

# REQUEST FOR LEGAL SERVICES

**Date:** November 7, 2018  
**From:** Robert Carroll, Chair  
Land Use Committee

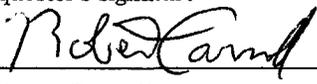
**TRANSMITTAL**

**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Jeffrey Ueoka, Esq.

**Subject:** DISTRICT BOUNDARY AMENDMENT FOR WAILUKU APARTMENT RENTAL HOUSING PROJECT (LU-64)

**Background Data:** Please review and, if appropriate, approve as to form and legality, the attached unilateral agreements (three originals) provided by the attorney for the Developer and executed by Kehalani Agricultural Investors LLC. Also attached for your information is a document entitled, "Authorization of Kehalani Agricultural Investors, LLC."

**Work Requested:**  FOR APPROVAL AS TO FORM AND LEGALITY  
 OTHER:

Requestor's signature  Robert Carroll	Contact Person <u>Carla Nakata or Saumalu Mataafa</u> (Telephone Extension: 7659 or 7665, respectively)
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- ROUTINE (WITHIN 15 WORKING DAYS)       RUSH (WITHIN 5 WORKING DAYS)  
 PRIORITY (WITHIN 10 WORKING DAYS)       URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): November 7, 2018, 4:30 p.m.  
REASON: To submit for posting on November 9, 2018.

**FOR CORPORATION COUNSEL'S RESPONSE**

ASSIGNED TO:	ASSIGNMENT NO.	BY:
--------------	----------------	-----

TO REQUESTOR:  APPROVED  DISAPPROVED  OTHER (SEE COMMENTS BELOW)  
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF THE CORPORATION COUNSEL

Date \_\_\_\_\_

By \_\_\_\_\_

(Rev. 7/03)

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

Office of the County Clerk  
County of Maui  
200 S. High Street  
Wailuku, Hawaii 96793

Tax Key: (2) 3-5-001:064

Total No. of Pages: \_\_\_\_\_

UNILATERAL AGREEMENT AND DECLARATION OF CONDITIONS  
FOR STATE LAND USE DISTRICT BOUNDARY AMENDMENT

THIS INDENTURE, made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by KEHALANI AGRICULTURAL INVESTORS LLC, a Delaware limited liability company, whose principal place of business is located in Wailuku, Maui, Hawaii, and whose mailing address is 10100 Santa Monica Blvd., Ste. 1000, Los Angeles, California 90067, hereinafter referred to as "Declarant", and who is the owner of that certain land located at Waikapu, Maui, Hawaii, comprised of approximately 14.416 acres and identified for real property tax purposes by Tax Map Key No. (2) 3-5-001:064, hereinafter referred to as the "Property".

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawaii, hereinafter referred to as "Council", is considering the Declarant's Petition for a State land use district boundary amendment for the Property, comprised of approximately 14.416 acres, which is more particularly described in Exhibit "1",

which is attached hereto and made a part hereof, and is more particularly identified in District Boundary Amendment Map No. DB-413 attached hereto as Exhibit "2" and made a part hereof; and

WHEREAS, Declarant proposes that the Property be developed as a residential workforce housing rental project under the name "Wailuku Rental Apartment Housing Project"; and

WHEREAS, the Council recommends through its Land Use Committee, Committee Report No. \_\_\_\_\_, that the State Land Use District Boundary Amendment be approved for passage on first reading subject to certain conditions, pursuant to Section 19.68.040, Maui County Code; and

WHEREAS, the Declarant has agreed to execute this instrument pursuant to the State land use district boundary classification provisions of Section 19.68.040, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. That this Declaration is made pursuant to the provisions of Section 19.68.040, Maui County Code, relating to State land use district boundary amendments;

2. That, until written release by the County of Maui, the Property, and all parts thereof, is and shall be held subject to the covenants, conditions and restrictions which are set forth on Exhibit "3" attached hereto and which shall be effective as to and shall run with the land as to the Property, from and after the recording of this Declaration with the Bureau of Conveyances or the Land Court of the State of Hawaii, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Declarant, the County of Maui, or any heir, devisee, executor, administrator, personal representative, successor, and assign; that the acquisition of any right, title or interest in or with respect to the Property by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Declaration by such person or persons, entity or entities; and that upon any transfer of any right, title or interest in or with respect to the Property

the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform all of the covenants, conditions and restrictions of this Declaration;

3. That this Declaration and all of the covenants, conditions and restrictions contained herein shall continue to be effective as to and run with the land in perpetuity, or until the Declarant notifies the appropriate County Department that any of said covenants, conditions and restrictions are satisfied by the Declarant, and the appropriate County Department verifies the satisfaction and provides a written release of the covenant, condition or restriction;

4. That the term "Declarant" and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the "Declarant", the Declarant's heirs, devisees, executors, administrators, personal representatives, successors and assigns;

5. That the Declaration shall become fully effective on the effective date of the ordinance approving the establishment of the Urban State land use district boundary classification and this Declaration shall be recorded in the Bureau of Conveyances or Land Court of the State of Hawaii;

6. That the Declarant agrees to develop the Property in conformance with the conditions set forth in Exhibit "3", which is attached hereto and made a part hereof and which shall be made a part of the State land use district boundary amendment ordinance;

7. That the conditions imposed are reasonable and rationally relate to the objective of preserving the public health, safety and general welfare and such conditions fulfill the need for the public service demands created by the proposed use;

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that, until released in writing by the County, the conditions imposed in this Declaration shall run with the land identified hereinabove and shall bind and constitute notice to all subsequent lessees, grantees, assignees, mortgagees, lienors and any other persons who claim an interest in said land, and the County of Maui shall have the right to enforce this Declaration by appropriate action

at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may at any time file a petition for the removal of the conditions and terminate this Unilateral Agreement, such petition to be processed in the same manner as petitions for State land use district boundary amendments.

This Declaration may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Declaration.

Each person signing this Unilateral Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Unilateral Agreement. Each party represents and warrants to the other that the execution and delivery of this Unilateral Agreement and the performance of such party's obligations hereunder have been duly authorized and that this Unilateral Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

*[Signatures on next page]*

IN WITNESS WHEREOF, the undersigned has executed this Agreement the day and year first above written.

DECLARANT:

KEHALANI AGRICULTURAL INVESTORS LLC

By   
\_\_\_\_\_  
Aaron A. Giovara  
Its Authorized Signatory

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
JEFFREY UEOKA  
Deputy Corporation Counsel  
County of Maui

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Francisco

On November 5, 2018 before me, Whitney Ann Allen, Notary Public  
(insert name and title of the officer)

personally appeared Aaron A. Giovara  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Whitney Ann Allen* (Seal)

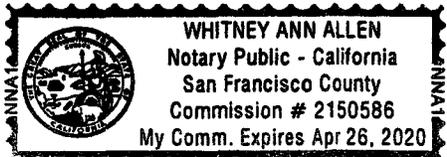


EXHIBIT "1"

Waikapu East (Large-Lot) Subdivision No. 3  
Description of Lot J

Land situated on the easterly side of Honoapiilani Highway  
(F.A.P. No. 13-G) at Waikapu, Wailuku, Maui, Hawaii

Being a portion of R.P. 4529-B and 4549, L.C. Aw. 71 to Michael  
J. Nowlein

Beginning at a point at the southwesterly corner of this lot,  
the coordinates of said point of beginning referred to Government  
Survey Triangulation Station "LUKE" being 4,236.79 feet South and  
2,218.58 feet West and running by azimuths measured clockwise from  
True South:

1. 172° 39' 11" 301.42 feet along the easterly side of  
Honoapiilani Highway (F.A.P.  
No. 13-G) to a point;
2. 262° 36' 6.43 feet along same to a point;
3. 172° 36' 570.94 feet along same to a point;
4. Thence along the southerly side of Kuikahi Drive Extension on a  
curve to the right, having a  
radius of 40.00 feet, the chord  
azimuth and distance being:  
217° 13' 56.19 feet to a  
point;
5. 261° 50' 151.68 feet along same to a point;
6. Thence along same on a curve to the right, having a radius of  
1,664.00 feet, the chord  
azimuth and distance being:  
270° 25' 496.70 feet to a  
point;
7. 279° 00' 248.10 feet along same to a point;
8. Thence along same on a curve to the right, having a radius of  
40.00 feet, the chord azimuth  
and distance being:  
324° 00' 56.57 feet to a  
point;

9. 10° 43' 323.28 feet along the remainder of R.P. 4529-B and 4549, L.C. Aw. To Michael J. Nowlein, being also along Lot K of Waikapu East (Large-Lot) Subdivision No. 3 to a point;
10. Thence along same on a curve to the right, with the point of curvature azimuth from the radial point being: 280° 43' and the point of tangency azimuth from the radial point being: 284° 32' 45", having a radius of 1,600.00 feet, the chord azimuth and distance being: 12° 37' 52.5" 106.91 feet to a point;
11. 61° 16' 878.02 feet along Grant 3343 to Claus Spreckels, being also along Lot A of Waikapu East (Large-Lot) Subdivision No. 3 to the point of beginning and containing an Area of 14.416 Acres.

SUBJECT, HOWEVER, to the following:

1. A Restriction of Vehicle Access rights along Honoapiilani Highway (F.A.P. No. 13-G).
2. A portion of an existing Electrical Easement (25 feet wide) in favor of Maui Electric Company, Ltd.
3. A portion of an existing Drainage Easement "D-1" in favor of Hawaii Land and Farming, Inc.

4. A portion of an existing Sewerline Easement "S-1" in favor of the County of Maui.



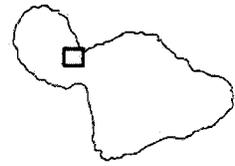
*Reed M. Ariyoshi*

1/2/18

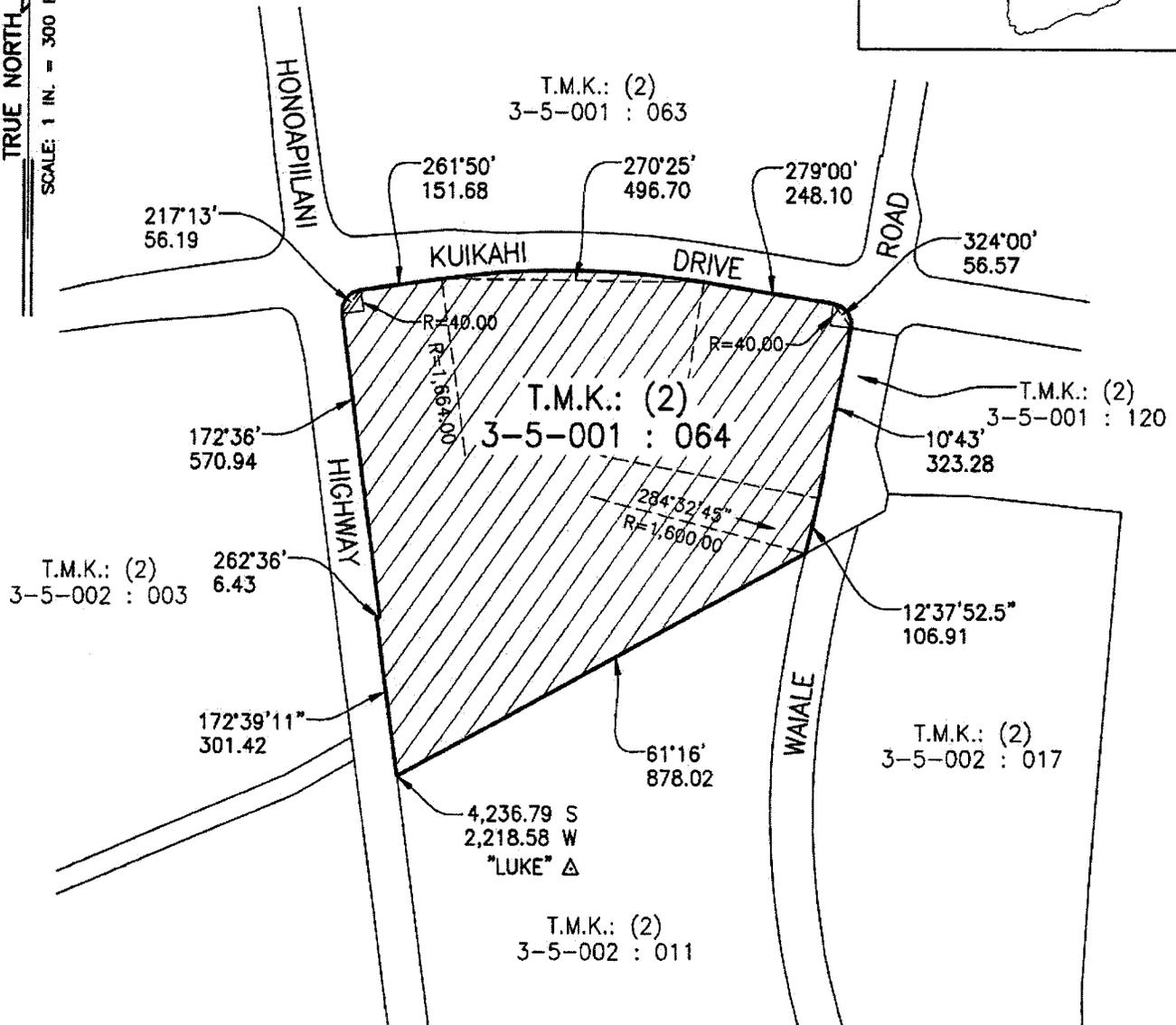
Licensed Professional Land Surveyor  
Certificate No. 6597

EXHIBIT "2"

VICINITY MAP



TRUE NORTH  
SCALE: 1 IN. = 300 FT.



**TAX MAP KEY**

T.M.K.: (2) 3-5-001 : 064 (14.416 ACRES)

**AREA:**

14.416 ACRES

**DISTRICT BOUNDARY AMENDMENT MAP NO. DB-413**

DISTRICT BOUNDARY AMENDMENT  
WAIKAPU, WAILUKU, MAUI, HAWAII  
FROM AGRICULTURAL (A) TO URBAN (U)

## **EXHIBIT "3"**

### **CONDITIONS**

1. This ordinance is conditional upon the Council's adoption of a resolution approving with modifications the independent development of Wailuku Apartments pursuant to Section 201H-38, Hawaii Revised Statutes (the "201H Resolution").
2. If the 201H Resolution shall expire due to the developer's failure to start physical construction on the Property by the time deadline set forth in the 201H Resolution, this ordinance shall also terminate concurrently with the expiration of the 201H Resolution.
3. Developer shall complete all of the 195 rental residential workforce housing units on the Property with all related infrastructure not later than the fifth (5<sup>th</sup>) anniversary of the effective date of the 201H Resolution. Developer may, subject to Council approval by resolution and for good cause, be granted one (1) time extension to this deadline, provided the request for time extension is received by the Council prior to the fourth (4<sup>th</sup>) anniversary of the effective date of the 201H Resolution. Failure to submit the request in a timely manner shall result in a forfeiture of the opportunity for extension.
4. The Property shall be developed as a residential housing project known as the Wailuku Apartment Rental Housing Project, in accordance with the 201H Resolution.
5. The 195 residential workforce housing units and the 129 market-rate units shall be for rental only, and not for sale to individual home buyers as condominium units for their own occupancy.
6. All residential workforce housing units and all market-rate units shall be subject to the restriction that no unit shall be leased for occupancy of any period shorter than one hundred eighty (180) days.
7. The Property shall be developed in strict compliance with the representations made to the Council in obtaining approval of the State District Boundary Amendment.

AUTHORIZATION OF KEHALANI AGRICULTURAL INVESTORS, LLC

The undersigned, PCCP ED Kehalani Kaloko, LLC, a Delaware limited liability company ("PCCP Kehalani"), being the managing member of Kehalani Agricultural Investors, LLC, a Delaware limited liability company ("Company"), hereby approves and authorizes the actions described below based on the following facts:

WHEREAS, the Company owns certain real property located on the Island of Maui, State of Hawaii and more particularly described in Exhibit A attached hereto ("Property");

WHEREAS, in connection with the Company's ownership and development of the Property, the Company desires to enter into, execute, acknowledge, deliver and/or perform the following agreements and other documents (collectively, "Documents"):

- (1) Unilateral Agreement and Declaration of Conditions for State Land Use District Boundary Amendment; and
- (2) The other documents, if any, listed on Exhibit B attached hereto.

NOW, THEREFORE, based on the foregoing:

1. PCCP Kehalani, in its capacity as the managing member of the Company, hereby authorizes the Company to enter into, execute, acknowledge, deliver and/or perform the Documents, any amendments thereto and any other documents and instruments related thereto, and any and all actions previously taken by the Company in connection with the foregoing purposes are hereby fully ratified and approved.

2. PCCP Kehalani, in its capacity as the managing member of the Company, hereby confirms the appointment of each of the following individuals as officers of the Company, and hereby authorizes each of such officers of the Company, acting alone, as officers or authorized signatories of the Company, to execute, acknowledge, deliver and/or cause the performance of the Documents, and otherwise to act for the Company in connection with the transactions contemplated by the Documents, and as the Company's act and deed, in such manner as each such person deems necessary or appropriate:

William R. Lindsay	President
Donald H. Kuemmeler	Vice President
Aaron A. Giovana	Vice President
Gregory Eberhardt	Vice President
Yon Cho	Vice President
Bryan Thornton	Vice President
Brian Heafey	Vice President
Steve Towle	Vice President
Jim Galovan	Vice President
Jed Lassere	Vice President

3. Any actions taken by any of the foregoing authorized officers prior to the date of this Authorization that is within the authority conferred herein is hereby ratified, confirmed and

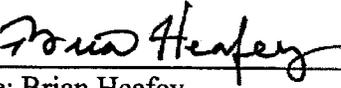
approved. Each of the authorized officers, acting alone, as officers or authorized signatories of the Company, hereby is authorized, on behalf of the Company, to execute any and all other documents, and to do any and all further acts as may be necessary or desirable in connection with the foregoing as, in his reasonable discretion, he approves, and that any and all acts heretofore taken by him in connection with the foregoing are hereby fully ratified and approved.

IN WITNESS WHEREOF, the undersigned has caused this Authorization to be executed as of November 5, 2018.

*[Signature page follows.]*

"MANAGING MEMBER"

PCCP ED KEHALANI KALOKO, LLC,  
a Delaware limited liability company,

By: 

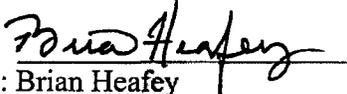
Name: Brian Heafey

Title: Authorized Signatory

CONSENT OF MEMBER

The undersigned, PMRP I Kehalani Kaloko, LLC, a Delaware limited liability company, as a member in Kehalani Agricultural Investors, LLC, a Delaware limited liability company, hereby consents to the foregoing Authorization of Kehalani Agricultural Investors, LLC, and to the authorization of all of the transactions contemplated thereby, as of the date of execution of the Authorization of Kehalani Agricultural Investors, LLC set forth above.

PMRP I KEHALANI KALOKO, LLC,  
a Delaware limited liability company

By:   
Name: Brian Heafey  
Title: Authorized Signatory

*[Signature Page to Authorization of Kehalani Agricultural Investors, LLC]*



9.     10° 43'                   323.28 feet along the remainder of R.F. 4529-B  
  and 4549, L.C. Aw. To Michael J.  
  Nowlein, being also along Lot K of  
  Waikapu East (Large-Lot)  
  Subdivision No. 3 to a point;
10.    Thence along same on a curve to the right, with the point of  
  curvature azimuth from the  
  radial point being:  
  280° 43' and the point of  
  tangency azimuth from the  
  radial point being:  
  284° 32' 45", having a radius of  
  1,600.00 feet, the chord azimuth  
  and distance being:  
  12° 37' 52.5"   106.91 feet  
  to a point;
11.    61° 16'                   878.02 feet along Grant 3343 to Claus  
  Spreckels, being also along Lot  
  A of Waikapu East (Large-Lot)  
  Subdivision No. 3 to the point  
  of beginning and containing an  
  Area of 14.416 Acres.

SUBJECT, HOWEVER, to the following:

1.    A Restriction of Vehicle Access rights along Honoapiilani Highway  
      (F.A.P. No. 13-G).
2.    A portion of an existing Electrical Easement (25 feet wide) in  
      favor of Maui Electric Company, Ltd.
3.    A portion of an existing Drainage Easement "D-1" in favor of  
      Hawaii Land and Farming, Inc.

*[Exhibit A to Authorization of Kehalani Agricultural Investors, LLC]*

4. A portion of an existing Sewerline Easement "S-1" in favor of the County of Maui.



*Reed M. Ariyoshi*

Licensed Professional Land Surveyor  
Certificate No. 6597

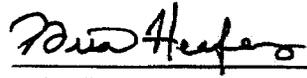
v:\Projdata\02proj\02067\Survey\Desc. of Lot J\_rev 07-2-2016.wpd

**Exhibit B**  
**DOCUMENTS**

NONE



Date: November 5, 2018

A handwritten signature in black ink, appearing to read "Brian Heafey", written over a horizontal line.

Brian Heafey  
Vice President  
of Kehalani Agricultural Investors, LLC

[Signature Page to Officer's Certificate]

**EXHIBIT A**

**CERTIFICATE OF FORMATION**

[see attached]

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "KEHALANI AGRICULTURAL INVESTORS, LLC" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF FORMATION, FILED THE TWENTIETH DAY OF JANUARY, A.D. 2016, AT 11:54 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID LIMITED LIABILITY COMPANY, "KEHALANI AGRICULTURAL INVESTORS, LLC".



5942248 8100H  
SR# 20187457979

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

A handwritten signature in black ink, appearing to read "JBULLOCK", written over a horizontal line.

Jeffrey W. Bullock, Secretary of State

Authentication: 203825313  
Date: 11-02-18

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 11:54 AM 01/20/2016  
FILED 11:54 AM 01/20/2016  
SR 20160302258 - File Number 5942248

STATE of DELAWARE  
LIMITED LIABILITY COMPANY  
CERTIFICATE of FORMATION

First: The name of the limited liability company is \_\_\_\_\_  
Kahalani Agricultural Investors, LLC

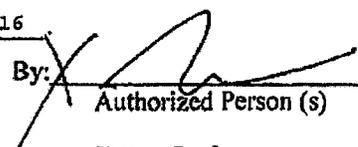
Second: The address of its registered office in the State of Delaware is \_\_\_\_\_  
160 Greentree Drive, Suite 101 in the City of Dover  
Zip code 19904. The name of its Registered agent at such address is  
National Registered Agents, Inc.

Third: (Use this paragraph only if the company is to have a specific effective date of  
dissolution: "The latest date on which the limited liability company is to dissolve is  
\_\_\_\_\_.")

Fourth: (Insert any other matters the members determine to include herein.)

In Witness Whereof, the undersigned have executed this Certificate of Formation this

18th day of January, 2016

By:  \_\_\_\_\_  
Authorized Person (s)

Name: Steve Towle

**EXHIBIT B**  
**GOOD STANDING CERTIFICATES**

[see attached]

# Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "KEHALANI AGRICULTURAL INVESTORS, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE SECOND DAY OF NOVEMBER, A.D. 2018.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "KEHALANI AGRICULTURAL INVESTORS, LLC" WAS FORMED ON THE TWENTIETH DAY OF JANUARY, A.D. 2016.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



5942248 8300

SR# 20187457952

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

A handwritten signature in black ink, appearing to read "JBULLOCK", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Authentication: 203825302

Date: 11-02-18



**Department of Commerce and Consumer Affairs**

**CERTIFICATE OF GOOD STANDING**

I, the undersigned Director of Commerce and Consumer Affairs of the State of Hawaii, do hereby certify that

**KEHALANI AGRICULTURAL INVESTORS, LLC**

**organized under the laws of Delaware**

**was duly registered to do business in Hawaii as a foreign limited liability company on 01/26/2016 , and that, as far as the records of this Department reveal, has complied with all of the provisions of Chapter 428, Hawaii Revised Statutes, regulating foreign limited liability companies.**

**IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Department of Commerce and Consumer Affairs, at Honolulu, Hawaii.**

**Dated: November 02, 2018**

**Director of Commerce and Consumer Affairs**

