

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

August 8, 2008

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Ref: 07od-080

OAHU

Authorization to Enter into Agreement with James Campbell Company LLC  
Regarding Water Allocation and Easements for State Lands; Amend Prior Action  
of December 14, 2007, Item D-26; Kunia, Ewa, Oahu, Tax Map key (1) 9-4-  
012:001, 002 & 003.

BACKGROUND:

On December 14, 2007, under agenda item D-25, the Board approved the mutual cancellation of General Lease No. 4612 issued to Del Monte Fresh Produce (DM). Staff is working with the Department of the Attorney General regarding the cancellation document.

At the same meeting, under separate item (D-26) (Exhibit A), the Board authorized the public auction of the former DM lease land for intensive agriculture purposes. As mentioned in the D-26 submittal, water sources for the subject State lands come from three wells managed by DM on land owned by James Campbell Company LLC (JCC). The wells provide a crucial element to the successful operation of farming on the State lands. There was no information regarding the future planning of the water source when the Board authorized the said public auction.

On December 13, 2007, JCC recorded the "Declaration of Covenants Regarding Water Allocation and Easements" (Declaration) at the Bureau of Conveyances. A copy of the map showing the properties affected by the Declaration and the latest version of the Declaration are attached as Exhibit B and C respectively.

Briefly, the Declaration provides a general plan for the overall water administration, maintenance and preservation of JCC lands in the area. Kunia Water Association, Inc., a non-profit organization, will be formed. Members of the Association include all property owners and lessee of the affected properties. Each member is required to pay a fixed operating cost to cover, for example, the independent contractor running the system, or anticipated repairs to the structure. In addition, members need to pay a variable operating

cost based on the fuel consumption of the individual member. After the water is pumped to the delivery point of each member's respective area, the member is responsible for all the costs and maintenance thereafter. JCC also reserves a perpetual easement over its land for the entire irrigation system. Such covenants in the Declaration shall run with the title of the properties affected.

Pursuant to paragraph 2.9 of the Declaration, JCC reserves its right to annex the subject State lands and thereafter allocate water according to the schedule at Exhibit C-2 of the Declaration, and further subject to the State agrees to be bound by the terms and conditions of the Declaration. At the time of writing this submittal, staff understands that the allocation on Exhibit C-2 is based on the arable acreage of the lands involved.

Department of Facility Maintenance, Division of Aquatic Resources, and Historic Preservation Division have no objections/comments to the request.

Department of Health, Commission on Water Resources Management, and Department of Hawaiian Home Lands, and Office of Hawaiian Affairs have not responded as of the suspense date.

Board of Water Supply reiterates that water should be provided by the private water system, as there is no BWS water system serving the area.

Department of Planning and Permitting advised that JCC proposed to preserve the Kunia Village (portion of properties affected by the Declaration) as affordable housing unit, and the City's Planning Commission is supporting JCC's proposal in its zoning change application.

Department of Agriculture does not have objections to the request subject to the terms and conditions of the agreement reviewed and approved by the Department of the Attorney General (AG).

JCC also provides a draft operating budget, Exhibit D, which shows the State land's share in the draft budget is about \$5,200 per year. Staff notes that this figure is only a draft based on an estimated consumption.

As mentioned at the beginning of this submittal, the water system is a crucial element toward the success of operating on the subject State land. Staff recommends the Board granting the authorization to enter the Declaration, as amended, with JCC, and further subject to the review and approval by AG. In addition, staff recommends the Board authorize the Chairperson to negotiate, on the State's behalf, with JCC on the terms and conditions of the Declaration.

Upon approval of the subject request, staff recommends the Board amend its prior action of December 14, 2007, item D-26, by encumbering the subject State lands with the proposed agreement with JCC.

Also regarding the forthcoming public auction, US Army Corps of Engineers (ACOE) is planning to install sewer lines and surface road within the subject State land to serve the adjacent military facilities. However, ACOE does not have the final decision of the alignment yet, but ACOE requests its intention for such easement request be reflected in the public auction lease. Staff will work with the AG on the proper languages in the lease, notwithstanding there is a standard provision for withdrawing land for public purpose in the lease. Staff recommends the Board amend its prior action of December 14, 2007, item D-26 by adding a condition for the State to reserve a right for granting easements to ACOE, subject to approval by the AG.

RECOMMENDATION: That the Board

- A. Authorize the Chairperson to negotiate and execute agreement with James Campbell Company LLC regarding water allocation and easements agreement for the above mentioned State lands, subject to the following:
  - 1. Review and approval by the Department of the Attorney General; and
  - 2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
  
- B. Amend its prior action of December 14, 2007, item D-26 by adding the following condition to paragraph 4 of the Recommendation:
  - d. Subject to the Declaration of Covenants and its amendment regarding water allocation and easements recorded at the Bureau of Conveyances.
  - e. Reserve its right for the State to grant non-exclusive easement to US Army Corps of Engineers for access and utility purposes.

Respectfully Submitted,



Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

December 14, 2007

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:07OD-080

OAHU

Sale of Lease at Public Auction for Intensive Agriculture  
Purposes, Waikele, Oahu, Tax Map Key: (1) 9-4-12:1,2,3

REQUEST:

Sale of lease at public auction for intensive agriculture  
purposes

LEGAL REFERENCE:

Sections 171-14, -14.5, -16, -17 and other applicable sections of  
Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Pouhala Mauka situated at Waikele,  
Ewa, Oahu, identified by Tax Map Key: (1) 9-4-12:1,2,3, as shown  
on the attached map labeled Exhibit A.

AREA:

578.265 acres, more or less, subject to confirmation by the  
Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Agriculture  
City & County of Honolulu CZO: AG-1 Restricted

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State  
Constitution: YES \_\_\_\_\_ NO   x  

CURRENT USE STATUS:

Encumbered by General Lease No. S-4612, Del Monte Fresh Produce  
(Hawaii), Inc., Lessee, for pineapple cultivation purposes.

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
*December 11, 2007*

**EXHIBIT " — ,**  
**D-26 —**

Lease to expire on December 31, 2008.

CHARACTER OF USE:

Intensive agriculture purposes

LEASE TERM:

Thirty (30) years

COMMENCEMENT DATE:

The date of sale if the current occupant is the successful bidder, otherwise, sixty (60) days after the date of sale; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

MINIMUM UPSET ANNUAL RENT:

To be determined by staff or independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th and 20th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities - Electricity and telephone service are available.  
Slope - Gently sloping to nearly level.  
Elevation - 720 feet to 880 feet.  
Rainfall - 39 inches distributed throughout the year.  
SCS Soil Series - Wahiawa silty clay (WaA), 0 to 3% slopes and was used for sugarcane, pineapple and pasture. This soil consists of well-drained, upland areas and has the highest capability classification rating of I if irrigated and predominates the 3 parcels. Very small area of WAB soil, 3 to 8% slopes. Very small area of Kunia silty clay (KyC) 8 to 15% slopes and was used for sugarcane and pineapple.

Land Study Bureau - B121 lists "a" for pineapple, "c" for

EXHIBIT

vegetable, sugarcane and orchard, "b" for forage and grazing. If irrigation is available all of the above commodity categories are rated "a".

Legal access to property - Staff has verified that there is legal access to the property off of Kunia Road.

Subdivision - Staff has verified that the subject property to be auctioned is a legally subdivided lot.

Encumbrances - Staff has verified that the following encumbrances exist on the property:

Pending General Lease No. S-5912, U.S. Army Garrison-Hawaii for security chain link fence.

Land Office Deed No. S-27850, Hawaiian Electric Co. for electrical transmission lines and poles.

#### CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. a, Item No. 1 that states "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

#### BACKGROUND:

General Lease No. S-4612 was sold at public auction on October 19, 1979. The successful bidder was Del Monte Corporation. The lease term was for 15 years commencing on January 1, 1980 and expiring on December 31, 1994. The lease character of use was pineapple cultivation. The Land Board at its meeting of October 27, 1989, under agenda item F-1-g, consented to the assignment from Del Monte Corporation to PPI Del Monte Fresh Produce (Hawaii), Inc. The Land Board at its meeting of June 24, 1994, under agenda item D-7, approved a 14 year lease extension and consented to Bank of Hawaii \$1,250,000 loan. Expiration was December 31, 2008.

By letter dated March 5, 2007 from Mr. David W.H. Chee on behalf of Del Monte Fresh Produce (Hawaii) Inc. informed the Department his clients would not be renewing the lease and is interested in surrendering the land at a date earlier than December 31, 2008.

The Land Board at its meeting of December 9, 2005, under agenda Item D-1, approved to recommend to the Governor the issuance of executive order(s) setting aside various parcels throughout the State of Hawaii under the Departments' jurisdiction to the Department of Agriculture (DOA) pursuant to Act 90, Session Laws of Hawaii 2003. Total acreage is approximately 4,725.799 acres. The subject three (3) parcels are included in this transfer to DOA.

In August 2007, staff met with Ms. Stacie Sasagawa, General Manager for Del Monte. Ms. Sasagawa indicated more work needs to be done by Del Monte, therefore, returning the State property may occur around December 2008. They will continue to work with the Department.

On November 5, 2007, Ms. Sasagawa informed staff she was leaving Del Monte and that Mr. Gordon Rezentes will be managing the State property until it is returned to the State may be in the summer of 2008.

ANALYSIS:

The highest and best use allowable in the county zoning is agriculture.

Staff feels that these properties (under 1 lease) will be successfully sold at public auction. The recommended character of use (intensive agriculture) will allow any farm operation to decide what crop is appropriate. In the future, should there be a change in the consumer's diet or marketplace, at least the tenant can easily switch crops. As adjacent property owners sell large tracts of agricultural lands for urban development, the State is committed in keeping these properties in agriculture use. Therefore, there are farm operations interested in a long-term lease.

Comments were solicited from:

DHHL	No comment
DOA	No response
ADC	No response
City DPP	Best management practices must be utilized for pesticide and nutrient control.
BWS	No water system in the area. Water should be provided for by the private water system serving the area.
OHA	No comment

Currently, water for the State properties comes from three (3) wells Del Monte is managing and operating on James Campbell Company LLC lands. Surrounding properties in Kunia including the former pineapple workers camp and HCAP pre-school are dependent on this water. For some time, James Campbell Company has been selling off its Kunia land holdings. Eventually, when Del Monte leaves, managing and operating the wells will have to be done by someone. Representatives from James Campbell Company are uncertain if it will be a company or water cooperative. It is important that the State participates in order for the State

properties to continue in agriculture.

Yes, it would've been much easier if Del Monte had assigned the lease to a qualified farmer. Then there would have been a smooth transition. Staff and others have discussed this option with Ms. Sasagawa. This was flatly denied.

Since there is nothing final from James Campbell Company, when a document is generated requiring the State's commitment, Land Board approval will be obtained.

The mutual cancellation of General Lease No. S-4612 will be done in a separate Board submittal.

With the departure of Del Monte, Board approval will allow staff to start the necessary paperwork for the public auction.

RECOMMENDATION: That the Board:

1. Find the area to be an economic unit in terms of the intended use.
2. Find that the subject area is not suitable for hunting, nor will it become so during the term of the lease.
3. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
4. Authorize the sale of a lease at public auction covering the subject area for intensive agriculture purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. The standard terms and conditions of the most current intensive agriculture general lease form, as may be amended from time to time;
  - b. Within the first two (2) years of the lease term, the land under lease shall be utilized for the purposes for which the lease is sold, all in accordance with a conservation plan approved by the Chairperson;
  - c. Review and approval by the Department of the Attorney General; and

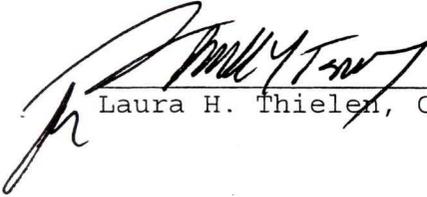
- d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

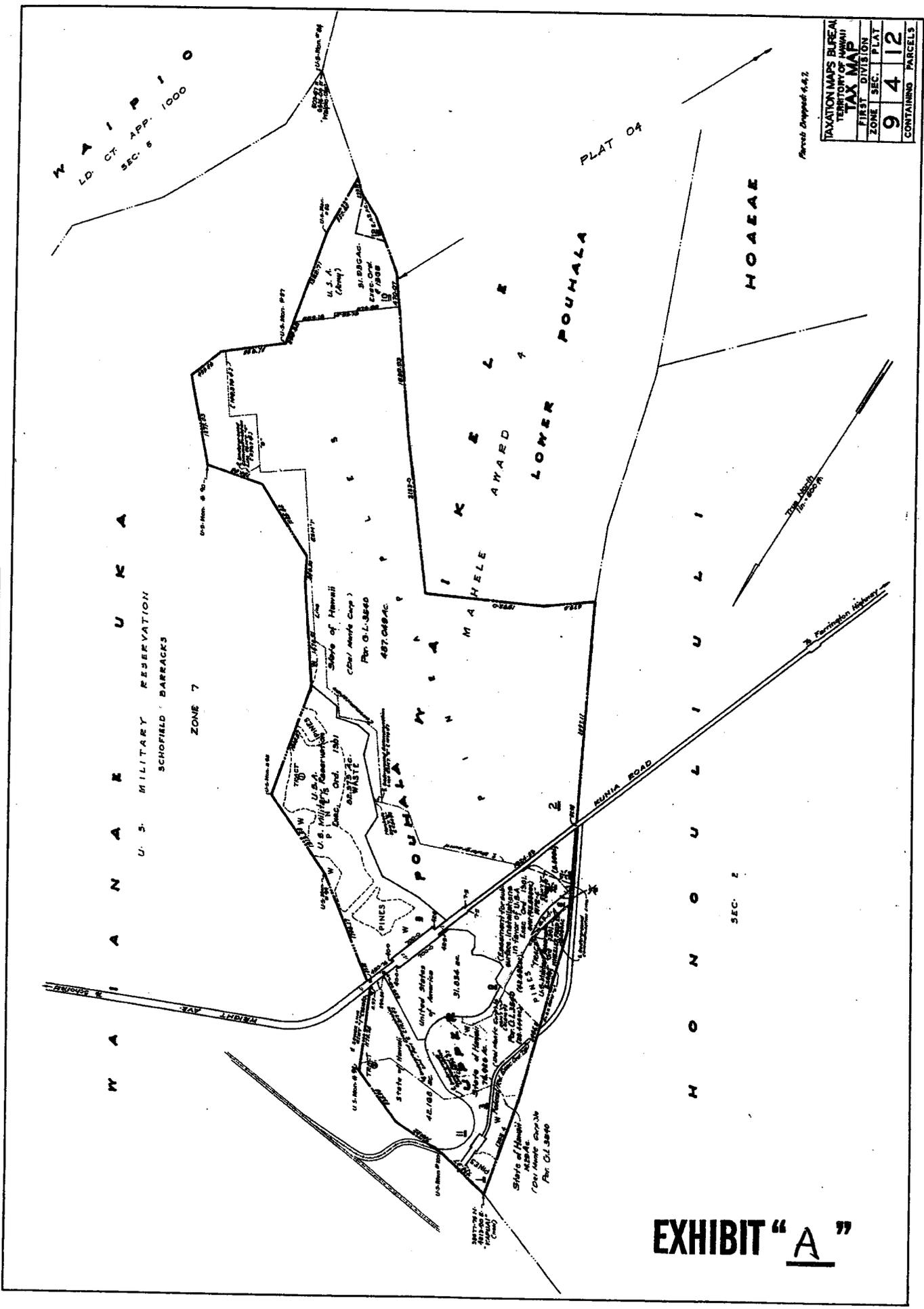


Charlene E. Unoki  
Assistant Administrator

APPROVED FOR SUBMITTAL:

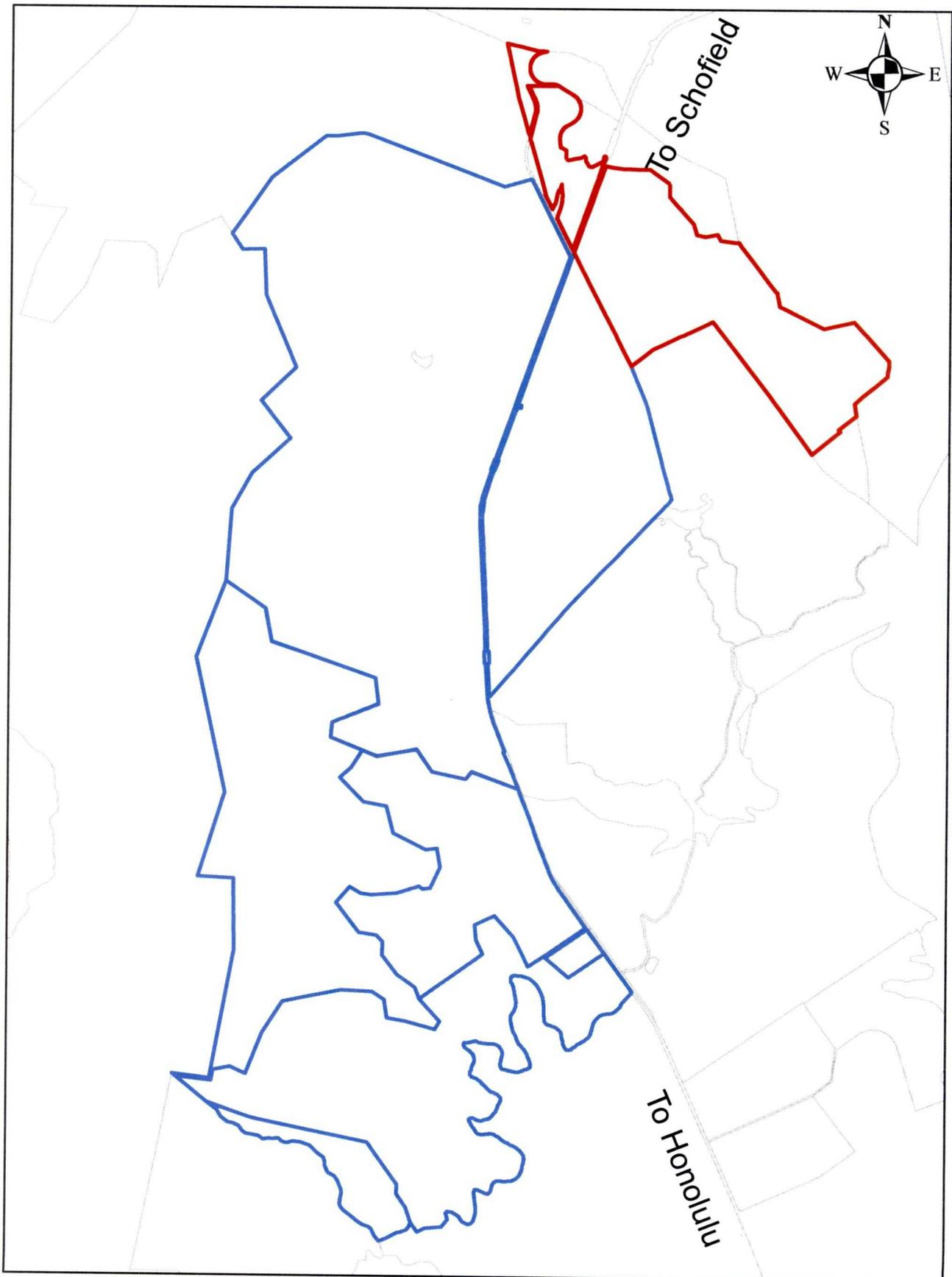
  
\_\_\_\_\_  
Laura H. Thielen, Chairperson *ma*

**PROPERTY LOCATION MAP**  
**First Division Tax Map Key 9-4-12, Parcels 1, 2, and 3**  
**General Lease No. S-4612**  
**Kunia, Oahu, Hawaii**



**EXHIBIT "A"**

# Water Allocation and Easement, Kunia



## Legend

 State of Hawaii

 James Campbell Company LLC

State of Hawaii - (1) 9-4-12:1,2 & 3

James Campbell Company - (1) 9-2-4:1,3,5 & 6  
(1) 9-2-5:1,2 & 4

# Exhibit B

LAND COURT

REGULAR SYSTEM

Return By Mail  Pick-Up

CARLSMITH BALL LLP  
318 Kapolei Building  
1001 Kamokila Boulevard  
Kapolei, Hawaii 96707  
Attention: Mark K. Murakami  
Telephone: 808.523.2561

TITLE OF DOCUMENT:

**AMENDED AND RESTATED DECLARATION OF COVENANTS REGARDING WATER  
ALLOCATION AND EASEMENTS**

PARTIES TO DOCUMENT:

**DECLARANT:**           **JAMES CAMPBELL COMPANY LLC,**  
a Delaware limited liability company  
James Campbell Building  
1001 Kamokila Boulevard  
Kapolei, Hawaii 96707

TAX MAP KEY(S):

(Oahu) 9-2-004: parcels 001, 003, 005, and 006  
(Oahu) 9-2-005: parcels 001, 002, and 004

**Certificate of Title Nos. 830,900; 830,905; 830,906; 830,907; 830,908; 830,909;  
830,910; 830,911; 830,912; 830,915; 830,917; 830,918; 892,319; 892,320; and  
892,761**

(This document consists of \_\_ pages.)

**AMENDED AND RESTATED DECLARATION OF COVENANTS REGARDING WATER  
ALLOCATION AND EASEMENTS  
TABLE OF CONTENTS**

**Page**

ARTICLE I	STATEMENT OF AGREEMENT.....	2
ARTICLE II	WATER ALLOCATION .....	3
2.1	Operation.....	3
2.2	Potential Water Sources .....	3
2.3	Licenses, Permits and Approvals.....	3
2.4	Water Allocation.....	4
2.5	Change in Allocation and Delivery .....	4
2.6	Decrease in Water Output .....	4
2.7	Redelivery of Water .....	4
2.8	No Right to Use or Control of Facilities or Water.....	5
2.9	Annexation of Land.....	5
2.10	Condemnation .....	5
2.11	Agricultural Use .....	5
ARTICLE III	EASEMENTS .....	6
3.1	Nonexclusive Easement .....	6
3.2	Access.....	6
3.3	Right to Relocate Easements.....	6
3.4	Designation of Land Court Easements.....	6
3.5	Right to Record.....	6
3.6	Exercise of Easements .....	7
3.7	Obstruction of Easement .....	7
ARTICLE IV	MAINTENANCE.....	7
4.1	Rights and Obligations.....	7
4.2	Standard of Performance.....	7
4.3	Limitation of Liability .....	8
ARTICLE V	OBLIGATION TO PAY COSTS.....	8
5.1	Operating Costs.....	8
5.2	Capital Recovery Costs .....	9
5.3	Annual Budgets .....	10
5.4	Estimated Payments.....	10
5.5	Gross Receipts Taxes.....	11

**AMENDED AND RESTATED DECLARATION OF COVENANTS REGARDING WATER  
ALLOCATION AND EASEMENTS  
TABLE OF CONTENTS  
(continued)**

	<b>Page</b>
5.6 Interest and Late Charges .....	11
5.7 Annual Reconciliations.....	11
5.8 Special Assessments.....	12
5.9 Recordkeeping .....	12
5.10 Right to Audit.....	12
<b>ARTICLE VI ENFORCEMENT .....</b>	<b>12</b>
6.1 Abatement and Suit .....	12
6.2 Shut Off of Water Delivery .....	13
6.3 Attorneys' Fees.....	13
6.4 Inspection .....	13
6.5 Lien for Unpaid Charges .....	13
6.6 Failure to Enforce Not a Waiver of Rights .....	14
<b>ARTICLE VII GENERAL .....</b>	<b>14</b>
7.1 Governing Law .....	14
7.2 Release and Indemnity .....	15
7.3 Constructive Notice and Acceptance .....	15
7.4 Declaration Runs with Land .....	15
7.5 Notice .....	15
7.6 Amendment .....	15
7.7 Voting Rights of Each Section.....	16
7.8 Assignment.....	16
7.9 Association's Role After the Substitution Date .....	16
7.10 Binding Effect .....	16
7.11 Withdrawal.....	16
7.12 Right to Terminate .....	17
7.13 Duration.....	17
7.14 Perpetuities.....	17
7.15 Severability.....	17
7.16 Captions .....	17

**AMENDED AND RESTATED DECLARATION OF COVENANTS REGARDING WATER  
ALLOCATION AND EASEMENTS  
TABLE OF CONTENTS  
(continued)**

**Page**

**EXHIBITS:**

**EXHIBIT A: PROPERTY DESCRIPTION**

**EXHIBIT B-1: MAP OF SECTIONS**

**EXHIBIT B-2: MAP OF WATER SYSTEM AND LOCATION OF  
DELIVERY POINTS (SECTIONS 6 & 8)**

**EXHIBIT C-1: CURRENT PERCENTAGE OF WATER ALLOCATION**

**EXHIBIT C-2: PERCENTAGE OF WATER ALLOCATION INCLUDING STATE OF  
HAWAII LAND**

**EXHIBIT D: MAP OF STATE OF HAWAII LAND**

**AMENDED AND RESTATED DECLARATION OF COVENANTS REGARDING WATER  
ALLOCATION AND EASEMENTS**

**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS REGARDING WATER ALLOCATION AND EASEMENTS** ("**Declaration**") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by **JAMES CAMPBELL COMPANY LLC**, a Delaware limited liability company, whose place of business and post office address is James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707 (the "**Declarant**").

**RECITALS**

**WHEREAS**, Declarant entered into that certain Declaration of Covenants Regarding Water Allocation and Easements dated December 13, 2007 (Agreement No. A02081500), filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3694441, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2007-219110 (the "**Original Declaration**"); and

**WHEREAS**, under paragraph 7.5 (Amendment) of the Original Declaration, so long as the Declarant owns any portion of the Property, the Declarant reserved unto itself, the unilateral right to amend the Original Declaration for any purpose until the Substitution Date; and

**WHEREAS**, as set forth in **Exhibit A**, Declarant continues to own substantially all of the Property, and Declarant represents that the Substitution Date has not yet occurred; and

**WHEREAS**, after receiving input from various sources, including from prospective buyers for portions of the Property, Declarant believes that certain modifications to the Original Declaration are appropriate to make implementation of the Original Declaration more effective towards the goals set forth in the Original Declaration; and

**NOW THEREFORE**, in consideration of the foregoing and in consideration of the covenants and agreements set forth below, Declarant does hereby amend and restate in its entirety, the Original Declaration as follows:

**BACKGROUND STATEMENT**

Declarant, as holder of rights under the Original Declaration, and as the owner of substantial portions of the real property described in **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**"), intends by recording this Declaration to establish a general plan of water allocation for the areas known as Kunia Village and the surrounding Kunia Lands. Substantially all of the Property was or is encumbered by that certain unrecorded Lease dated April 29, 1994 (Lease No. L00977200) between James Campbell Company LLC, a Delaware limited liability company, as successor Lessors, and Del Monte Fresh Produce (Hawaii), Inc., a Delaware corporation ("**Del Monte**"), as Lessee, as amended and restated by instrument dated January 5, 1995 (collectively the "**Lease**"), the term of which expires on December 31, 2008, subject to earlier termination pursuant to the terms thereof.

By imposing the mutually beneficial restrictions created by this Declaration, Declarant seeks to allocate water use for the benefit of all Property Owners (as such term is defined below). This Declaration provides a flexible and reasonable procedure for present and future

water allocation as Declarant deems appropriate and provides for the overall water administration, maintenance, and preservation. An integral part of the water allocation plan is the creation of the Kunia Water Association ("**Association**"), an incorporated association to be comprised of all Property Owners to administer and enforce this Declaration. Prior to providing any water in accordance with this Declaration, Declarant shall adopt articles of incorporation and bylaws for the Association in order to implement the provisions of this Declaration.

For purposes of this Declaration, the "**Substitution Date**" shall mean the earlier of (i) the date by which Declarant or any successor of Declarant pursuant to paragraph 7.8 (Assignment) below no longer owns any portion of the Property, or (ii) when Declarant voluntarily assigns all of its rights, powers, duties and obligations retained under this Declaration to the Association, as evidenced by a written instrument to that effect, executed by Declarant and the Association, and records the same in the Office of the Assistant Registrar of the Land Court of the State of Hawaii and in the Bureau of Conveyances of the State of Hawaii. After the Substitution Date, every reference to Declarant herein shall be deemed to mean and refer to the Association. To the extent Declarant will own any portion of the Property after the Substitution Date, Declarant shall be deemed a Property Owner bound by the same terms and conditions, and with the same rights and privileges as all other Property Owners hereunder. Notwithstanding the foregoing, if the Association is formed prior to the Substitution Date, the Declarant may, but shall not be obligated to, delegate, from time to time, some or all of the Declarant's rights and obligations to the Association, which delegation will be on such terms as the Declarant determines in its sole and absolute discretion, and which delegation may be revoked by the Declarant for any or no reason.

For purposes of this Declaration, "**Property Owner**" shall mean the person or persons, corporation or corporations, or other legal entities named as grantee in the last recorded deed to any portion of the Property, or the vendee of the Property on the last recorded agreement of sale or subagreement of sale, as the case may be, or the lessee of the Property on the last recorded lease or sublease, as the case may be, for a period exceeding five (5) years, unless the deed, agreement of sale or subagreement of sale or lease or sublease document provides otherwise.

## **ARTICLE I** **STATEMENT OF AGREEMENT**

Declarant hereby declares that all of the Property shall be held, sold, and conveyed subject to the covenants, conditions, and easements contained herein, which are made for the express benefit of: (i) Declarant, its successors and assigns, and (ii) the present and future Property Owners, the Association and its members. The covenants, conditions, and easements contained herein shall run with the title to the Property and shall inure to the benefit of Declarant, the Association and any other person who acquires any interest in all or any part of the Property.

In consideration of the mutual benefits and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant, for itself and on behalf of the future Property Owners and the Association, hereby covenants and agrees as set forth herein.

## **ARTICLE II**

### **WATER ALLOCATION**

2.1 **Operation.** Subject to any limitations or conditions precedent provided in this Declaration, Declarant (or the Association after the Substitution Date) in its sole discretion shall have the right to withdraw water from the Water Sources, as defined below, and allocate and deliver such water up to the delivery points ("**Delivery Points**") which will service the portions of land (each portion of land being defined as a "**Section**") within the Property by means of transmission and storage facilities and improvements (the "**Water Delivery System**"). Each Section is shown on the map attached as **Exhibit B-1** and incorporated herein by this reference. The Water Delivery System is shown on **Exhibit B-2** attached hereto and incorporated herein by this reference. The portions of the water system which begin from and include the Delivery Points and provide water to the areas solely within each Section shall be referred to herein as the "**Property Owner Distribution Systems**". As a general matter, all booster pump stations and water filtration stations will be part of the Property Owner Distribution Systems. In addition, all water meters and valves at each respective Delivery Point will be part of the Property Owner Distribution Systems, but will be operated and managed by the Declarant (or the Association after the Substitution Date) as if the same were part of the Water System. The initial Delivery Points for Section 6 and Section 8 are shown on **Exhibit B-2**.

2.2 **Potential Water Sources.** To Declarant's knowledge, the potential water sources available under this Declaration are Kunia Well No. 1 (State Well Nos. 2703-01 and 02), Kunia Well No. 3 (State Well No. 2803-05), Kunia Well No. 4 (State Well No. 2803-07), and the sewage treatment plant located in the Section known as the Kunia Village Area (as such Section is shown on **Exhibit B-1**) (collectively, the "**Potential Water Sources**").

2.3 **Licenses, Permits and Approvals.** Declarant's right (or the Association's right after the Substitution Date) to withdraw water from the Potential Water Sources and deliver water through the Water Delivery System to the respective Delivery Points is subject to Declarant and/or its agent or the Association obtaining and maintaining the right to all governmental licenses, permits and approvals necessary to withdraw water from the Potential Water Sources and deliver such water through the Water Delivery System to the respective Delivery Points. Del Monte currently owns the revocable permits for the use of water derived from the Potential Water Sources, and upon the expiration of the Lease, subject to the limitations below, Declarant will use commercially reasonable efforts to cause such revocable permits to be assigned to Declarant or its designee. If Del Monte currently holds permits or has other documented rights to (i) use the land underlying Kunia Well No. 3 (State Well No. 2803-05) for withdrawal of water; and/or (ii) to transmit water through pipelines under Kunia Road, Declarant will use commercially reasonable efforts to cause such permits or other documented rights to be assigned to Declarant or its designee; provided, however, that if Del Monte does not hold such permits or documented rights, Declarant shall have no duty or obligation to obtain the same from the applicable landowners or governmental authorities. As Declarant obtains such rights to the necessary licenses, permits and approvals, Declarant will annex each Potential Water Source to this Declaration which upon annexation shall be referred to herein as a "**Water Source**" or the "**Water Sources**" under this Declaration. If the sewer treatment plant located in the Section known as the Kunia Village Area becomes a Water Source, the Declarant (or the Association after the Substitution Date) hereby reserves the right to thereafter remove such Water Source from this Declaration at such time as the Declarant or the Association determines to be appropriate, in the Declarant's or in the Association's respective sole and absolute discretion. Upon the Substitution Date, Declarant will use commercially reasonable efforts to

assign or cause the assignment of all rights and interests under the licenses, revocable permits and approvals to the Association.

Declarant shall not annex Well No. 1 to this Declaration unless and until Del Monte (i) fulfills its obligations under the Consent Decree by and between the United States and Del Monte entered into by Del Monte on May 2, 2005, and (ii) has obtained all appropriate Certifications of Completion, as defined in said Consent Decree issued by the Environmental Protection Agency, as provided in said Consent Decree. Notwithstanding the foregoing, prior to annexing Well No. 1, Declarant (or the Association after the Substitution Date) in its sole discretion may accept treated water from Well No. 1 provided that Del Monte complies with the treatment standards for such water as set forth in the Del Monte Consent Decree, and Declarant (or the Association after the Substitution Date) may allocate such treated water to the Sections in accordance with the allocation provisions set forth in paragraph 2.4 (Water Allocation) below.

**2.4 Water Allocation.** The percentages shown on the attached **Exhibit C-1** represent the allocation of available water that will be delivered to the Delivery Points for each Section. In the event that Declarant exercises the right to annex the lands owned by the State of Hawaii pursuant to paragraph 2.9 (Annexation of Land) below, then the percentages of water allocation shall be as shown on the attached **Exhibit C-2**.

The exact location of the Delivery Points for the remainder of the Sections (other than Section 6 and Section 8) will be determined by mutual agreement between Declarant (or the Association after the Substitution Date) and the Property Owner(s) of the Section for which each Delivery Point services. The cost to construct the Delivery Point and the cost of the Property Owner Distribution System in a given Section will be the responsibility of the Property Owner(s) of the Section within which the Delivery Point is located. The cost to deliver water from the Water Sources to the Delivery Points, including maintenance, repair and replacement, of the Water Delivery System, shall be an Operating Cost, and a Capital Recovery Cost, paid by the Property Owner(s) of each Section in accordance with Article V (Obligation to Pay Costs).

**2.5 Change in Allocation and Delivery.** Any changes in the allocation of water or in the Delivery Points shall require the consent of Declarant (or the Association after the Substitution Date) and the Property Owner(s) of the affected Section(s). Any changes in the costs associated with such change in allocation or Delivery Points will be the responsibility of the Property Owner(s) of the Section who benefits from such changes. Pursuant to paragraph 7.11 (Withdrawal), if Declarant (or the Association after the Substitution Date) withdraws any Section from this Declaration, then the water allocated to the withdrawn Section shall be re-allocated pro rata among the remaining Sections without the consent of the Property Owner(s) of the remaining Sections, and the percentages in **Exhibit C-1 and Exhibit C-2, as applicable**, shall be adjusted accordingly. If Declarant (or the Association after the Substitution Date) instead determines in its sole discretion that the water for the withdrawn Section shall be re-allocated among the remaining Sections in a different manner, then such re-allocation shall require the consent of the Property Owner(s) of the affected Sections.

**2.6 Decrease in Water Output.** Notwithstanding the occurrence of a decrease in water output from the Water Sources, any available water shall be delivered in accordance with the percentages provided in paragraph 2.4 (Water Allocation) above.

**2.7 Redelivery of Water.** Other than Declarant (or the Association after the Substitution Date), a Property Owner shall have no right to redeliver or otherwise redistribute the water outside of the Property without the prior written consent of Declarant (or the

Association after the Substitution Date), which consent may be withheld by Declarant (or the Association after the Substitution Date) in its sole discretion for any reason.

2.8 No Right to Use or Control of Facilities or Water. Assessment or payment of a Property Owner's obligation shall not confer on the Property Owner or any other person or entity any right, privilege or duty to own, manage, control, maintain, or use the Water Sources or the Water Delivery System, nor otherwise claim or be entitled to any legal or equitable interest therein or in any allocation of water for any purpose. Nothing in these restrictions shall be construed as imposing any duty whatsoever on the part of Declarant (or the Association after the Substitution Date) or any other person or entity to provide water to the Property or to a Property Owner, or to construct, develop or maintain facilities, or to plan for same, now or at any future time.

2.9 Annexation of Land. James Campbell Company LLC, a Delaware limited liability company ("**JCCLLC**"), reserves the right in its sole discretion to annex the lands owned by the State of Hawaii, as shown on the map attached as **Exhibit D**, and to thereafter allocate water to the State of Hawaii based on the percentage provided in **Exhibit C-2**; provided, however, that no water shall be allocated to the State of Hawaii unless and until the State of Hawaii agrees to be bound by the terms and conditions of this Declaration. The right to annex the lands owned by the State of Hawaii shall be a right personal to JCCLLC and shall not be a right which will be assumed by the Association upon the Substitution Date unless such right is expressly assigned by JCCLLC.

2.10 Condemnation. In the event of condemnation of all or a portion of the Water Sources, the Water Easements (defined below), the Water Delivery System or the Property Owner Distribution Systems, this Declaration shall cease and be null and void as to such portions of the system condemned, and the amount of water to which each Section shall be entitled under this Declaration shall be proportionately reduced or increased. If such condemnation action concerns only the Water Sources, the Water Easements or the Water Delivery System or portions thereof, Declarant (or the Association after the Substitution Date) shall have the sole and exclusive right to defend such condemnation action and all of Declarant's costs and expenses (or the Association's costs and expenses after the Substitution Date) relating to such defense shall be paid from the condemnation award, up to the amount of the condemnation award that is attributable to the Water Sources, the Water Easements or the Water Delivery System. The term "condemnation" shall include a taking pursuant to a conveyance under threat of condemnation. The entire amount of the condemnation award that is attributable to the Water Sources, the Water Easements or the Water Delivery System shall be payable solely and exclusively to Declarant (or the Association after the Substitution Date).

2.11 Agricultural Use. The Property Owners acknowledge and agree that the water to be allocated from the Water Sources and delivered to each Delivery Point under this Declaration is for agricultural use only, and in no event shall Declarant (or the Association after the Substitution Date) be responsible for the delivery of potable water or compliance with the Safe Drinking Water Act, as the same may be amended from time to time, or any similar federal, Hawaii state and local laws and ordinances, and regulations now or hereafter adopted. Nothing herein shall be deemed or construed to prohibit: (a) the Property Owner(s) in the Section known as Kunia Village Area from continuing to treat and use such water for domestic use; or (b) the Property Owners in the Sections other than the Kunia Village Area from using the water for potable or domestic use in their Sections, provided that they obtain the required licenses, permits and approvals necessary for such use.

### **ARTICLE III EASEMENTS**

3.1 **Nonexclusive Easement.** Declarant hereby reserves to itself and its successors and assigns, and grants to the Property Owners, a blanket, perpetual, nonexclusive easement over, under, and across the Property solely for water source, transmission and storage purposes in order to allocate and deliver water to the Property as provided in this Declaration ("**Water Easements**"), and for no other purposes. The location of the Water Sources, the Water Easements and the Water Delivery System, including also easements for access to and maintenance of the water meters and valves at each respective Delivery Point that are part of the Property Owner Distribution Systems, but that are operated and managed by the Declarant (or the Association after the Substitution Date) as if the same were part of the Water System (collectively the "**Easement Areas**") shall be mutually agreed upon by Declarant (or the Association after the Substitution Date) and the Property Owner(s) of the land upon which such easement(s) is to be located, but are generally located and shown on **Exhibit B-2**. To the extent that the Delivery Point for Section 6 is at its boundary, as shown on **Exhibit B-2**, there is no blanket easement within Section 6, and there are no Easement Areas within Section 6.

3.2 **Access.** Declarant hereby reserves to itself, its agents, successors and assigns, a blanket, perpetual, non-exclusive easement over, under, and across the Property for the purpose of access, ingress and egress, operation, maintenance and repair to the extent reasonably necessary for Declarant (or the Association after the Substitution Date) or its agents and assigns to perform its responsibilities with respect to the Water Sources, the Water Easements and the Water Delivery System. The location of such easements shall be mutually agreed upon by Declarant (or the Association after the Substitution Date) and the Property Owner(s) of the land on which such easement(s) is to be located.

3.3 **Right to Relocate Easements.** The Property Owner(s) shall have the right from time to time to realign or relocate the Easement Areas, or portions thereof as may be located on such Property Owner(s) land, provided that (a) such Property Owner(s) shall be solely responsible for paying the cost of realigning or relocating the Easement Areas (including the cost of realigning or relocating utilities, other infrastructure or improvements within the Easement Areas); (b) such Easement Areas shall be equivalent or better in quality and size to the Easement Areas being replaced; and (c) such realigning or relocating of the Easement Areas shall be completed in a manner that will not unreasonably interfere with or disturb the use and enjoyment of the Water Delivery System by the other Property Owners. Declarant (or the Association after the Substitution Date) shall not have any right to relocate any Easement Area without the prior written consent of each affected Property Owner.

3.4 **Designation of Land Court Easements.** Declarant (or the Association after the Substitution Date) and each Property Owner shall have the right to seek subdivision approval for the Easement Areas from the Department of Planning and Permitting of the City and County of Honolulu, and designation of the Easement Areas in the Office of the Assistant Registrar of the Land Court of the State of Hawaii without the joinder or consent of the other Property Owners. The party who seeks designation of the Easement Areas shall be responsible for the cost to obtain such governmental approvals to create such Land Court designated easement.

3.5 **Right to Record.** Declarant (or the Association after the Substitution Date) also reserves for itself the right and power to delineate, grant and record with the Assistant Registrar of the Land Court of the State of Hawaii such specific easements as may be necessary, in

Declarant's or the Association's respective sole discretion, in connection with the operation and maintenance of the Water Sources, the Water Easements and the Water Delivery System without the joinder or consent of the Property Owners.

3.6 Exercise of Easements. The Water Easements shall be used in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement.

3.7 Obstruction of Easement. No person shall construct, install, or maintain any obstruction of the Water Sources, the Water Easements or the Water Delivery System, or otherwise hinder Declarant's ability (or the Association's ability after the Substitution Date) to exercise the easement rights created hereby. Declarant (or the Association after the Substitution Date) shall have the right to remove any such obstruction placed in violation of this paragraph, without notice and without liability to the person(s) who constructed said obstruction or hindered such use.

#### **ARTICLE IV MAINTENANCE**

4.1 Rights and Obligations. Declarant (or the Association after the Substitution Date) shall have the right and the obligation to acquire, operate, maintain, repair, replace, and administer the Water Sources, Water Easements and Water Delivery System for which each Property Owner agrees to contribute to the cost of such maintenance as set forth in Article V (Obligation to Pay Costs) below. Each Property Owner acknowledges and agrees that Declarant (or the Association after the Substitution Date) shall have the right to engage the services of an independent contractor to acquire, operate, maintain, repair, replace, and administer the Water Sources, the Water Easements and the Water Delivery System and that the cost of such agreement shall be included in the Operating Costs to be paid by the Property Owners as set forth in Article V (Obligation to Pay Costs) below. The independent contractor shall hold all contracting and other licenses and permits required by law for the performance of such obligations and shall at all times during its engagement maintain liability insurance covering claims for bodily injury and property damage with a combined single limit of not less than \$1,000,000 naming the Property Owners and Declarant (or the Association after the Substitution Date) as additional insureds. The Property Owners further acknowledge and agree that upon Declarant's or the Association's engagement of an independent contractor that meets the requirements set forth above, and for so long as such independent contractor is engaged to do and does perform the obligations of Declarant or of the Association hereunder, the obligations of Declarant or the Association, each as applicable, to operate, maintain, repair and administer the Water Sources, the Water Easements and the Water Delivery System shall be deemed satisfied and Declarant and the Association shall have no further obligation or liability with respect to the same. In the event that the independent contractor ceases to perform such obligations, then Declarant or the Association, as the case may be, shall assume the performance of such obligations or engage the services of another independent contractor to perform such obligations. The Property Owner(s) of each Section shall have the obligation to operate, maintain, repair and administer the Property Owner Distribution System for their respective Sections.

4.2 Standard of Performance. Declarant (or the Association after the Substitution Date) shall operate, maintain, repair, replace, and administer the Water Sources, the Water

Easements and the Water Delivery System in good operating condition including, without limitation, repairing and replacing improvements, maintaining, repairing, and replacing equipment and fixtures, as well as such other duties as may be necessary or appropriate. The Property Owner(s) of each Section shall operate, maintain, repair, replace, and administer the Property Owner Distribution System located in their Section in good operating condition including, without limitation, repairing and replacing improvements, maintaining, repairing, and replacing equipment and fixtures, as well as such other duties as may be necessary or appropriate. Maintenance, as such term is used in this Declaration, shall mean maintaining, improving, repairing, replacing, insuring, paying taxes and other incidental charges incurred, and taking any and all steps to keep the systems in good operating condition including, without limitation, repairing and replacing improvements; maintaining, repairing, and replacing equipment and fixtures, as well as such other duties as may be necessary or appropriate. Declarant (or the Association after the Substitution Date) shall also be responsible for preparing and timely filing any and all monthly reports regarding water usage with the appropriate governmental entity.

4.3 Limitation of Liability. Notwithstanding anything contained herein to the contrary, in fulfilling its responsibilities hereunder Declarant and the Association shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own, unless, and only to the extent that, it has been grossly negligent in the performance of its maintenance responsibilities.

## **ARTICLE V** **OBLIGATION TO PAY COSTS**

### 5.1 Operating Costs.

(a) Obligation to Pay Operating Costs. All Property Owners shall be obligated to pay for the costs to operate, maintain, repair, replace, and administer the Water Sources, Water Easements and the Water Delivery System used to deliver water to each Delivery Point (the "**Operating Costs**"). The Operating Costs will include, but shall not be limited to, all costs and expenses incurred by Declarant (or the Association after the Substitution Date), the independent contractor engaged pursuant to paragraph 4.1 (Rights and Obligations) above for operating, maintaining, repairing, replacing, and administering ditches, metering devices, pumps, transmission lines, appurtenances and other improvements and facilities for the production and/or delivery of water from the Water Sources, including without limitation, wages, salaries and benefits, security, insurance, materials and supplies, professional services, taxes, fees and permits, and energy, utility and communication charges, rates and assessments. The Operating Costs shall consist of: (i) that portion of Operating Costs that fluctuate depending upon the amount of water delivered from the Water Sources, through the Water Easements and the Water Delivery System, by way of example and not in limitation thereof, electricity charges, fuel charges, water charges, if any, payable to third parties (collectively "**Variable Operating Costs**"), and (ii) that portion of Operating Costs that do not fluctuate depending upon the amount of water delivered from the Water Sources, through the Water Easements and the Water Delivery System, by way of example and not in limitation thereof, the cost of the independent contractor engaged pursuant to paragraph 4.1 (Rights and Obligations), lease or other use or occupancy costs associated with use of the land underlying Kunia Well No. 3 (State Well No. 2803-05), wages, salaries and benefits, security, insurance, professional services, taxes, fees and permits, communication charges, and rates and

assessments (collectively "**Fixed Operating Costs**"). The determination of whether an Operating Cost is a Variable Operating Cost or a Fixed Operating Cost shall be made by the Declarant (or by the Association after the Substitution Date), in its sole and absolute discretion. The obligation to pay the Operating Costs shall be mandatory. No diminution or abatement of a Section's share of the Operating Costs or setoff shall be claimed or allowed by reason of any alleged failure of Declarant or the Association to perform its maintenance or operation responsibilities. Notwithstanding anything in this Declaration to the contrary, Operating Costs shall not include any costs or expenses incurred or to be incurred by Del Monte that are connected with or in any way related to the environmental cleanup and purification of contaminated groundwater and other environmental contamination.

(b) **Calculation of Share of Variable Operating Costs.** The Variable Operating Costs shall be charged to the Property Owners of each Section based on the actual metered amount of water delivered to the respective Property Owner's Delivery Point(s). Each Section's share of the Variable Operating Costs shall be computed by multiplying the total Variable Operating Costs for the applicable calendar year by the ratio of: (x) the actual metered water delivered to the applicable Section's Delivery Point(s) in that calendar year, to (y) the total actual metered water delivered to all Sections' respective Delivery Point(s) for that calendar year.

(c) **Calculation of Share of Fixed Operating Costs.** The Fixed Operating Costs shall be charged to the Property Owners of each Section based on the percentages provided in paragraph 2.4 (Water Allocation). Each Section's share of the Fixed Operating Costs shall be computed by multiplying the total Fixed Operating Costs for the applicable calendar year by the percentages provided in paragraph 2.4 (Water Allocation).

## 5.2 **Capital Recovery Costs.**

(a) **Obligation to Capital Recovery Costs.** All Property Owners shall be obligated to pay for capital expenditures incurred or reasonably anticipated to be incurred to keep the Water Sources, Water Easements and the Water Delivery System in good and working order (the "**Capital Recovery Costs**"). The Capital Recover Costs will include capital expenditures made by the Declarant (or by the Association after the Substitution Date) to construct, replace, upgrade, or retrofit, the common metering devices, pumps, transmission lines, reservoirs, appurtenants and other improvements and facilities for the production and/or delivery of water from the Water Sources to the Delivery Points. After the Substitution Date, the Association may include within Capital Recovery Costs, one or more capital reserve accounts established to accumulate capital funds for future reasonably anticipated capital expenditures. The determination of whether an expenditure is a "capital expenditure" or an "expense" shall be made by the Declarant (or by the Association after the Substitution Date) using accounting principles generally or customarily used by operators of agriculture water delivery systems in the State of Hawaii. The obligation to pay the Capital Recovery Costs shall be mandatory. No diminution or abatement of a Section's share of the Capital Recovery Costs or setoff shall be claimed or allowed by reason of any alleged failure of Declarant or the Association to perform its maintenance or operation responsibilities.

(b) **Calculation of Capital Recovery Costs.** The Capital Recovery Costs shall be charged to the Property Owners of each Section based on the percentages provided in paragraph 2.4 (Water Allocation). Each Section's share of the Capital Recovery Costs shall be computed by multiplying the total Capital Recovery Costs for the applicable calendar year by the percentages provided in paragraph 2.4 (Water Allocation).

5.3 Annual Budgets. By no later than November 1 of each calendar year during the term of this Declaration, each Property Owner shall provide the Declarant (or the Association after the Substitution Date) with that Property Owner's anticipated annual water usage for the following calendar year. Based partly upon such estimates and historical or other information that the Declarant (or the Association after the Substitution Date) has at that time, the Declarant (or the Association after the Substitution Date) shall prepare an annual budget of the anticipated Variable Operating Costs for the following calendar year (the "Variable Operating Costs Annual Budget"), the anticipated Fixed Operating Costs for the following calendar year (the "Fixed Operating Costs Annual Budget"), and the anticipated Capital Recovery Costs for the following calendar year (the "Capital Recovery Costs Annual Budget") (collectively, the Variable Operating Costs Annual Budget, the Fixed Operating Costs Annual Budget, and the Capital Recovery Costs Annual Budget may sometimes be referred to as the "Annual Budgets"). Once prepared, and no later than December 1 of each calendar year during the term of this Declaration, copies of the Annual Budgets shall be provided to the Property Owners for the following calendar year. The Variable Operating Costs Annual Budget shall include, at a minimum, (i) the estimated Variable Operating Costs for the Water Sources, Water Easements, and Water Delivery System for the applicable calendar year, expressed both as a cumulative total, and as a price per 1,000 gallons of water delivered, and (ii) each Section's estimated share of such Variable Operating Costs, based upon historical usage, or anticipated usage for the applicable calendar year. The Fixed Operating Costs Annual Budget shall include, at a minimum, (i) the estimated Fixed Operating Costs for the Water Sources, Water Easements, and Water Delivery System for the applicable calendar year, and (ii) each Section's estimated share of such Fixed Operating Costs. The Capital Recover Costs Annual Budget shall include, at a minimum, (i) the estimated Capital Recovery Costs for the Water Sources, Water Easements, and Water Delivery System for the applicable calendar year, and (ii) each Section's estimated share of such Capital Recovery Costs. If the Declarant (or the Association after the Substitution Date) does not provide one or more of the Annual Budgets to the Property Owners by December 1, then until the applicable Annual Budget(s) is provided to the Property Owners, Variable Operating Costs shall continue to be assessed at the then current price per 1,000 gallons of water delivered, the Fixed Operating Costs, and the Capital Recovery Costs, shall continue to be assessed at the then current monthly rate until the applicable Annual Budget is prepared and provided to the Property Owners.

5.4 Estimated Payments.

(a) Variable Operating Costs.

(1) Monthly or Other Periodic Payments. From time to time, using the Declarant's best estimates, or the Association's best estimates, the Declarant or the Association, each as applicable, shall determine the then current estimated Variable Operating Costs for the Water System expressed as a price per 1,000 gallons of water delivered. Using such estimated price per 1,000 gallons, from time to time, or on a monthly or other periodic basis, the Declarant (or the Association after the Substitution Date) shall determine the amount of water delivered to each Section's Delivery Points for the period for which such determination is made, and invoice the applicable Property Owner for such water usage. The Property Owner(s) of each Section shall pay that Section's share of estimated Variable Operating Costs to Declarant (or to the Association after the Substitution Date) in cash in arrears within thirty (30) days of the date of receipt of an invoice for such estimated Variable Operating Costs.

(2) Annual Reconciliation. Each Section's share of the Variable Operating Costs for a calendar year shall be computed by multiplying the total Variable

Operating Costs for the Water System for the calendar year by the ratio of: (x) the actual metered water delivered to the applicable Section's Delivery Point(s) in that calendar year, to (y) the total actual metered water delivered to all Sections' respective Delivery Point(s) for that calendar year.

(b) Fixed Operating Costs. The Property Owner(s) of each Section shall pay that Section's share of estimated Fixed Operating Costs to Declarant (or to the Association after the Substitution Date) in cash monthly in advance on the first day of each month.

(c) Capital Recovery Costs. The Property Owner(s) of each Section shall pay that Section's share of Capital Recovery Costs to Declarant (or to the Association after the Substitution Date) in cash monthly in advance on the first day of each month.

5.5 Gross Receipts Taxes. In addition, the Property Owner(s) of each Section shall, with each payment of the Operating Costs, Capital Recovery Costs, or any other amount due to Declarant (or the Association after the Substitution Date) under this Declaration, reimburse Declarant (or the Association after the Substitution Date) for the applicable State of Hawaii general excise tax or any other similar tax on each such payment plus the tax thereon. It is the intent of Declarant (or the Association after the Substitution Date) and the Property Owners to insure that all amounts paid to Declarant (or the Association after the Substitution Date) by the Property Owners will be received by Declarant (or the Association after the Substitution Date) without diminution by any tax, assessment, charge or levy of any nature whatsoever, except any net income taxes of Declarant (or the Association after the Substitution Date), and the terms and conditions of this Declaration shall be liberally construed to effect such purpose.

5.6 Interest and Late Charges. Any amounts due for a Section and not paid within ten (10) days of when due will bear interest at the rate of one percent (1%) per month until paid. The Property Owner(s) of a Section shall also pay to Declarant (or the Association after the Substitution Date) a late charge of the five percent (5%) of any amount not paid within ten (10) days of when due and a fee for dishonored checks equal to five percent (5%) of the amount of any such check.

5.7 Annual Reconciliations. Following the end of each calendar year during the term of this Declaration, Declarant (or the Association after the Substitution Date) shall provide each Property Owner with a statement (an "**Annual Statement**") of the actual amount of the Variable Operating Costs, the actual amount of the Fixed Operating Costs, and the actual amount of the Capital Recovery Costs for the applicable calendar year, which statement must also include that Property Owner's share of such costs, as determined by the methodology set forth in paragraph 5.1(b) (Calculation of Share of Variable Operating Costs), paragraph 5.1(c) (Calculation of Share of Fixed Operating Costs), and paragraph 5.2(b) (Calculation of Share of Capital Recovery Costs). The Declarant (or the Association after the Substitution Date) will endeavor to complete each Annual Statement by March 31<sup>st</sup> following the end of each calendar year. If a Property Owner's payments of estimated Variable Operating Costs, estimated Fixed Operating Costs and estimated Capital Recovery Costs during the applicable calendar year was less than as shown in the Annual Statement, then the Property Owner shall pay any deficiency within thirty (30) days of receipt of the Annual Statement. If a Property Owner's payments of estimated Variable Operating Costs, estimated Fixed Operating Costs, and estimated Capital Recovery Costs during the applicable calendar year was more than as shown in the Annual Statement, then the Declarant (or the Association after the Substitution Date) shall provide that Property Owner with a credit against future payments of Variable Operating Costs, Fixed Operating Costs, or Capital Recovery Costs, each as applicable. In its discretion, the Declarant

(or the Association after the Substitution Date) may offset an overpayment of costs against an underpayment of other costs such that, for example, if a Property Owner overpays Variable Operating Costs for a given calendar year, but underpays Fixed Operating Costs for that calendar year, the overpayment of Variable Operating Costs can be applied towards the underpayment of Fixed Operating Costs for that calendar year.

5.8 Special Assessments. The Declarant (or the Association after the Substitution Date) may levy a special assessment (a "**Special Assessment**") at any time for the following reasons: (a) against a Property Owner, when, as a result of the Property Owner's act or failure or refusal to act in accordance with this Declaration, the Declarant (or the Association after the Substitution Date) incurs costs or expenses, or (b) against all Property Owners as a result of any Property Owner's failure to timely pay its estimated Operating Costs or estimated Capital Recovery Costs, respectively, and the Declarant (or the Association after the Substitution Date) is unable to timely recover such delinquency, and therefore the Declarant (or the Association after the Substitution Date) faces or may face a cash shortfall, or the Association is or may be unable to maintain an adequate capital reserve account(s), or (c) against all Property Owners where, due to unanticipated circumstances, an Annual Budget(s) is exceeded, or (d) for any other reason determined by the Declarant (or the Association after the Substitution Date) pursuant to and in advancement of its rights, obligations and duties under this Declaration or applicable laws. All Special Assessments shall be paid within thirty (30) days of the date of receipt of an invoice for such Special Assessment unless a different date for payment is set forth in such invoice.

5.9 Recordkeeping. Declarant (or the Association after the Substitution Date) shall maintain or cause to be maintained full and accurate books of account with respect to Operating Costs, Capital Recovery Costs, and any other matter covered by this Declaration.

5.10 Right to Audit. At any time within one (1) year after the receipt of an Annual Statement by the Property Owner(s) of each Section, but no more than once per calendar year, a Property Owner may cause an audit of Declarant's or of the Association's books and records related to the Operating Costs, the Capital Recovery Costs, or both, set forth in such Annual Statement. The audit will be at the requesting Property Owner's sole cost and expense and may be performed by an accountant selected by the Property Owner. Such accountant shall be permitted to inspect all books and records of Declarant or of the Association necessary to determine the amount of the Operating Costs, Capital Recovery Costs, or both. If the audit discloses that Declarant or the Association has overstated a Section's share of Operating Costs, Capital Recovery Costs, or both, then Declarant or the Association, each as applicable, shall immediately refund the amount overpaid to the Property Owner(s) of such Section. In addition, if any such audit discloses that Declarant or the Association has overstated the Section's share of Operating Costs, Capital Recovery Costs, or both, by more than two percent (2%), Declarant or the Association, each as applicable, shall immediately pay the costs of any such audit.

## **ARTICLE VI ENFORCEMENT**

6.1 Abatement and Suit. Without limitation of any rights herein specifically provided, violation or breach of any restriction herein contained shall give to Declarant (or the Association after the Substitution Date) and the Property Owner(s) the right but not the obligation to prosecute a proceeding at law or in equity against the person or persons who have violated or

are attempting to violate any of these restrictions to enjoin or prevent them from doing so, to cause said violation to be remedied or to recover damages for said violation.

6.2 Shut Off of Water Delivery. In addition to any other right available at law or in equity, if a Property Owner fails to timely make any monetary payment to Declarant (or to the Association after the Substitution Date) required to be made under this Declaration, including by way of example and not in limitation thereof, estimated Operating Costs payments, estimated Capital Recovery Costs payments, any payment due after an annual reconciliation under paragraph 5.7 (Annual Reconciliations), or any Special Assessments, without the necessity of any additional written or verbal notice, the Declarant or the Association, as applicable, shall have the unilateral right to shut off the water being transmitted through the Water System to the Property Owner's Delivery Point(s) until such payment(s) is/are made.

6.3 Attorneys' Fees. In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provision hereof, the losing party or parties shall pay the attorneys' fees of the prevailing party or parties, in such amount as may be fixed by the Court in such proceeding. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

6.4 Inspection. Declarant (or the Association after the Substitution Date) may from time to time at any reasonable hour or hours, with at least twenty-four (24) hours prior notice to the affected Property Owner, enter and inspect the Property subject to these restrictions to ascertain compliance therewith.

6.5 Lien for Unpaid Charges.

(a) If the Property Owner(s) of a Section fails to pay any portion of the Section's obligation to Declarant or to the Association (or to whom Declarant or the Association directs such payment to be made), then Declarant or the Association may pay such monies for the account of the Property Owner(s) of such Section, and all expenses of Declarant or of the Association so incurred on account of such non-payment shall be payable by the Property Owner(s) of the Section to Declarant or to the Association, each as applicable, together with interest and late fees as provided in paragraph 5.6 (Interest and Late Charges) above, accruing from the date of expenditure by Declarant or by the Association until paid in full. The amount of the Section's obligation, together with all expenses of Declarant or of the Association incurred as set forth immediately above, as well as all other sums hereunder required to be paid by the Property Owner(s) of the Section to Declarant or to the Association and not paid when due, including without limitation attorneys' fees and all costs of collection shall constitute and be a lien in favor of Declarant or the Association on the Property upon filing of a notice of lien in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

(b) Such lien shall be subject and subordinate to the lien of any mortgage upon the Property filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii prior to the filing of Declarant's or the Association's notice of lien, and the sale or transfer of any lot in foreclosure of any such mortgage, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, or by the transfer or conveyance to the mortgagee by deed in lieu of foreclosure, shall extinguish the lien as to the payments of any assessment which became due prior to such sale, transfer or conveyance; provided, however, that no such sale, transfer or conveyance shall relieve the Property Owner of the Property or the purchaser or transferee thereof with regard to assessments thereafter becoming due. Declarant or the Association, as applicable, shall record such notice of lien within one hundred eighty (180) days

following the occurrence of such default and shall commence proceedings to enforce such lien within six (6) months following such recordation. Such lien may be foreclosed by suit in the manner of foreclosure of a mortgage of real property, and Declarant or the Association or any other prospective purchaser thereof shall have the power to bid on the Property at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. A suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of any such assessment obligation.

(c) Upon request, Declarant or the Association shall issue a certificate stating the amount of indebtedness secured by a lien upon the Property. Such certificate shall be conclusively binding upon Declarant or the Association, as applicable, and the Property Owner(s) of a Section in favor of all persons who rely thereon in good faith as to the amount of such indebtedness existing on the date of the certificate. Property Owners may request that such a certificate be issued and may obtain a copy thereof for a reasonable fee charged by Declarant or the Association.

6.6 Failure to Enforce Not a Waiver of Rights. Each remedy provided for in this Declaration is cumulative and non-exclusive. The failure of Declarant or the Association in any case to enforce any of the provisions of any limitation, covenant, condition or restriction herein contained shall in no event be deemed to be a waiver of the right to enforce any such provision or to do so thereafter, nor of the right to enforce any other provisions of this Declaration.

## **ARTICLE VII**

### **GENERAL**

7.1 Governing Law. This Declaration shall be governed and construed in accordance with the laws of the State of Hawaii, including the Water Code of the State of Hawaii and the rules and regulations of the Commission on Water Resource Management of the State of Hawaii ("**CWRM**") promulgated thereunder and, to the extent determined applicable, the statutes governing public utilities and the rules and the regulations of the Public Utilities Commission of the State of Hawaii ("**PUC**"), the Board of Water Supply of the City and County of Honolulu ("**BWS**"), the Department of Health of the State of Hawaii ("**DOH**") and other governmental authorities. Declarant excepts and reserves for itself, its successors and assigns, from this Declaration, the sole and exclusive right and power, with respect to all matters pertaining to water use, consumption, and development on or affecting the Water Sources, the Water Easements or the Water Delivery System, (a) to apply for, receive, hold and own permits and certificates, in its own name alone, issued by or under the authority of CWRM, or by or under the authority of any other governmental agency or body now or hereafter constituted with jurisdiction over water sources or development thereof ("**governmental authority**"); (b) to register wells or stream diversion works, if any, and facilities therefor, and to file any reports with CWRM or any governmental authority in connection therewith; (c) to make any necessary declarations and reports of water use as may be required by CWRM or governmental authority; and (d) to petition, apply to and appear before CWRM or other governmental authority in its name alone or on behalf of itself and a Property Owner. A Property Owner shall not take any of the foregoing actions with respect to the Water Sources, the Water Easements or the Water Delivery System unless and to the extent specifically authorized to do so in writing by Declarant. If requested by Declarant, a Property Owner shall join in any report, declaration, registration, petition, application to or appearance before CWRM or other governmental authority. Upon the

termination of this Declaration for any reason, and upon the written request by Declarant, the Property Owner shall apply, or join in any application made by Declarant to CWRM or governmental authority for the transfer of any permit involving the Water Sources in the Property Owner's name or in which the Property Owner may have an interest, to Declarant or Declarant's nominee, without payment of any consideration to the Property Owner therefor. In the event that the PUC, the BWS or any other governmental authority shall be determined to have jurisdiction over the Water Sources, the Water Easements and/or this Declaration, this Declaration shall be further subject to any terms and conditions imposed by the PUC, the BWS or such other governmental authority, and Declarant may, if any of such conditions are not acceptable to Declarant, terminate this Declaration upon thirty (30) days' prior written notice to the Property Owners.

7.2 Release and Indemnity. Declarant makes no warranty or representation, express or implied, as to (a) the quality of the water, including its chemical or turbidity content, (b) its fitness for agricultural use or of any other kind, (c) the capacity of the Water Sources and the quantity of water output, (d) ownership of the water, (e) permits to use the water, or (f) the availability of water. Declarant and the Association will not be responsible for any loss, cost, damage, liability or claim, including attorneys' fees, for injury or death to persons or property arising out of or in connection with the use of the water delivered to the Property Owners. Each Property Owner indemnifies and holds Declarant and the Association harmless from and against any such loss, cost, damage, liability or claim arising therefrom. Declarant and the Association shall not be required to transmit water to a Property Owner for any period of time which Declarant or the Association is prevented from doing so as a result of equipment failure, government action, labor unrest, acts of God or other reasons beyond Declarant's or the Association's control.

7.3 Constructive Notice and Acceptance. Every or all person or persons, corporation or corporations, or other legal entity or entities who now or hereafter own or acquire any right, title or interest in or to any portion of the Property are and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person or persons, corporation or corporations, or other legal entity or entities acquired an interest in the Property.

7.4 Declaration Runs with Land. All provisions contained herein shall burden each and every part of the parcel of the Property; and shall operate as covenants running with the land, and shall apply to and bind the heirs, devisees, personal representatives, assignees and successors in interest of the Property Owners, and all lessees and sublessees or vendees of all or any portion of the Property, and shall be enforceable as such in accordance with the terms and provisions of this Declaration; provided, however, the right to enforce this Declaration is reserved to Declarant (or the Association after the Substitution Date), its successors and assigns, and to no one else.

7.5 Notice. Any notice provided for in this Declaration shall be served personally or shall be mailed by registered or certified mail to Declarant, the representative of a Section or the Association, as applicable. All such notices shall, for all purposes, be deemed delivered (a) upon personal delivery to the party or address specified above or (b) on the third day after mailing when mailed by registered or certified mail, postage prepaid, and properly addressed.

7.6 Amendment. In addition to specific amendment rights granted elsewhere in this Declaration, so long as Declarant owns any portion of the Property, Declarant unilaterally may amend this Declaration for any purpose until the Substitution Date. Thereafter, this Declaration

may be amended upon the written consent of the Property Owners of the Sections holding 75% of the water allocations set forth in paragraph 2.4 (Water Allocation) above; provided, however that so long as Declarant owns any portion of the Property, any amendment to this Declaration shall require Declarant's consent, which consent may be withheld by Declarant in its sole discretion. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. If an individual or entity consents to any amendment to this Declaration, it will be conclusively presumed that such individual or entity has the authority so to consent, and no contrary provision in any mortgage or contract between such individual or entity and a third party will affect the validity of such amendment. No amendment may remove, revoke, or modify any right or privilege of Declarant without Declarant's written consent or that of the assignee of such right or privilege, which consent may be withheld by Declarant its sole discretion.

7.7 Voting Rights of Each Section. The Property Owner(s) in each Section shall be entitled to a vote in the Association equal to the percentage of water allocation for that Section (i.e., if a Section has a water allocation of 25%, then the Property Owner(s) of that Section shall have a 25% voting interest in the Association). If there is more than one Property Owner in a Section, then the percentage vote allocated to that Section may be cast only in accordance with the agreement of a majority in interest of the Property Owners of that Section.

7.8 Assignment. The Property Owners acknowledge and agree that JCCLLC may assign its rights as Declarant under this Declaration to an affiliate without the consent of the Property Owners, and will assign its rights as Declarant to the Association on the Substitution Date, as more fully described above. Upon any such assignment to any such affiliate, or to the Association, the affiliate or the Association, each as applicable, must assume all of JCCLLC's obligations under this Declaration, and thereafter JCCLLC shall have no further liability under this Declaration.

7.9 Association's Role After the Substitution Date. Except for the rights provided in paragraph 2.9 (Annexation of Land) above, all rights and duties retained by Declarant under this Declaration shall pass to and be assumed by the Association on the Substitution Date.

7.10 Binding Effect. This Declaration and all of the terms, covenants and conditions hereof shall extend to the benefit of and be binding upon the respective successors and assigns of Declarant, the Association and the Property Owners.

7.11 Withdrawal. Declarant (or the Association after the Substitution Date) reserves, in its sole discretion, the right from time to time to withdraw from this Declaration a portion of the Property by recording with the Assistant Registrar of the Land Court of the State of Hawaii an amendment to this Declaration noting the withdrawal of such Property. An amendment recorded pursuant to this paragraph shall not require the consent of any person except the Property Owner(s) of such Property, if other than Declarant (or the Association after the Substitution Date). Upon the recordation of the amendment, such property shall be withdrawn from the Property, and shall be free and clear of the encumbrance of this Declaration and any and all obligations that may arise hereunder; provided, however, that Declarant (or the Association after the Substitution Date) shall not have the right to allocate or deliver any water from the Water Sources to such withdrawn property, and that the Water Sources, Water

Easements and Water Delivery System shall remain the property of Declarant or the Association.

7.12 Right to Terminate. Notwithstanding any other term or provision in this Declaration, this Declaration may be terminated unilaterally by Declarant (or the Association after the Substitution Date) if Declarant (or the Association after the Substitution Date) is unable to obtain and maintain the rights to all governmental licenses, permits and approvals necessary to withdraw water from the Water Sources, including the revocable permits currently owned by Del Monte for use of the Water Sources, pursuant to paragraph 2.3 (Licenses, Permits and Approvals) above. The termination of this Declaration shall be effective upon the recordation of a proper instrument with the Assistant Registrar of the Land Court of the State of Hawaii.

7.13 Duration. Unless terminated as provided above, this Declaration shall have perpetual duration. If Hawaii law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years.

7.14 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

7.15 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

7.16 Captions. The captions of each Article and paragraph hereof, as to the contents of each Article and paragraph, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or paragraph to which they refer.

[This space intentionally left blank; signature(s) on following page(s)]

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

**DECLARANT:**

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

By \_\_\_\_\_  
Stephen H. MacMillan  
Its President/Chief Executive Officer

By \_\_\_\_\_  
Bertram L. Hatton  
Its Executive Vice President  
Hawaii Land Management

STATE OF HAWAII )  
 ) ss.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_ day of \_\_\_\_\_, 2008, 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.

\_\_\_\_\_  
Notary Public, State of Hawaii  
Name:  
My commission expires:

**EXHIBIT A**  
**Property Description**

**KUNIA SECTION 2:**

**PARCEL ONE:**

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, a Delaware limited liability company.

**End of Parcel One Description**

**KUNIA SECTION 6:**

**PARCEL TWO:**

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-9-A** (area 19.296 acres), as shown on Map 6, 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. 830,905** issued to James Campbell Company LLC.

End of Parcel Two Description

**PARCEL THREE:**

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 169** (area 0.693 acres), as shown on Map 27, 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. 830,906** issued to James Campbell Company LLC.

End of Parcel Three Description

**PARCEL FOUR:**

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 171** (area 1.319 acres), as shown on Map 27, 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. 830,907** issued to James Campbell Company LLC.

End of Parcel Four Description

**PARCEL FIVE:**

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 416** (area 91.99 acres), as shown on Map 76, 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. 830,908** issued to James Campbell Company LLC.

End of Parcel Five Description

**PARCEL SIX:**

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 878** (area 432.503 acres), as shown on Map 109, 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. 830,909** issued to James Campbell Company LLC.

End of Parcel Six Description

**PARCEL SEVEN:**

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 879** (area 198.580 acres), as shown on Map 109, 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. 830,910** issued to James Campbell Company LLC.

End of Parcel Seven Description

**PARCEL EIGHT:**

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 880** (area 93.117 acres), as shown on Map 109, 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. 830,911** issued to James Campbell Company LLC.

End of Parcel Eight Description

**PARCEL NINE:**

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 881** (area 11.129 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. 830,912** issued to James Campbell Company LLC.

End of Parcel Nine Description

**KUNIA SECTION 8:**

**PARCEL TEN:**

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 Fat Law's Farm, Inc., Law Tieng's Farm LLC, Tony Tan Law and Manyvone Law, husband and wife, and Hae Viengkhou and Phouangphet Viengkhou, husband and wife.

End of Parcel Ten Description

**KUNIA SECTIONS 7 & 9:**

**PARCEL ELEVEN:**

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 17846** (area 2,395.961 acres), as shown on Map 1370, 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. 892,319** issued to James Campbell Company LLC, a Delaware limited liability company.

End of Parcel Eleven Description

**PARCEL TWELVE:**

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-2** (area 0.028 acre), as shown on Map 4, 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. 830,915** issued to James Campbell Company LLC, a Delaware limited liability company.

End of Parcel Twelve Description

**PARCEL THIRTEEN:**

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-4** (area 3.307 acres), as shown on Map 4, 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. 830,917** issued to James Campbell Company LLC, a Delaware limited liability company.

End of Parcel Thirteen Description

**PARCEL FOURTEEN:**

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-5** (area 0.676 acre), as shown on Map 4, 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. 830,918** issued to James Campbell Company LLC, a Delaware limited liability company.

End of Parcel Fourteen

**PARCEL FIFTEEN:**

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 17847** (area 119.086 acres), as shown on Map 1370, 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. 892,320** issued to James Campbell Company LLC, a Delaware limited liability company.

End of Parcel Fifteen Description

**PARCEL SIXTEEN:**

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

**ROYAL PATENT NUMBER 4490, LAND COMMISSION AWARD 10,474, APANA 9 TO NAMAUU**, situate, lying and being on the westerly side of Kunia Road, being PARCEL 5, and thus bounded and described as per survey dated August 8, 1988:

Beginning at the north corner of this parcel of land and on the westerly side of Kunia Road, the coordinates of said point being referred to Government Survey Triangulation Station "KAPUAI NEW", being 22,750.96 feet North and 4,331.52 feet East, thence running by azimuths measured clockwise from true South:

1. Along the westerly side of Kunia Road, on a curve to the left with a radius of 2,894.90 feet, the azimuth and distance of the chord being:  
  
345° 29' 57" 611.81 feet;
2. 159° 26' 573.67 feet along Lot M-1-A-1 of Land Court Application 1069;
3. 221° 12' 30" 73.38 feet along Lot M-1-A-1 of Land Court Application 1069 to the point of beginning and containing an area of 11,930, square feet, more or less.

**BEING** a portion of the premises acquired by Trustees Limited Warranty Deed dated November 1, 2006, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, as grantors, 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 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2006-198463.

End of Parcel Sixteen Description

HONOULIULI  
FOREST  
RESERVE

KUNIA  
VILLAGE  
AREA

SECTION 7

SECTION 9

KUNIA ROAD

SECTION 2

SECTION 8

SECTION 6

**EXHIBIT "B-1"**

**MAP OF SECTIONS**

APPROX. SCALE:

1"=2,100'



JULY 21, 2008





**EXHIBIT C-1**

**Current Percentage of Water Allocation**

<b>Section</b>	<b>Percentage of Water Allocation up to Delivery Point</b>
9	40.78%
8	13.74%
7	17.36%
6	3.82%
2	14.18%
Kunia Village Area	10.12%

**EXHIBIT C-2**

**Percentage of Water Allocation including State of Hawaii Land**

<b>Section</b>	<b>Percentage of Water Allocation up to Delivery Point</b>
9	35.70%
8	12.03%
7	15.20%
6	3.35%
2	12.41%
Kunia Village Area	8.87%
State of Hawaii	12.44%



**Capital Costs:**

Reline Reservoir	\$ 100,000	Approx
Air vents (max)	\$ 8,000	Approx
Replace isolation valves as needed	\$ 25,000	Approx
Build Reserve to 50K by end of year 1	\$ 50,000	
Per Month	\$ 183,000	for 1st year
	\$ 15,250	/mo

**Fixed Costs:**

Rent to Navy for Pump #3 @ \$19,500/year	\$ 1,625	/mo
Management Contract	\$ 20,000	
Insurance	\$ 1,000	
Supplies & Miscellaneous	\$ 1,000	(includes chlorine, annual Audit, etc)
System Maint costs	\$ 3,000	
	\$ 26,625	/mo

**With the State Land**

	Approx acreage	Allocation per docs	Water x1,000 gpd	Fixed Costs	Capital Costs & Reserve	Total Fixed & Capital	Cost per Acre/yr
Section 9	1,322	35.70%	5,035	9,505 \$	5,444 \$	14,949	\$136
Section 8	406	12.03%	1,797	3,203 \$	1,835 \$	5,038	\$149
Section 7	513	15.20%	606	4,047 \$	2,318 \$	6,365	\$149
Section 6	90	3.35%	765	892 \$	511 \$	1,403	\$187
Section 2	420	12.41%	169	3,304 \$	1,893 \$	5,197	\$148
Kunia Village	N/A	8.87%	625	2,362 \$	1,353 \$	3,714	
State	400	12.44%	447	3,312 \$	1,897 \$	5,209	\$156
		100.00%	5,035 \$	26,625 \$	15,250 \$	41,875	
				0.174	0.100	0.273	

Cost per 1,000 gal assuming used at max allocation

**Without the State Land**

	Approx acreage	Allocation per docs	Water x1,000 gpd	Fixed Costs	Capital Costs & Reserve	Total Fixed & Capital	Cost per Acre/yr
Section 9	1,322	40.78%	5,035	10,858 \$	6,219 \$	17,077	\$155
Section 8	406	13.74%	2,053	3,658 \$	2,095 \$	5,754	\$170
Section 7	513	17.36%	692	4,622 \$	2,647 \$	7,270	\$170
Section 6	90	3.82%	874	1,017 \$	583 \$	1,600	\$213
Section 2	420	14.18%	192	3,775 \$	2,162 \$	5,938	\$170
Kunia Village	N/A	10.12%	714	2,694 \$	1,543 \$	4,238	
		100.00%	5,035 \$	26,625 \$	15,250 \$	41,875	
				0.174	0.100	0.273	

Cost per 1,000 gal assuming used at max allocation

Variable Costs - (when running at full allocation)

**DRAFT**

Pump 3  
 KWH required to pump 1,000 gallons 4.15  
 Cost per KWH \$0.30 includes likely increase; about .24/KWH in April 2008  
 Pump 3 electric Cost \$1.25 /1,000 gal Note: These costs incl a substantail discount from HECO  
 Daily Capacity @ 1,400 gpm 2,016,000 (approx 20%) for Rider M in which DM agrees not to  
 use power from 5 pm to 9 pm (peak hours)

Pump 4 Diesel  
 Daily Capacity @ 1,450 gpm 2,088,000  
 Daily Capacity x 65% 1,357,200  
 Combined Pump 3 & 4 capacity 3,373,200 Shared allocation is 3.96 MGPD

22 gallons of diesel/hour per Gordon 22 gal  
 Cost of off-road diesel per gal \$5.00 /gal (includes likey increases; Garlow in Jul 08 is at \$4.56/gal incl taxes)  
 Cost per Hour \$110.00  
 Water Gallons per minute 1,450  
 Water Gallons per hour 87,000  
 Water x 1,000 gal 87  
 Cost per 1,000 gal of water \$ 1.26

Pump 1  
 Pump #1 costs (allocation is 1.075 MGPD):  
 750,000 GPD 0  
 Next 325,000 GPD @ \$2.00/1,000 gal \$ 650.00 /day (cost in early 2008 was \$1.50/1,000. Use \$2.00/1,000 for likely increases)

Utility Cost Per Day  
 Pump 1 # 1.075 MGPD Gallons x 1,000 1,075  
 Pump #3 @ 2 MGPD 2,000  
 Pump #4 @ 1.96 MGPD 1,960  
 \$ 650.00  
 \$ 2,490.00  
 \$ 2,478.16  
 \$ 5,618.16 5,035

Avg Variable Cost / 1,000 -running at full allocation 1.12

## Variable Costs - (likely first year)

### Assumptions:

Section 8 & 6 combined needs less than 750K gpd  
 Excess of water not used by Section 6 & 8 up to 750K gpd irrigates oats in Section 9  
 Del Monte required to pump 750K gpd by EPA consent decree  
 Del Monte provides water up to 750K gpd at no cost exiting well 1 sump pump  
 Village uses 150K gpd Potable for drinking water and commercial = 15 hours per week pumping at 1,400 gpm (rotated between Well 3 & 4)  
 If Village has some non potable needs, they come from Well 1  
 If Farmers do not have adequate storage will they have to pay D.M. to pump from well 1, 7 day/week (DM does not have to pump 51 hrs/week)

### Utility Cost Per Day

Pump 1	\$ -	750	(Del Monte's cost in early 2008 was \$1.50/1,000 gallons)
Pump #3	\$ 93.38	75	
Pump #4	\$ 94.83	75	
	\$ 188.20	900	
Avg Variable Cost / 1,000	0.21		

### Assumed daily usage in Year 1:

	x 1,000 gal	Daily Variable cost	Monthly Variable cost	Annual Variable cost
Section 8	300	\$62.73	\$1,882.03	\$22,897.98
Section 6	192	\$40.15	\$1,204.50	\$14,654.71
Village incl commercial	150	\$31.37	\$941.01	\$11,448.99
	642	\$134.25	\$4,027.54	\$49,001.68