

**WELL USE AGREEMENT**  
**(Hahakea Well)**

THIS AGREEMENT ("Agreement"), made this 13 day of Jan, <sup>2017</sup>~~2016~~, but effective as of January 1, 2010 (the "Effective Date"), by and between **KAANAPALI LAND MANAGEMENT CORP.**, a Hawaii corporation, whose address is 275 Lahainaluna Road, Lahaina, Hawai'i 96761 ("KLMC"), and **HAWAII WATER SERVICE COMPANY, INC.**, a Hawaii corporation, whose address is 1720 North First Street, San Jose, California 95112-4598 ("HWSC");

WITNESSETH:

WHEREAS, KLMC is the owner of (a) that certain well known as Hahakea Well, State Well No. 5541-01 (the "Hahakea Well") as shown on the map attached hereto as Exhibit "A", which well is located within the area designated as "License Area" on Exhibit "A", which is within land owned by KLMC; (b) that certain area designated as "Driveway Area" on Exhibit "A"; (c) those certain improvements allowing the production, transmission, distribution, and measuring of water, appurtenant to the Hahakea Well, specifically excluding, however, any improvements on the "Lower Tank Lot" as shown on Exhibit "A" (such improvements, excluding the Lower Tank Lot are referred to collectively or individually as the "Hahakea Improvements"). The Hahakea Well, the License Area and the Hahakea Improvements are referred to collectively as the "Hahakea Well System", all as more particularly described in Exhibit "A" attached hereto.

WHEREAS, HWSC is a private utility service company regulated by the State of Hawaii Public Utilities Commission ("PUC") providing drinking water within a designated service area, as approximately shown in Exhibit "B" attached hereto ("HWSC Service Area"), and as such currently owns, operates, and maintains certain water system facilities that are interconnected to provide drinking water within the HWSC Service Area (collectively "HWSC Water Service System") as generally shown in the attached Exhibit "B".

WHEREAS, HWSC has been using and desires to continue use of the Hahakea Well System to serve as a source of drinking water and for which it is connected and integrated with the HWSC Water Service System to enhance its water serviceability to current and future customers within HWSC Service Area in the County of Maui;

NOW, THEREFORE, in consideration of the promises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. LICENSE AND OPERATION OF EXISTING HAHAKEA WELL SYSTEM.

1.1 KLMC hereby licenses the Hahakea Well System to HWSC and HWSC licenses the Hahakea Well System from KLMC, which license includes the exclusive right to withdraw water from the Hahakea Well, together with a non-exclusive license to enter upon the License Area solely for the purposes of operating, maintaining, repairing, improving, testing, monitoring and protecting the Hahakea Well System and for no other purposes, and together with a non-exclusive license to enter upon the

Driveway Area for ingress and egress to the License Area and no other purposes. Without limitation of the foregoing, in no event shall HWSC do any of the following: drill additional wells within the License Area; materially increase the capacity of the pumps drawing water from the Hahakea Well; withdraw more than five hundred thousand (500,000) gallons per day ("GPD") from the Hahakea Well (calculated on a thirty-day moving average); provide water from the Hahakea Well directly to any governmental entity (except for services to governmental offices or facilities located in HWSC's service area); or provide water from the Hahakea Well to users outside of the HWSC Service Area, as expanded from time to time. The Driveway Area shall be used by HWSC only for access of employees and contractors to and from the License Area, and for no other purpose. KLMC shall have the right, from time to time at KLMC's sole discretion, upon reasonable notice to HWSC, to relocate the Driveway Area so long as HWSC shall at all times have reasonable access to the License Area. HWSC is specifically prohibited from utilizing or permitting any employees, or other third parties from utilizing any of KLMC's land outside of the License Area for parking or other purposes and shall ensure that no such prohibited use shall occur. Further, HWSC agrees that it shall utilize the Driveway Area for access purposes in a manner consistent with its concurrent use by KLMC and other third parties so as to not interfere with such use or access by KLMC and such third parties to such other land or facilities. KLMC specifically reserves the right to cause any vehicles or other property of HWSC or its customers that are parked in violation of this paragraph to be towed or otherwise removed from such non-licensed areas at HWSC's expense.

1.2 The term (the "License Term") of the license granted under this Agreement shall be for a term of fifteen (15) years commencing on the Effective Date; provided, however that, so long as (a) this Agreement has not previously been terminated in accordance with its terms, and (b) HWSC is not in default under any provision of this Agreement, this Agreement shall be renewed automatically for one (1) additional period of five (5) years ("the Extension Period") unless HWSC gives written notice of termination to KLMC no later than six (6) months prior to the commencement of the Extension Period. The Extension Period shall be upon all terms and conditions of this Agreement, except that HWSC shall have no further right to extend the License Term beyond the end of the Extension Period. Said automatic extension shall, at KLMC's election, be null and void if HWSC is in default under this Agreement at the commencement of the Extension Period. Any automatic extension of the term shall not operate to cure any default by HWSC of any of the terms or provisions in this Agreement, nor to extinguish or impair any rights or remedies of KLMC arising by virtue of such default. If this Agreement or HWSC's right to the use, occupancy and operation of the Hahakea Well System and License Area hereunder shall terminate in any manner whatsoever before commencement of the Extension Period, then immediately upon such termination, the right to automatically extend the term shall simultaneously terminate and become null and void. Upon commencement of the Extension Period without the prior termination of this Agreement, such Extension Period shall be deemed added to the License Term for purposes of this Agreement.

1.3 HWSC shall pay license fees to KLMC as follows:



1.3.1 HWSC shall pay KLMC monthly in arrears, not later than the 15th day of each calendar month in respect of the immediately preceding month, a water delivery charge for the water taken from the Hahakea Well. The amount payable to KLMC initially shall be the difference between (a) \$0.3614 (as of 2016) multiplied by the number of gallons taken and divided by 1,000 (the "Rate") and (b) the Standby Fee (defined below) actually paid for such month.

1.3.2 HWSC shall pay KLMC monthly in advance, not later than the 15th day of each calendar month in respect of the current month, a standby water delivery charge in respect of the water available to be taken from the Hahakea Well ("Standby Fee"). The amount of the Standby Fee payable to KLMC initially shall be \$1,800 per month as of the Effective Date.

1.3.3 The Rate and Standby Fee shall change annually on January 10th of each calendar year. The new Rate and Standby Fee, respectively, shall equal the Rate and Standby Fee payable by HWSC to KLMC as of December 31st of the immediately preceding calendar year multiplied by the Consumer Price Index, All Urban Consumers, All Items, Honolulu, Hawaii 1982-84=100 ("CPI") available as of January 10th of such new calendar year and divided by the CPI available as of December 31st of the immediately preceding calendar year. The Standby Fee also shall increase annually on January 10th of each calendar year such that it is not less than the new Rate for such year multiplied by fifty percent (50%) of the average number of gallons per month taken by HWSC for the immediately preceding year, divided by 1,000.

1.4 Notwithstanding the foregoing, the parties agree that the total of the Standby Fees and Rates owed by HWSC to KLMC for the period from January 1, 2010 through October 31, 2016 is equal to \$216,748.57, which amount shall be paid concurrently with such execution and delivery, together with the Standby Fee for the current month.

1.5 HWSC shall install a water meter or meters or other measuring devices as shall be approved by KLMC for the continuous measurement and recording of all water quantities actually taken from the Hahakea Well pursuant to this Agreement and ensure at all times that the same are present and functional.

1.6 HWSC shall provide to KLMC together with each monthly payment a statement of the amount of water taken from the Hahakea Well during the preceding month, certified by HWSC's authorized representative. HWSC shall also provide to KLMC, not later than five (5) business days following submission, copies of any reports submitted to the State of Hawaii of water use from the Hahakea Well. KLMC and HWSC shall at all times have access to all such meters or devices to read or check the same.

1.7 HWSC acknowledges that the owner of the golf courses at the Kaanapali Beach Resort (the "Golf Course Owner") may have certain rights to draw water from certain wells owned by KLMC, including the Hahakea Well. While currently the Golf Course Owner may not be drawing any water from the Hahakea Well and may not have any lines that currently connect the Hahakea Well System to the golf course lands that it owns, KLMC makes no representation or warranty concerning the scope of the rights possessed by the Golf Course

Owner or any other third party relative to the Hahakea Well System, nor that such Golf Course Owner or third party may in the future assert such rights for the purpose of connecting to and drawing water from the Hahakea Well System.

1.8 At the end of the License Term, HWSC shall peaceably deliver up to KLMC possession of the License Area and the Hahakea Well in the same condition as received, ordinary wear and tear excepted; provided, however, that HWSC shall have no obligation to repair, replace or remove the storage tank owned by KLMC and located on the License Area; and provided, further, that HWSC shall have no obligation to make any Major Repairs as defined in Section 5.2 below at the end of the License Term. Any affixed improvements made to the License Area, Driveway Area and Hahakea Well by HWSC, shall become KLMC's property on the License Termination Date, without any requirements for any document of conveyance by HWSC to KLMC on account thereof, unless KLMC, at its election and upon notice to HWSC, requires HWSC to remove same. HWSC further agrees, if elected by KLMC and upon notice to HWSC given by KLMC on or prior to thirty (30) days after the end of the License Term, to cap the Hahakea Well and make all necessary governmental filings and obtain all necessary governmental approvals to close such well. Any affixed improvements that are so requested to be removed, shall be removed by HWSC on or before the License Termination Date or, if later, fifteen (15) days after such notice is given by KLMC; provided that the time for such removal shall be extended if necessary in order to obtain any required governmental approvals. At KLMC's election, if HWSC is not in default under this Agreement, HWSC shall remove all personal property of HWSC prior to or upon the expiration or sooner termination of this Agreement. Property not so removed shall be deemed abandoned by HWSC and title to the same shall thereupon pass to KLMC. If the License Area is not surrendered at the time and in the manner required in this Agreement, HWSC shall indemnify KLMC against loss or liability resulting therefrom including, without limitation, any claims made by any succeeding user or occupant. If HWSC shall remain in possession after the expiration or sooner termination of this Agreement, all the terms, covenants and agreements hereof shall continue to apply and bind HWSC so long as HWSC shall remain in possession, insofar as the same are applicable, except that if such possession is without the consent of KLMC, the Standby Fee and Rate shall each be two (2) times the Standby Fee and Rate, as applicable, for the last year of the License Term, prorated on a daily basis for each day that HWSC remains in possession, and HWSC shall also be liable to KLMC for any and all consequential damages resulting from failure to surrender possession. HWSC's obligation to observe or perform these covenants shall survive the expiration of the License Term, or other termination, of this Agreement.

2. OPERATION OF HAHAKEA WELL SYSTEM. Except as otherwise provided in this Agreement, including Section 5.2, HWSC shall pay all expenses pertaining to ownership, operation, maintenance and repair of the Hahakea Well. KLMC shall only be required to pay the real property taxes assessed against the Hahakea Well System if the Hahakea Well System is separately assessed and only to the extent that KLMC demonstrates that such taxes arise from HWSC's improvements or from HWSC's use of the Hahakea Well System. KLMC shall reasonably cooperate with HWSC in filing an exemption application for any real property taxes payable by HWSC hereunder. HWSC shall, in its use and occupancy of the License Area comply with all of the laws and regulations of local, state and federal authorities now in force, or which may hereafter be in force, including, without limitation, requirements of the State of Hawaii Department of Health and any report submittals or other requirements in connection with

permitting of wells by the State of Hawaii Commission of Water Resource Management, any laws and regulations governing the operation of a public water utility, public health and the Americans with Disabilities Act, 42 U.S.C. §§ 12191 through 12213. HWSC shall be solely responsible for, and shall indemnify and hold harmless KLMC, Pioneer Mill Company, LLC, Kaanapali Farm Services, Inc., KLC Land Company, LLC, Kaanapali Land, LLC, their shareholders or members, partners, subsidiaries and affiliates, and any officer or manager, director, representative, employee and agent thereof (collectively, the "Indemnified Parties", individually, an "Indemnified Party"), from and against any claims, actions, proceedings, damages, liabilities, penalties, judgments, awards, costs and expenses directly or indirectly arising out of or attributable to any violation or alleged violation of the foregoing sentence. If after receiving written notice from a local, state or federal authority or KLMC of infractions or of failure to meet any laws or regulations of such an authority, HWSC refuses or neglects to comply, KLMC may, at its sole discretion and at HWSC's cost and expense, enter the License Area and take such action as is necessary to achieve such compliance on HWSC's behalf and HWSC hereby waives any right to claim or bring an action at law for damages against KLMC based upon any injury or loss resulting from KLMC's action hereunder. The waiver, indemnity and hold harmless provisions set forth in this Section 2 shall not apply to (a) any contamination of water from the Hahakea Well caused by the violation of laws or regulations by Indemnified Parties, or (b) the gross negligence or willful misconduct of Indemnified Parties.

HWSC agrees that for purposes of this Agreement, the past, current or future use of pesticides by Indemnified Parties or their predecessors or their affiliates in accordance with applicable laws and regulations as a part of agricultural activities shall not constitute "gross negligence".

3. **DISCLAIMER OF WARRANTY.** HWSC accepts the Hahakea Well System, the License Area and the Driveway Area in their "as-is" condition, with all faults and hazards.

3.1 HWSC acknowledges that neither KLMC nor any Indemnified Parties has made any representation or warranty with respect to the License Area or with respect to the suitability of the License Area for HWSC's intended use. KLMC shall have no obligation under this Agreement to perform any work in preparing the License Area for use by HWSC.

3.2 KLMC does not represent or guarantee the quantity or quality of the raw water which is the subject of this Agreement. HWSC understands the water specified for delivery under this Agreement, as supplied from the Hahakea Well System is untreated and may not be fit for human consumption. HWSC shall be solely responsible for testing such water and for any and all treatment which may be necessary to bring the water into conformity with all Federal, State and local domestic water quality requirements prior to its delivery for domestic use. KLMC shall not be responsible for the quantity or quality of water delivered by HWSC in any way or at any time and HWSC's failure to test or properly treat the water is not the responsibility of KLMC. HWSC expressly waives any and all legal remedies against KLMC relating the quantity or quality of water from the Hahakea Well System. The waiver set forth in this Section 3.2 shall not apply to (a) the contamination of water from the Hahakea Well caused by

the violation of laws or regulations by KLMC or its affiliates, or (b) the gross negligence or willful misconduct of KLMC or its affiliates.

3.3 In the event that water from the Hahakea Well contains any substances in excess of the maximum contaminant levels ("MCLs") established under federal or state laws or regulations ("Contamination"), upon written notice of such Contamination to KLMC, KLMC shall have the option to elect to attempt to remediate any such Contamination. If, within sixty (60) days after the date of HWSC's notice to KLMC, KLMC has not elected to attempt to remediate such Contamination to a level within the MCLs, then HWSC shall have the right to terminate this Agreement by giving KLMC not less than sixty (60) days' written notice of termination.

3.4 Without limitation of any other provisions of this Agreement, HWSC shall indemnify, defend and hold Indemnified Parties harmless from and against any and all claims from or against Indemnified Parties pertaining to water from the Hahakea Well System in any manner arising out of this Agreement or any use or occupancy of the Hahakea Well System or the License Area by HWSC, whether or not permitted hereunder. The foregoing agreement to indemnify, defend and hold harmless shall not apply to any claims relating to (a) contamination of the water from the Hahakea Well caused by the violation of any laws or regulations by Indemnified Parties, or (b) the gross negligence or willful misconduct of KLMC Parties. In addition, HWSC's obligation to defend shall be subject to the following limitations: (i) so long as HWSC is not in default under this Agreement, HWSC shall have the right, subject to KLMC's reasonable approval, to select counsel and control the defense, including any settlement; (ii) if requested to do so by HWSC, KLMC shall participate in a joint defense, unless there is a conflict of interest between HWSC and Indemnified Parties with respect to the defense; and (iii) HWSC's obligation to defend shall not apply if the only claims against KLMC Parties are those under Sections 3.4(a) or 3.4(b) above.

3.5 HWSC understands and acknowledges that the License Area may be periodically affected by various nuisances, risks and hazards and by noise, dust, fire, smoke, soot, ash, odor, visual nuisances or other adverse conditions of any other kind (including but not limited to those attributable to winddrift and other weather factors) (collectively, "Surrounding Use Effects") created by historical, existing, and prospective agricultural, industrial, development, commercial, sales and other non-residential uses and activities occurring within the lands owned by Indemnified Parties and/or on surrounding lands, and specifically approves all of those uses and activities, which include, but are not limited to: (a) real estate development and other changes in use (due to zoning changes and other governmental authorization or otherwise), construction, grading, improvement, leasing, licensing, sales and maintenance of adjacent and surrounding properties, including residential and non-residential property and roadways; (b) electrical transmission and distribution lines and facilities within or in the vicinity of the License Area; (c) irrigation with reclaimed water, treated effluent, or other non-potable water sources; (d) use of cultivation, harvesting and crop processing equipment and other uses attendant with agricultural activities; (e) experimental agriculture uses and activities; and/or (f) drainage and the effects thereof. Without limiting the generality of the foregoing, KLMC hereby expressly reserves the right to utilize any of its lands

adjoining or proximate to the License Area for any lawful purpose whatsoever and HWSC shall have no right to complain about any such use as a consequence of its use or occupancy of the License Area or the Driveway Area. Notwithstanding the foregoing, KLMC shall not utilize pesticides or herbicides within 150 feet of the Hahakea Well.

4. NO SERVICES BY KLMC. KLMC shall not furnish any services and shall have no obligation to perform any work in connection with this Agreement.

5. REPAIRS AND MAINTENANCE; ALTERATIONS.

5.1 Except as provided in Section 5.2 below, HWSC shall promptly perform all maintenance and repairs to the Hahakea Well System, and shall keep the Hahakea Well System, in good condition and repair, reasonable wear and tear excepted. The Hahakea Well System shall include the pump, controls, flow measuring equipment/devices (including data recording of water flow, pumping rates, pumping durations/time, etc.).

5.2 KLMC and HWSC acknowledge and agree that some or all of the components of the Hahakea Well System may be beyond their expected useful lives and that it may not be cost effective to make major repairs to the Hahakea Well System. Therefore, HWSC shall have no obligation to repair or replace any portion of the Hahakea Well System if the cost of such repair or replacement exceeds \$200,000 (a "Major Repair"). In the event a Major Repair is required to continue operation of the Hahakea Well System, and HWSC elects not to make such Major Repair, HWSC shall have the right to terminate this Agreement by giving KLMC not less than sixty (60) days written notice of termination.

5.3 HWSC shall make no alterations, changes, additions or improvements (the "Work") to the License Area or Driveway Area without the prior written consent of KLMC or subsequent owner of the License Area or Driveway Area, which consent shall not be unreasonably withheld or delayed, and may be subject to such reasonable requirements or conditions as KLMC may impose. Any request for such approval shall be given at least twenty (20) days prior to commencement of the Work and shall be accompanied by such documentation or information as KLMC may request, including but not limited to plans and specifications, permits, bonds, identification of all contractors or subcontractors who will perform the Work and insurance. Any Work so approved shall be done in a good and workmanlike manner and in accordance with any such requirements or conditions. KLMC may further impose requirements concerning the timing of the Work and may, in its discretion require that KLMC's personnel be present when the Work is being done. KLMC further reserves the right to inspect such Work at any time; provided however that nothing herein shall constitute an assumption of liability on KLMC's part for the quality, workmanship, design, safety or suitability of the Work, and KLMC hereby specifically disclaims same.

6. UTILITIES. HWSC shall not contract for or connect to any public or private utility services (except its own water system and except for existing connections for electrical power) on land owned by KLMC unless approved in writing by KLMC in advance, which approval shall not be unreasonably withheld or delayed. HWSC shall pay for the connection and usage of all utilities and services charged or assessed against the HWSC's.

7. INSURANCE. HWSC shall, at its sole cost and expense, procure and maintain for the duration of this Agreement the following types and limits of insurance or such other amounts as KLMC may from time to time reasonably request, with insurance companies and on forms satisfactory to KLMC:

7.1 A policy of Commercial Property Insurance covering the Hahakea Well System, including but not limited to any contents, fixtures, equipment or other personal property on the same basis that HWSC obtains property insurance on its other wells and well systems; provided, however, at a minimum, the insurance shall: (1) be written on an Insurance Services Office, Inc. ("ISO") Commercial Property Policy - "Special Form" Causes of Loss form or its equivalent, and at a minimum such policy shall insure against destruction or damage by fire and other perils covered under such an ISO policy, with additional coverage for risk of loss by hurricane, perils normally insured under a policy of boiler and machinery insurance, vandalism, theft, sprinkler leakage, water damage however caused, explosion of heating and cooling or similar apparatus and such other hazards or risks which a prudent business person would insure against; (2) provide Replacement Cost Coverage (exclusive only of excavation, foundations and footings) and shall contain an Agreed Value Endorsement and shall satisfy any co-insurance requirements; and (3) not have a deductible amount in excess of \$500,000 for any one occurrence.

7.2 A policy or policies of commercial general liability insurance or commercial general liability and excess or umbrella liability insurance written on an "occurrence" form covering the use, occupancy and maintenance of the License Area, Driveway Area, and the Hahakea Well System, as applicable, and all operations of HWSC under this Agreement including: Premises Operations; Independent Contractors; Products - Completed Operations; Blanket Contractual Liability; Personal and Advertising Injury; and Employees Named as Additional Insureds, subject to the following:

7.2.1 Notwithstanding the foregoing, Commercial General Liability insurance may be written on a "claims first made" form so long as HWSC, as a covenant surviving termination of this Agreement, continues to maintain such insurance on a "claims first made" form until the third anniversary after the termination of this Agreement. As an alternative to continuation of insurance on a claims first made" basis following termination of this agreement, HWSC may propose for approval by KLMC, which approval will not be unreasonably withheld or delayed, tail insurance coverage covering damage or injury caused by HWSC during the term of this Agreement and extending through and including through the third anniversary after the termination of this Agreement.

7.2.2 Such commercial general liability insurance shall be reasonably acceptable to KLMC and shall be as at least as broad as the AEGIS Excess Liability form. Limits for such coverage shall be not less than the following for the specified categories: Bodily Injury and Property Damage Combined Single Limit - \$2,000,000 per occurrence, subject to \$2,000,000 general aggregate per policy year; \$2,000,000 products and completed operations aggregate per policy year; Personal and Advertising Injury - \$2,000,000 per person/organization per policy year, subject to \$2,000,000 general aggregate per policy year; and Fire Legal Liability \$50,000 per fire, subject to \$2,000,000



general aggregate per policy year. Except with KLMC's prior written approval, the policy shall not have a deductible or self-insured retention amount in excess of \$500,000 for any one occurrence. HWSC agrees that it shall be solely responsible for satisfaction of any retention – deductible or self-insured retention – contained within the policy(ies) maintained to satisfy the conditions of this paragraph 7.

7.3 Workers' Compensation and Employers' Liability insurance as required by HRS Chapter 386 and related regulations for all employees of HWSC. Limits for such coverage shall be not less than the statutory limits for Workers' Compensation and the following for Employers' Liability: \$1,000,000 Each Accident; \$1,000,000 Disease - Policy Limit; and \$1,000,000 Disease - Each Employee. The policy shall further contain an endorsement providing a waiver of subrogation in favor of KLMC and its employees. To the extent permitted by law, HWSC may elect to self insure the coverages required under this Section 7.3.

7.4 Umbrella Liability Insurance providing excess coverage over Commercial General Liability, and Employer's Liability. The total limit of coverage applicable to Commercial General Liability insurance and Employer's Liability Insurance shall have a total limit of liability of not less than \$5,000,000 per policy year and HWSC shall obtain said coverage in its discretion using any combination of Commercial General Liability Employer's Liability and Umbrella policies. Said policies shall contain a self-insured retention and/or deductible no greater than \$500,000.

7.5 HWSC's policies shall be considered to be primary liability insurance which shall apply to any loss or claim for which HWSC is liable before any contribution by any insurance which Indemnified Parties may have in force. The policy and certificate of insurance shall contain a provision specifically naming as additional insureds KLMC, Pioneer Mill Company, LLC, Kaanapali Farm Services, Inc., KLC Land Company, LLC, and Kaanapali Land, LLC, their shareholders or members, subsidiaries and affiliates, and any officer or manager, director, representative, employee and agent thereof, which additional insureds shall be protected as if they were separately insured under a separate policy, provided, however, that such policy shall not require the insurer to pay any amounts in excess of the maximum limits stated in this Article.

7.6 Each policy is to be written by an insurer reasonably acceptable to KLMC with a financial rating by A. M. Best Company, Inc. of A or better and a financial size rating by A. M. Best Company, Inc. of XII or higher. In the event that such rating system is altered or eliminated, then the insurer shall have a rating from a comparable rating service reflecting the ability of the insurer to meet its insurance obligations, comparable to such A rating, and shall have a policyholder surplus of not less than \$200 million. If the limits of available liability coverage required in this Article become substantially reduced as a result of claim payments, HWSC immediately shall purchase additional liability insurance (if such coverage is available at commercially reasonable rates) to increase the amount of available coverage to the limits of liability coverage required by this Agreement. To the extent available, all policies are to be specifically endorsed to provide 30 days' written notice of cancellation for any reason [or 10 days' in the case of nonpayment of premium], coverage reduction, termination, non-renewal, and 10 days' written notice prior to lapse, which notice shall be delivered to KLMC. To the

extent available, all Certificates of Insurance must state that "the issuing company will mail 30 days' written notice of cancellation to the certificate holder." HWSC will from time to time deposit promptly with KLMC current certificates of all insurance required to be maintained by HWSC under this Agreement. At KLMC's request, HWSC shall deliver to KLMC current copies of the insurance policies required by this Section. KLMC shall not have any liability to HWSC for the coverage or quality of any insurance required to be carried by HWSC or for the collection of any insurance proceeds or for the insolvency of any insurer or insurance underwriter.

7.7 Notwithstanding anything in this Agreement to the contrary, HWSC waives and shall cause its insurance carriers to waive any and all rights of recovery, claim, action or causes of action against KLMC, Pioneer Mill Company, LLC, Kaanapali Farm Services, Inc., KLC Land Company, LLC, and Kaanapali Land, LLC, and their respective employees, agents, successors and assigns, for any loss or damage that may occur to KLMC or HWSC or any party claiming by, through or under KLMC or HWSC, as the case may be, with respect to HWSC's property, the Hahakea Well System, the License Area or the Driveway Area, any additions or improvements to the Hahakea Well System, and the use and operation thereof by HWSC, including all rights of recovery, claims, actions or causes of action arising out of the negligence of KLMC, which loss or damage is (or would have been, had the insurance required by this Agreement been carried) covered by insurance. Notwithstanding anything in this Agreement to the contrary, KLMC waives and shall cause its insurance carriers to waive any and all rights of recovery, claim, action or causes of action against HWSC, its employees, agents, successors and assigns, for any loss or damage that may occur to KLMC or any party claiming by, through or under KLMC, as the case may be, with respect to KLMC's property, including all rights of recovery, claims, actions or causes of action arising out of the negligence of HWSC, which loss or damage is covered by KLMC's insurance.

8. ENTRY BY KLMC. KLMC, its agents, contractors and representatives may enter that portion of the Hahakea Well System, including any appurtenant easements located on property owned by KLMC to inspect and exercise any rights under this Agreement which require entry, in KLMC's sole discretion. Except in emergencies, KLMC shall provide HWSC with reasonable prior notice of entry, which may be given orally. Entry by KLMC shall not excuse HWSC's performance hereunder. KLMC shall indemnify, defend and hold HWSC harmless from and against any and all claims arising from out of KLMC's exercise of such right of entry.

## 9. RIGHT TO TERMINATE.

9.1.1 KLMC shall have the right to terminate this Agreement at any time upon not less than one hundred eighty (180) days prior written notice to HWSC in the event that HWSC has not taken water from the Hahakea Well for at least six (6) consecutive months; provided, however, that KLMC shall not have the right to terminate if the reason that HWSC has not taken water from the Hahakea Well is that HWSC is in the process of diligently and actively making repairs to the well.

9.1.2 HWSC shall have the right to terminate this Agreement at any time upon not less than one hundred eighty (180) days prior written notice to KLMC.

9.1.3 HWSC shall have the right to terminate this Agreement immediately upon written notice in the event that KLMC defaults, or causes there to be a default, in any of the provisions of this Agreement, which default is not cured within ninety (90) days after written notice by HWSC to KLMC provided in accordance with the provisions of this Agreement; provided, however, KLMC shall have a reasonable period of time to cure non-monetary defaults so long as KLMC is diligently and continuously attempting to cure such default.

9.1.4 KLMC shall have the right to terminate this Agreement immediately upon written notice in the event that HWSC defaults, or causes there to be a default, in any of the provisions of this Agreement, which default is not cured within ninety (90) days after written notice by KLMC to HWSC provided in accordance with the provisions of this Agreement; provided, however, HWSC shall have a reasonable period of time to cure non-monetary defaults so long as HWSC is diligently and continuously attempting to cure such default.

9.1.5 In addition to the parties' right to terminate this Agreement as a result of default by the other party, KLMC and HWSC also shall each have the right to pursue any other remedies available at law or in equity.

#### 10. NO WASTE, DAMAGE, NUISANCE OR LIENS.

10.1.1 HWSC shall not commit or suffer to be committed waste upon the License Area or Driveway Area and HWSC shall not do or permit anything to be done in or about the License Area or Driveway Area which will in any way injure any of the buildings or improvements in the vicinity of the License Area or Driveway Area or obstruct or interfere with the rights of any tenants, users or occupants in the vicinity of the License Area or the Driveway Area.

10.1.2 HWSC shall be fully responsible to compensate KLMC for any damages to the License Area or the Driveway Area, or other property of KLMC, including improvements, facilities and equipment thereon, resulting from the activities of HWSC and its employees, contractors, agents and invitees. HWSC shall not be considered to be an independent contractor, employee or agent of KLMC.

10.1.3 HWSC shall ensure that the use and occupancy of the License Area and Driveway Area shall not cause a public nuisance and shall take such action as necessary to ensure that undue noise, odor or other disturbances do not emanate from the same. HWSC shall use appropriate dust control measures to ensure that no material dust from HWSC's operations encroaches on adjoining properties.

10.1.4 HWSC shall keep the License Area and Driveway Area free from any attachment, execution or judgment liens and encumbrances arising out of any claim against HWSC whatsoever. Without limitation of the foregoing, nothing contained in this Agreement shall authorize HWSC to do any act that shall subject KLMC's title to the License Area or Driveway Area to any liens or encumbrances, whether claimed by operation of law or

express or implied contract. Any claim to a lien or encumbrance upon the License Area or Driveway Area arising in connection with any work shall be null and void.

10.1.5 HWSC shall use commercially reasonable efforts not to take any action that would damage or contaminate the aquifer underlying the land upon which the Hahakea Well is located. HWSC shall install appropriate well casings and seals and withdraw water in amounts only to the extent that the sustainable yield is not exceeded.

## 10.2 NO LIABILITY OF KLMC; INDEMNITY BY HWSC.

10.2.1 KLMC shall not be liable to HWSC or any of its employees, contractors, agents or invitees (the "HWSC Invitees") in any way as a result of the HWSC or the HWSC Invitees traversing, entering, occupying and/or using the License Area or Driveway Area, or their activities thereon. HWSC hereby assumes all known and unknown risks associated with any such person's entry onto the License Area and Driveway Area. HWSC shall comply with KLMC's directives concerning the security of the License Area and Driveway Area and adjacent lands of KLMC or its affiliates, and shall use reasonable efforts to keep gates and locks properly maintained. HWSC shall be responsible for repairing and replacing all locks as needed to ensure the security of such areas and shall provide keys to KLMC for such areas. HWSC shall promptly notify KLMC if HWSC becomes aware of any security breaches or broken or stolen locks or gates on lands of KLMC or its affiliates. Although KLMC may provide various additional security measures in KLMC's discretion, HWSC shall not have any right to rely on any such security measures working as intended and shall have no action against KLMC or any of its affiliates for the failure thereof. The disclaimers of liability and assumption of risk set forth in this Section 10.2.1 shall not apply to the gross negligence or willful misconduct of KLMC or its affiliates.

10.2.2 HWSC shall at all times with respect to the License Area and Driveway Area exercise due care for public and private safety and hereby agrees to indemnify and hold harmless the Indemnified Parties against any and all losses, damages, costs, expenses, including attorneys' fees and litigation costs, liabilities, demands or causes of action (collectively, "Claims"), arising out of or in any way connected with HWSC's and/or any of its employees', contractors', agents', or invitees' entry upon and/or use of the License Area or Driveway Area or the activities of HWSC and/or any of its employees, contractors, agents, or invitees on or in the vicinity of the License Area and Driveway Area, including, but not limited to claims for property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of the premises by HWSC or any other person claiming by, through or under HWSC, or any accident, fire, or nuisance on the premises or any adjacent areas caused by HWSC, or any failure by HWSC to keep the premises or any adjacent areas in a safe condition, to observe or perform any applicable rules or regulations of governmental agencies, or statutes or ordinances, or to perform any of the covenants or agreements herein contained. HWSC shall reimburse the applicable Indemnified Party for all costs and expenses, including reasonable attorney's fees, incurred in connection with the prosecution or defense of any such claim, and will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the premises at user's sole risk and hold harmless each Indemnified Party from and against any loss or damage thereto by any cause whatsoever. This indemnity shall survive termination of this Agreement. The indemnity and hold harmless

provisions set forth in this Section 10.2.2 shall not apply to the gross negligence or willful misconduct of KLMC or its affiliates.

### 10.3 HAZARDOUS MATERIALS.

10.3.1 KLMC shall not be liable for any damages to HWSC or any other person or entity for the presence of Hazardous Materials (defined below) on, under or within the License Area or Driveway. HWSC shall not cause or permit any Hazardous Material to be used, stored, generated, or disposed of on or in the License Area or Driveway by HWSC, or their respective agents, employees, contractors or invitees, except as reasonably necessary for operation of the Hahakea Well System and then only upon specific written approval by KLMC. If in violation of the foregoing sentence Hazardous Materials are used, stored, generated, or disposed of on or in the License Area or Driveway by HWSC, or their respective employees, contractors, agents or invitees, HWSC and the user thereof shall indemnify and hold harmless KLMC from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising on or after the date of this Agreement and arising as a result of that contamination. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any clean-up, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if HWSC, its agents, employees, contractors or invitees, cause the presence of any Hazardous Material on the License Area or Driveway Area that results in contamination, HWSC, at its sole expense, promptly shall take any and all necessary actions to return the affected property to the condition existing prior to the presence of any such Hazardous Material thereon. HWSC shall first obtain KLMC's written approval for any such remedial action which shall not be unreasonably withheld or delayed. The disclaimer of liability, indemnity and hold harmless provisions set forth in the Section 10.3.1 shall not apply to (a) the contamination of water from the Hahakea Well caused by the violation of laws or regulations by KLMC or its affiliates, or (b) the gross negligence or willful misconducts of KLMC or its affiliates.

10.3.2 As used herein, the term "Hazardous Material" means and includes, without limitation, inflammable explosives, radioactive materials, asbestos, organic compounds (including polychlorinated biphenyls), pollutants, contaminants, hazardous wastes, toxic substances or related materials and any such substances defined as or included in the definitions for "hazardous substances", "hazardous wastes", "extremely hazardous wastes", "hazardous materials", or "toxic substances" under the following laws, ordinances and regulations ("Hazardous Materials Laws"): Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, as the same may be amended from time to time, any similar Hawaii State and local laws and ordinances, and regulations now or hereafter adopted, accomplished and promulgated pursuant thereto.

11. INDEMNITY BY KLMC. KLMC shall indemnify and hold HWSC harmless from and against any claims, liabilities, costs and expenses arising out of or relating to (a) the contamination of water from the Hahakea Well caused by the violation of any laws or



regulations by KLMC or its affiliates, or (b) the gross negligence or willful misconduct of KLMC or its affiliates.

12. **AGREEMENT REGARDING FUTURE DEVELOPMENT IN WEST MAUI.** As further consideration for this Agreement, HWSC covenants and agrees, for the benefit of KLMC and its affiliates, that, except to the extent there is direct interference with the operation of HWSC's water system or with the rights or obligations of HWSC or KLMC under this Agreement, HWSC (and its affiliates and their respective successors, and any of their consultants, attorneys and agents) will not oppose, object to, intervene in, or otherwise interfere with (either directly or through third parties) any development applications as KLMC or its affiliates (or their respective successors and assigns) may deem necessary or advisable for the development of any lands in Lahaina, Ka'anapali or elsewhere in West Maui, including, but not limited to, applications that include the License Area and/or any other portions of the property included within the Wainee or Ka'anapali 2020 development areas of KLMC and its affiliates, or the Pioneer Mill Site property, for purposes consistent with and in compliance with applicable law.

13. **COOPERATION.** KLMC and the HWSC agree to cooperate to the extent necessary to effect the intentions expressed by this Agreement.

14. **ASSIGNABILITY.** HWSC shall not have the right to assign, mortgage or otherwise transfer this Agreement, or HWSC's rights or obligations hereunder, or permit the License Area or Driveway Area to be used or occupied by any persons or entities other than HWSC, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, HWSC shall have the right to assign its rights herein to any corporation or other entity which controls, is controlled by, or is under common control with HWSC, or to any corporation or other entity resulting from a merger, sale, reorganization or consolidation with HWSC, or to any person or entity which acquires a controlling interest in HWSC's stock, either by private sale or as the result of a public stock offering, or substantially all of the assets of HWSC as a going concern (collectively a "Permitted Assignment") without obtaining KLMC's written consent. Any Permitted Assignment shall be subject to the following conditions: 1) HWSC shall notify KLMC in writing of the Permitted Assignment not less than thirty (30) days before the effective date of the assignment; 2) the Permitted Assignment shall not release HWSC from its obligations under this Agreement; and 3) the assignee shall assume the obligations of HWSC hereunder in writing; and 4) HWSC shall have obtained the approval of the Hawaii Public Utilities Commission to the extent such approval is required.

14. **AMENDMENT.** The terms of this Agreement may be amended only by a written instrument executed by KLMC and HWSC which sets forth the amendments.

15. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of Hawai'i and applicable federal statutes and rules both as to interpretation and performance.

16. **BINDING EFFECT.** Upon its execution by each party, this instrument shall become binding and enforceable according to its terms. The rights and obligations of each party named in this instrument shall bind and inure to the benefit of each party and their respective successors and permitted assigns.

17. PERPETUITIES. If any of the terms, covenants, conditions and restrictions, or reservation of rights set forth herein shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

18. INTERPRETATION. This Agreement and the rights and obligations of the parties shall be interpreted, construed and enforced in accordance with the laws of the state of Hawaii. If any term or provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law. The headings and titles to the sections of this Agreement are for convenience only and shall have no effect on the interpretation of any part of the Agreement. Time is of the essence of every provision of this Agreement.

19. ENFORCEMENT COSTS. If any legal action or other proceeding, including arbitration, is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses even if not taxable as court costs, incurred in such action or proceeding, in addition to any other relief to which such party or parties may be entitled. THE PARTIES HERETO IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR CLAIM BROUGHT BY OR ON BEHALF OF EITHER PARTY RELATED TO OR ARISING OUT OF THIS AGREEMENT.

20. NOTICE. If a demand, request, approval, consent or notice (collectively a "notice") is given to either party by the other, the notice shall be in writing and delivered by hand or sent by registered or certified mail with return receipt requested, or sent by overnight or same day courier service at the party's respective address set forth above. Each notice shall be deemed to have been received or given on the earlier to occur of actual delivery or the date on which delivery is refused. Either party may, at any time, change its notice address by giving the other party written notice of the new address in the manner described herein.

21. NO THIRD PARTY BENEFICIARIES. Nothing in this agreement shall be construed as giving any person, firm, corporation or other entity, other than the parties hereto, their successors and permitted assigns, any right, remedy or claim under or in respect of this agreement or any provision hereof.

22. NOT A LEASE; NO RECORDATION. This Agreement shall not at any time be construed as or deemed to be a lease of the lands underlying the License Area and/or Driveway Area. HWSC hereby acknowledges and confirms that this Agreement does not give, grant or convey any right, title or interest in the lands underlying the License Area or Driveway Area to HWSC. HWSC shall not record this Agreement or any memorandum or short form of the Agreement under any circumstance whatsoever.

23. ENTIRE AGREEMENT. This Agreement embodies the entire agreement of the parties and supersedes all other agreements or understandings with respect to the subject matter hereof that may ever have existed between the parties.

24. JURISDICTION; VENUE. The jurisdiction and venue for any and all arbitrations or lawsuits if any, shall be the County of Maui, State of Hawai'i.

25. CONSENTS. Except as otherwise provided herein, whenever KLMC's or HWSC's consent or approval is required hereunder, such consent or approval shall not be unreasonably withheld or delayed, nor shall the consenting party require the payment of any consideration.

26. COUNTERPARTS; FACSIMILE COPIES. This Agreement may be executed in counterparts. Each counterpart shall be executed by one or more of the parties to this document and the several counterparts shall constitute one document to the same effect as though the signature of all the parties were upon the same document. Facsimile copies shall be deemed to be originals.

IN WITNESS WHEREOF, the KLMC and HWSC have executed this Agreement as of the day and year first above written.

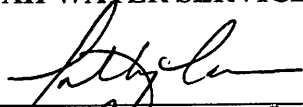
**KAANAPALI LAND MANAGEMENT CORP.**

By   
Name: JEFFREY K. KONO  
Title: VP

By \_\_\_\_\_  
Name:  
Title:

**"KLMC"**

**HAWAII WATER SERVICE COMPANY**

By   
Name: Anthony Carrasco  
Title: General Manager

**"HWSC"**

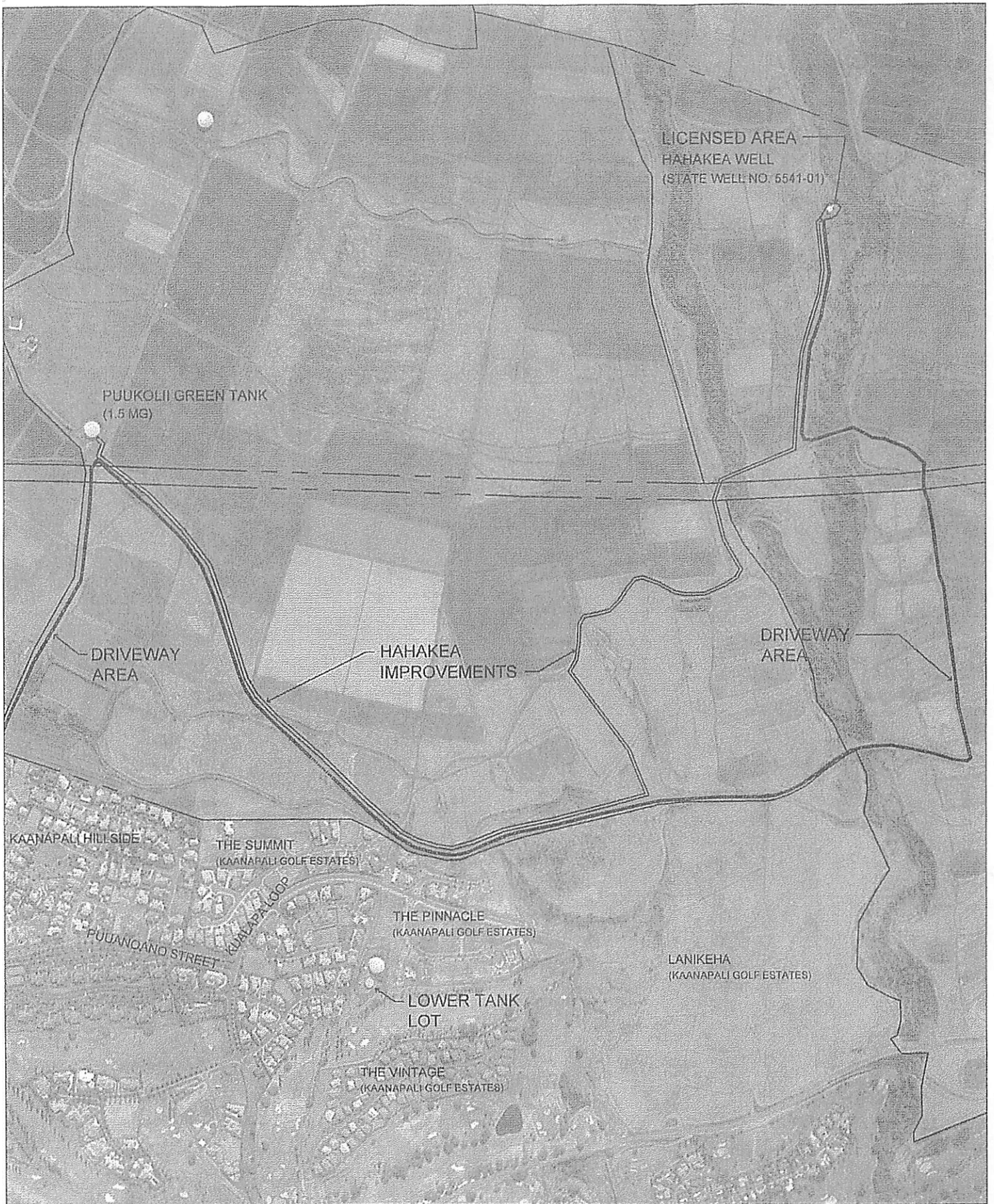
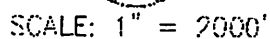


EXHIBIT "A"

(NO SCALE)



HWSC Tariff No. 1  
First Revised Exhibit "A"  
Cancels Original Exhibit "A"



**EXHIBIT "B"**

Effective: November 3, 2010