

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

THIS FIFTH AMENDMENT TO AMENDMENT AND RESTATEMENT OF MEMORANDUM OF UNDERSTANDING ("Fifth Amendment") is made this 10<sup>th</sup> day of January, 2024, by and between HASEKO ROYAL KUNIA, LLC ("Haseko"), a Hawaii limited liability company, successor in interest to RP2 VENTURES, LLC ("RP2"), and the DEPARTMENT OF AGRICULTURE, STATE OF HAWAII ("DOA");

**RECITALS:**

1. Halekua Development Corporation ("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 IV Royal Kunia Property LLC ("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 subsequently amended the 2012 MOU in writing and entered into that certain *Third Amendment to Amendment and Restatement of Memorandum of Understanding* ("2015 MOU") dated July 28, 2015, for the purpose of amending Paragraph E.a. of the 2012 MOU to extend the deadline for completion and submittal of the preliminary site plan to the DOA from December 31, 2013 to December 31, 2015, and construction and installation of off-site infrastructure no later than December 31, 2016.

6. RP2, as successor in interest to Canpartners, and DOA subsequently amended that 2015 MOU in writing and entered into that certain *Fourth Amendment to Amendment and Restatement of Memorandum of Understanding* (“2020 MOU”) dated March 16, 2020, for the purpose of amending Paragraph E.b. of the 2015 MOU to extend the deadline for completion and construction of the irrigation infrastructure no later than February 28, 2021 and complete the construction and installation of the remainder of the off-site infrastructure to service the State Agricultural Park no later than June 30, 2021.

7. RP2, in consultation with DOA, commissioned the design of certain interim off-site infrastructure (the “Interim Infrastructure”) and the non-potable water infrastructure (the “Irrigation Infrastructure”) which Interim Infrastructure and Irrigation Infrastructure construction plans are currently being reviewed by the Department of Planning and Permitting (“DPP”).

8. On August 12, 2020, Haseko purchased TMK Parcel 9-4-002:071 (“Parcel 71”) from RP2 and assumed RP2’s obligations under the 2020 MOU.

9. On August 17, 2020, Ho`ohana Solar 1, LLC, successor petitioner as to Parcel 52 (“Ho`ohana Solar”), filed its Motion for Modification and Time Extension seeking an order modifying the Land Use Commission’s January 28 2015 *Order Granting Successor Petitioner (To Parcel 52), Ho`ohana Solar 1, LLC’s Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed on October 1, 1996*, to allow for modification to the solar farm authorized thereunder and the related timeframe for development of the modified solar farm.

10. On September 29, 2021, the Land Use Commission issued its *Order Granting Successor Petitioner (as to Parcel 52) Ho`ohana Solar 1, LLC’s Motion for Modification and Time Extension*, which was amended on November 1, 2021 by the Land Use Commission *Amended Order Granting Successor Petitioner (As to Parcel 52) Ho`ohana Solar 1, LLC’s Motion for Modification and Time Extension* (collectively the “2021 LUC Order”).

11. Haseko and DOA now desire to further amend and restate the Original MOU, the 2007 MOU, the 2009 MOU, the 2012 MOU, the 2015 MOU, and the 2020 MOU (the Original MOU, as amended, is hereinafter sometimes referred to as the “MOU”) to (a) acknowledge Haseko as successor in interest to RP2, (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 Haseko, as successor, and the DOA with respect to the timing of the processing of the Irrigation Infrastructure, Interim Infrastructure, and the design and construction of the permanent off-site infrastructure as further described and defined in Paragraph E below (the “Permanent Infrastructure”) (which for purposes of this Fifth Amendment, neither the Interim Infrastructure nor the Permanent Infrastructure includes the Irrigation Infrastructure) to the state agricultural park and submittal of a revised master plan pursuant to Amended Conditions A.1 and A.2 of the 2021 LUC Order.

NOW, THEREFORE, in consideration of the Recitals set forth above and other consideration, the receipt and sufficiency of which is hereby acknowledged, Haseko and DOA do hereby amend and restate Paragraphs A through O 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 and other activities associated with or related thereto shall be prohibited within the State Agricultural Park.

D. Canpartners Included State Agricultural Park in Land Plan. Canpartners previously incorporated the State Agricultural Park into its land plan for the Royal Kunia Phase II subdivision and jointly with the DOA prepared a preliminary site plan for the State Agricultural Park reflecting the locations of how Canpartners intended to lay out the roadway and infrastructure connections to be provided to the boundary of the State Agricultural Park parcel. The DOA accepted and approved Canpartner's preliminary site plan by letter dated March 31, 2015. The DOA extends this acceptance of the preliminary site plan to Haseko, subject to Haseko's right to modify its plans for the roadway and infrastructure connections based on Haseko's land development plans.

E. Haseko to Design and Construct Certain Off-Site Infrastructure to the State Agricultural Park. Subject to receipt of DOA's approval, which approval shall not be unreasonably withheld, conditioned or delayed, Haseko shall design and construct the Permanent Infrastructure improvements for the State Agricultural Park, to include a roadway, potable water (exclusive of the Irrigation Infrastructure and any associated water commitment), electrical and communications, and gravity sewer, up to the property boundary of the State Agricultural Park at no cost to the DOA. For purposes of this Fifth Amendment, the Permanent Infrastructure shall not include the Irrigation Infrastructure, which Ho'ohana Solar and Haseko Royal Kunia, LLC are obligated to design and construct, pursuant to Amended Condition B.1 of the 2021 LUC Order. The Permanent Infrastructure shall be sufficient to service the agricultural uses contemplated by the DOA for the 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 Haseko and the DOA agree as follows:

1. R. M. Towill has prepared design plans for the Interim Infrastructure for DOA that provides the roadway, potable water, gravity sewer, and electrical and communications connections to the property boundary of the State Agricultural Park to service the contemplated improvements on the State Agricultural Park. This site plan has been accepted by DOA and has been submitted to DPP for permitting. It is understood and agreed that Haseko 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 Hawaii 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, conditioned or delayed. The purpose of the Interim Infrastructure plan is to provide DOA with a bonded infrastructure plan that will provide infrastructure to the DOA in the event Haseko is unable to perform the Permanent Infrastructure which would be determined, in part, by Haseko's failure to perform the deadlines in this Fifth Amendment.

2. Haseko will provide the DOA with Temporary Infrastructure that will include functional electrical power and potable water to the boundary of the State Agricultural Park by December 31, 2025, ("Temporary Infrastructure") the Irrigation Infrastructure has commenced construction and will be completed and operational to the boundary of the State Agricultural Park by August 31, 2024, and the roadways and sewer will be included with the Permanent Infrastructure. The Temporary Infrastructure is separate and apart from the Interim Infrastructure previously accepted by DOA. Accordingly, new site plans for the Temporary Infrastructure will be submitted by Haseko to DPP because the Temporary Infrastructure's alignment is different than the Interim Infrastructure. Further, the Temporary Infrastructure will provide sufficient electrical power and potable water for DOA to begin development and management, and continued operation of the agricultural park. DOA agrees to provide reasonable assistance in obtaining and expediting approvals to provide Temporary Infrastructure to the State Agricultural Park.

3. Upon completion by Haseko of its design of the Permanent Infrastructure, Haseko shall forward its design plans to the DOA for its approval, which approval shall not be unreasonably withheld, conditioned or delayed. Should the DOA not provide its approval or substantive comments to Haseko's plans or any modified plans within thirty (30) days following receipt by DOA, such design plans shall be deemed approved.

4. After the DOA approves the Permanent Infrastructure plans, Haseko shall, at its sole cost and expense, (i) obtain all necessary governmental permits and approvals for construction of such Permanent Infrastructure, and (ii) arrange for and substantially complete the construction and installation of the Permanent Infrastructure to service the State Agricultural Park no later than September 30, 2028, or such later date to which Haseko and the DOA shall mutually agree, subject to extension in such substantial completion date for construction industry recognized force majeure events, including extraordinary delays by the City and County of Honolulu in reviewing and issuing all necessary permits for the construction and installation of such Permanent Infrastructure. Any extension for the construction and installation of Temporary Infrastructure and/or Permanent Infrastructure must be negotiated with and agreed to in writing. DOA acknowledges that the foregoing date to complete the construction and installation of the Permanent Infrastructure is five (5) years after the deadline set forth under Amended Condition A.1 of the 2021 LUC Order due to several factors including, but not limited to, Haseko's

completion of its land development plans, sequencing of the various subdivisions necessary to develop the areas near the State Agricultural Park, and obtaining the necessary approvals, permits, and other authorizations. DOA agrees to work jointly with Haseko to have the 2021 LUC Order amended to reflect the updated deadline for the completion of the construction and installation of the Permanent Infrastructure in accordance with this Fifth Amended Memorandum of Understanding, except the Irrigation Infrastructure shall be installed and operational by August 31, 2024. (D&O A.1 includes non-potable waterline as part of the term, "offsite infrastructure.").

5. Haseko acknowledges that RP2 has submitted (a) construction plans for the Interim Infrastructure which have been accepted by DOA, and have been submitted to DPP (b) and upon receipt of proper authorization from the landowners, will submit a subdivision application to the DPP to designate an easement over a portion of Parcel 71 (which portion is identified as Lots 1-A, 1-B and 1-C, with TMK Parcel 9-4-002:086), and a portion of Parcel 52 (which portion identified as Lot B with TMK Parcel 9-4-002:052) owned by Robinson Kunia Land LLC for such Interim Infrastructure.

6. Notwithstanding the foregoing, Haseko has been working on its land development plan for Parcel 71. In connection with such land development plan, Haseko's consultants have just begun designing the Permanent Infrastructure that will be incorporated into proposed Road Y Phase 2 which will provide permanent access and utility services to the State Agricultural Park.

7. Because the location of the Interim Infrastructure was not based on Haseko's land development plan, but was based on RP2's best estimate on where Road Y and the residential parcels would be located, the Permanent Infrastructure (and not the Interim Infrastructure), will be utilized to provide the appropriate permanent utility connections to the boundary of the State Agricultural Park at the mutually agreed upon designated location.

F. Bond Requirement. Upon receipt of (a) tentative approval from DPP Subdivision Branch of the proposed subdivision involving the Interim Infrastructure and (b) approval of the Interim Infrastructure construction plans, Haseko agrees to obtain, at no cost to DOA, a bond (or such other financial security instrument acceptable to the DPP, the DOA and Haseko) covering the cost for the completion of the Interim Infrastructure ("Interim Security"). In addition, upon (a) receipt of tentative approval of the subdivision creating the right-of-way lot for Road Y Phase 2 and (b) approval of the construction plans for Road Y Phase 2, Haseko agrees to obtain, at no cost to DOA, a new bond (or such other financial security instrument acceptable to the DPP, the DOA and Haseko) covering the cost for the completion of Road Y Phase 2, the right-of-way, and the Permanent Infrastructure ("New Security"). It is the intent that upon the issuance of the New Security, the Interim Security will be canceled.

G. 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 Fifth Amendment as being expressly assumed by Haseko) associated with the development, operation and maintenance of the State Agricultural Park and the agricultural farm dwellings and/or farm employee housing units to be developed thereon.

H. Coordinate Developments. Haseko 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. Pertinent information shall be shared by each party with the other upon request.

I. 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.

J. DOA Support of Land Use Approvals. The DOA shall assist and support Haseko in its efforts to obtain and maintain the necessary land use approvals for the Royal Kunia Phase II project, as well as in Haseko's efforts to obtain the necessary Permanent Infrastructure permit approvals and related authorizations. Any assistance and support by the DOA shall be limited to the extent permitted by the applicable statutes and rules.

K. 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 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 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.

L. 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.

M. Assistance with Non-Potable Water System. The DOA will utilize reasonable best efforts to require Ho`ohana Solar to comply with Amended Condition B.1 of the 2021 LUC Order, related to the development and maintenance of the Irrigation Infrastructure to service irrigation and other non-potable water needs of the Royal Kunia Phase I and Phase II projects, including the State Agricultural Park. Haseko will also utilize reasonable best efforts to require Ho`ohana Solar to comply with the agreement entered into between Haseko and Ho`ohana Solar. .

N. 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 Haseko 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 Fifth Amendment replaces the Original MOU, the 2007 MOU, the 2009 MOU, the 2012 MOU, the 2015 MOU, and the 2020 MOU in their entirety.

O. Amendment. This Fifth Amendment may be amended from time to time by instrument in writing signed by both Haseko and the DOA.

P. Counterpart. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement binding on the parties hereto.

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

**HASEKO ROYAL KUNIA, LLC ,**  
a Hawaii limited  
liability company

**DEPARTMENT OF AGRICULTURE,  
STATE OF HAWAII**

By: M. Narahara  
Name: Masayuki Narahara  
Title: President of Haseko Development, Inc.,  
Manager of Haseko Royal Kunia, LLC

By: Sharon Hurd  
Name: Sharon Hurd  
Title: Chairperson, Board of Agriculture

**APPROVED AS TO FORM:**

*Kelcie K. Nagata*

Name: Kelcie Nagata  
Deputy Attorney General