive Use Covenant on State Agricultural Park. The time periods for initiation of the development of on-site improvements for the State Agricultural Park and for the DOA to achieve active utilization of the State Agricultural Park set forth in Paragraph K of the Original MOU are hereby deleted in their entirety. Instead the State Agricultural Park shall be subject to a restrictive use covenant providing that the State Agricultural Park shall only be used as an agricultural park or for the current or similar agricultural purposes, including diversified agriculture. If at any time in the future the DOA ceases to use or abandons the use of the State Agricultural Park as an agriculture park or for the current or similar agricultural purposes, including diversified agricultural, then, and in such event, the 150 acre parcel comprising the State Agricultural Park shall be subject to a reversion in favor of certain "Robinson Owners" as more particularly defined in the State Ag Park Deed. It is understood that the fact that any portion of the State Agricultural Park may lie vacant or fallow shall not constitute the cessation or abandonment of the agricultural use.

K. No Adverse Impact on Lands Adjoining State Agricultural Park. The DOA agrees to use its best efforts to minimize the impact of the State Agricultural Park on the adjacent lands being developed for residential, industrial and other urban uses.

L. Assistance with Non-Potable Water System. The DOA shall assist Canpartners, to the extent allowable by law and subject to the availability of funds, in obtaining and developing a non-potable water system to service irrigation and other non-potable water needs of the Royal Kunia Phase I and Phase II projects, including the State Agricultural Park.

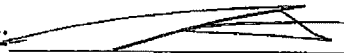
M. Purpose of Amended and Restated MOU. The parties hereto agree that this Amended and Restated MOU is being executed to evidence their mutual understandings and agreements regarding the conveyance of the 150-acre parcel comprising the State Agricultural Park to the DOA, the design and development by Canpartners of certain off-site infrastructure to service the State Agricultural Park, and certain use restrictions and limitations applicable to the DOA's use of the State Agricultural Park. This 2015 MOU replaces the Original MOU, 2007 MOU, 2009 MOU, and 2012 MOU in their entirety.

N. Amendment. This 2015 MOU may be amended from time to time by instrument in writing signed by both Canpartners and the DOA.


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IN WITNESS WHEREOF, this Third Amendment to Amendment and Restatement of Memorandum of Understanding is made and executed by Canpartners and the DOA as of the day and year first above written.

**CANPARTNERS IV ROYAL KUNIA  
PROPERTY LLC**, a Delaware limited  
liability company

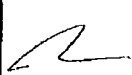
By:   
Name: Jonathan P. Roth  
Title: President

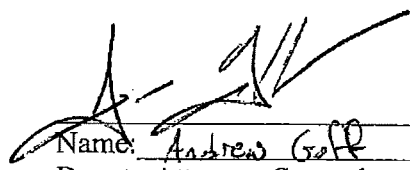
**DEPARTMENT OF AGRICULTURE,  
STATE OF HAWAII**

By:   
Name: Scott E. Enright  
Title: Chairperson

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**APPROVED AS TO FORM:**

Legal	Acq/AM
	<u>WRB</u>

  
Name: Andrew Goff  
Deputy Attorney General