

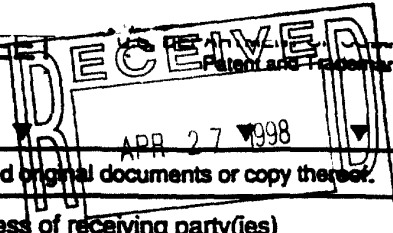
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05-13-1998



100709320

COVER SHEET
ONLY



Patent and Trademark Office

is attached original documents or copy thereof.

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To the Honorable Commissioner of

1. Name of conveying party(ies):

MAUNA LA'I TROPICALS, LTD.

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation-State MASSACHUSETTS
- Other

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: SEPTEMBER 1, 1997

2. Name and address of receiving party(ies)

Name: KILAUEA AGRONOMICS, INC.

Internal Address:

Street Address: FORT AND QUEEN STREETS

City: HONOLULU State: HI ZIP: 96805

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State HAWAII
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designations must be a separate document from assignment)

Additional name(s) & address(es) attached? Yes No

4. Application number(s) or patent number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,694,721

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: HOWARD N. ARONSON

Internal Address:

Street Address: LACKENBACH SIEGEL MARZULLO ARONSON & GREENSPAN, P.C.

ONE CHASE ROAD

City: SCARSDALE State: NY ZIP: 10583

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41).....\$ 40.00

Enclosed

10-0100

Authorized to be charged to deposit account

Please charge any additional fees due, or credit any over payment to:

8. Deposit account number:

10-0100

(Attach duplicate copy of this page if paying by deposit account)

05/13/1998 100709320 00000000 100100 1694721
Sale Ref: 00000000 Date: 100100 1694721
01 FC:481 40.00 CH

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

HOWARD N. ARONSON

Name of Person Signing

Signature

9/23/98

Date

15

Total number of pages including cover sheet, attachments, and document:



Excluded
Original

GUAVA PUREE SUPPLY CONTRACT
Between
MAUNA LA'I TROPICALS, LTD.
and
KILAUEA AGRONOMICS, INC.

This Agreement is between Mauna La'i Tropicals, Ltd., a corporation (herein called "Mauna La'i") and Kilauea Agronomics, Inc. (hereinafter called "KAI"), a Hawaii corporation. Each party intending to be legally bound agrees as follows as of September 1, 1997.

1. Supply Contract. Starting September 1, 1997 and continuing for five years thereafter, Mauna La'i will purchase all of Mauna La'i's guava puree requirements from KAI except for 1,000,000 pounds of guava puree per Fiscal Year September 1 to August 31 which Mauna La'i is obligated to purchase from Ocean Spray Cranberries, Inc. for the first three years of this Agreement. Except for Mauna La'i's purchases of guava puree from Ocean Spray Cranberries, Inc. as stated above, Mauna La'i must purchase all of its guava puree requirements from KAI, but there is no "take or pay" nor minimum annual purchase requirements in this supply Agreement. All guava puree sold to Mauna La'i must meet specifications as clearly defined in Section 4. Exhibit B. Throughout each Fiscal Year of this Agreement, Mauna La'i will take delivery of all of its yearly requirements from KAI during KAI's peak harvest months (normally September through December). Mauna La'i will give KAI at least nine months' advance written notice of Mauna La'i's estimated guava puree purchase requirements from KAI for the forthcoming Fiscal Year starting September 1 of each year. If Mauna

La'i licenses or permits anyone else to use the Mauna La'i trademark or brand in the existing base business in the multi-serve (greater than 24 ounces) shelf stable business, Mauna La'i will ensure that such licensee or permittee will purchase all of its guava puree requirements from KAI, as set forth in this Agreement. If Mauna La'i licenses or permits anyone else to use the Mauna La'i trademark or brand in other than in the existing base business in the multi-serve (greater than 24 ounces) shelf stable business, Mauna La'i will endeavor to ensure that such licensee or permittee will purchase all of its guava puree requirements from KAI, as set forth in this Agreement.

Mauna La'i will not purchase guava puree from any party other than KAI unless KAI cannot supply this guava puree in the amount and at the time requested by Mauna La'i. Mauna La'i may purchase guava puree from sellers other than KAI only during the time that KAI cannot supply or informs Mauna La'i that KAI has no guava puree available. This situation will not be considered a default under this Agreement by either party. If KAI does not have enough guava puree from its own orchards to satisfy Mauna La'i's requirements, KAI may source the guava puree from equivalent Hawaii sources which otherwise meet the Specifications in paragraph 4 below.

Title to, and risk of loss of, the guava puree shall pass to Mauna La'i when delivered by KAI to Mauna La'i's West Coast plant.

2. Price. The first Fiscal Year price (base price) will be \$.50¢/pound delivered to Mauna La'i's West Coast plant. After the first Fiscal Year, the base price of \$.50¢/pound will be adjusted each Fiscal Year based on an

even weighting of percentage changes in the Honolulu Consumer Price Index (50% weight) and the U.S. Department of Agriculture Statistics Service price of Hawaiian guava (50% weight). For Fiscal Year two of the Agreement, these changes will measure the change between calendar year 1 of the Agreement (January 1, 1997 to December 31, 1997) and the prior calendar year. An example of this calculation is attached hereto as Exhibit A. Invoices shall be dated and sent to Mauna La'i on the same day that the guava puree is shipped to Mauna La'i, and Mauna La'i shall pay such invoice within 30 days of the date of the invoice.

3. Term. This Agreement shall last five years starting September 1, 1997, and ending August 31, 2002.

4. Specifications. The specifications are as attached on Exhibit B which is made a part hereof.

5. Sale of Mauna La'i Trademark. As part of the consideration for this Agreement, KAI hereby sells its 50% ownership interest in all rights, title, interest and goodwill in the Mauna La'i trademark and brand name to Mauna La'i free and clear of all liens except as noted below. As payment therefore, Mauna La'i will pay to KAI a 5% premium on the dollar value of all guava puree purchased by Mauna La'i under this Agreement. KAI will add this 5% to each invoice that KAI sends to Mauna La'i, and Mauna La'i will pay each invoice within 30 days of the date of the invoice. If Mauna La'i has not paid to KAI a total of \$450,000 in premium payments by August 31, 2002, Mauna La'i will pay a lump sum to KAI on that date so that the total premium payments equals \$450,000. However,

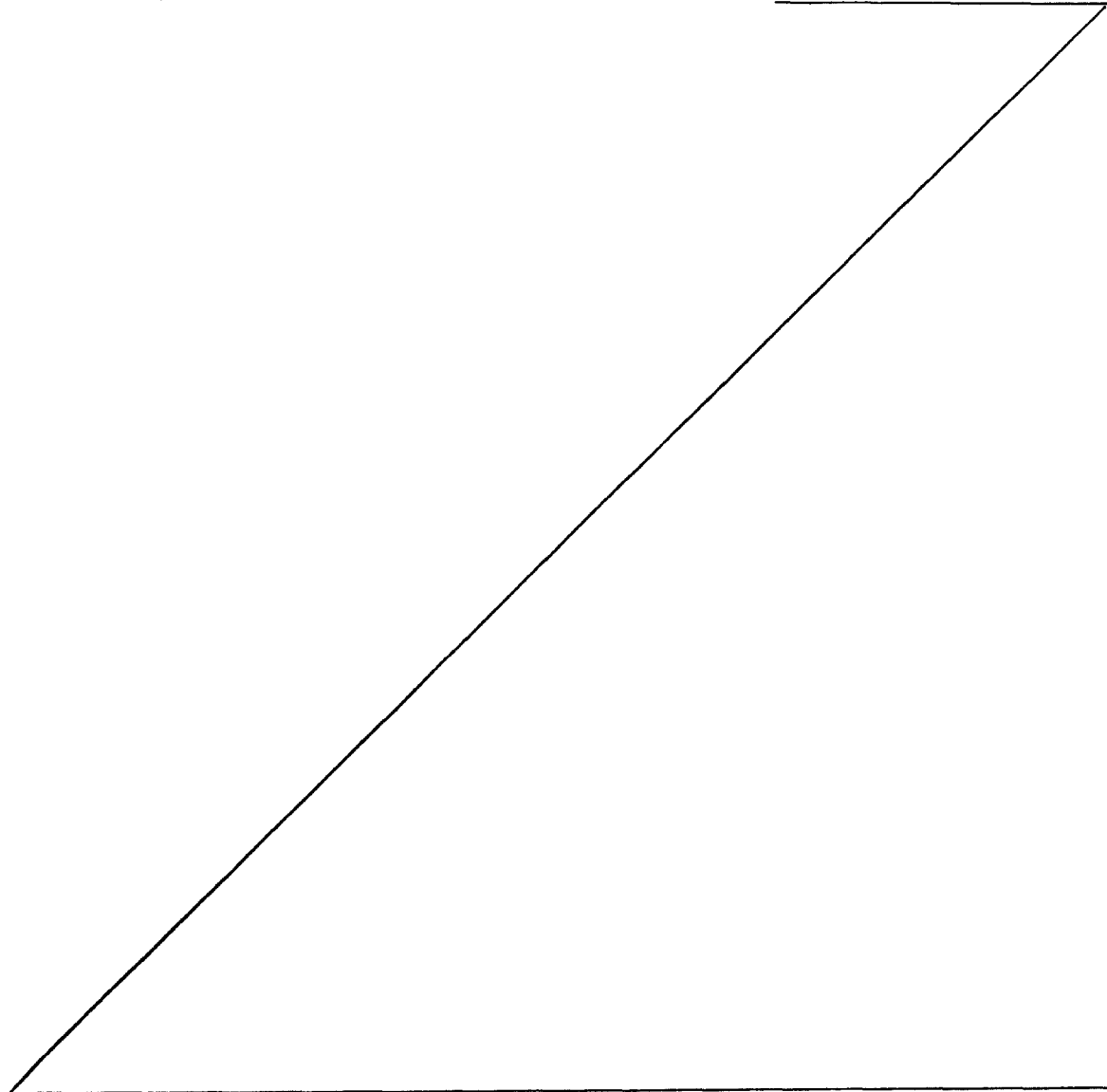
There is no cap on the premium payments so that it is possible for Mauna La'i to pay to KAI more than \$450,000. As security for such payment of \$450,000, Mauna La'i will, at the start of this Agreement, place a lien on a 50% interest in the Mauna La'i trademark during the first three years of this Agreement and a 100% interest thereafter and record it in favor of KAI (including a UCC No. 1 filing in the county of Mauna La'i's home office), and which will provide that if Mauna La'i defaults under this section 12 of this Agreement, Mauna La'i will immediately transfer 50% ownership of the trademark during the first three years of this Agreement and a 100% interest thereafter to KAI for \$1.00 free and clear of all liens.

Subject to provisions under Section 12, if Mauna La'i defaults in the payment of any premium payment or any other provision of this contract, the above payment of \$450,000 (or whatever sum is still outstanding) will become due. If Mauna La'i defaults, subject to the provisions under Section 12, on the balance of the premium due or any other provision of this contract, Mauna La'i will transfer 50% of legal ownership of the trademark and brand name to KAI during the first three years of this Agreement and a 100% interest thereafter for \$1.00 consideration. Until the full \$450,000 premium is paid to KAI, Mauna La'i will not allow any liens or encumbrances to be placed on the trademark. When the full \$450,000 premium is paid in full, KAI will immediately file a Release and Satisfaction of the lien.

6. Non-Compete. Mauna La'i agrees not to enter the frozen tropical juice business nor license anyone else to do so.

7. Force Majeure. Neither party shall be responsible to the other for any delay or loss if the fulfillment of any of the terms or provisions of this Agreement is prevented by drought, weather, disease, infestation, civil commotion, riots, wars, acts of enemies, national emergency, strikes, floods,

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hurricane, fires, acts of God, or by any other cause not within the control of the party whose performance is interfered with, which by the exercise of reasonable diligence, such party is unable to prevent, whether of the class or causes enumerated above or not. In the event such a cause prevents KAI from shipping to Mauna La'i the full quantities of guava puree as required by this Agreement, KAI, if requested by Mauna La'i, will use its best efforts to make up for any shortfall as soon as practicable at its normal cost, it being understood that KAI may allocate deliveries of guava puree to Mauna La'i under this Agreement and to other parties under any other binding contract existing as of the date of execution hereof.

8. Product Liability.

(a) KAI does hereby indemnify and agree to hold Mauna La'i harmless with respect to all liability, cost and expenses (including attorney's fees) arising out of or in any way connected with the guava puree sold hereunder. KAI agrees to deliver to Mauna La'i a Product Liability Insurance Policy certificate naming Mauna La'i as an insured in an amount of not else than \$1,000,000. Such insurance shall be maintained during the Term hereof.

(b) KAI represents and warrants that all guava puree sold by it to Mauna La'i hereunder will comply with the Federal Food, Drug and Cosmetic Act and other Federal and State laws relating to pure food which are applicable to such sales.

(c) Mauna La'i hereby agrees to indemnify and hold KAI harmless with respect to all liability, cost and expenses (including attorney's fees)

arising from product liability claims which may be assessed during the Term of this Agreement or thereafter with respect to any guava beverage or other product marketed or sold by Mauna La'i, and which are not due to a breach of the above warranty or KAI's obligations. Mauna La'i agrees to deliver to KAI a Product Liability Insurance Policy certificate naming KAI as an insured in an amount not less than \$1,000,000. Such insurance shall be maintained during the Term hereof.

9. Best Efforts of Mauna La'i. Mauna La'i recognizes that, as consideration for this Agreement, KAI transferred its 50% ownership interest in the Mauna La'i trademark and brand name to Mauna La'i, and that KAI is interested in selling as much guava puree to Mauna La'i as possible. Therefore, Mauna La'i agrees to use his best reasonable efforts to grow the revenues of the Mauna La'i brand name and the use of guava puree in existing Guava Products (products that have guava as the principle characterizing ingredient) and if in its sound business reasoning, new Guava Products. Mauna La'i further agrees to continue using the Mauna La'i brand name on the existing Guava Products and agrees not to introduce competing Guava Products which do not use the Mauna La'i label.

10. Joint Venture. This Agreement shall not be construed to create a separate entity or to create a partnership between the parties. Except as provided in Section 10, no assets shall be owned jointly by reason of the provisions of this Agreement. No party hereto is hereby constituted the agent or partner of the other.

11. Assignment. KAI contemplates that in the future it may desire to convey to third parties part or all of its orchards or other assets utilized in the performance of this Agreement and any assignment of this Agreement or sale of asset by KAI shall be permitted, except provided that no such assignment or sale shall interfere with KAI's performance of its obligations under this Agreement or impose increased costs on Mauna La'i. KAI may purchase guava puree from third parties to carry out its obligations under this Agreement, provided that the guava puree meets the specifications set forth in Exhibit "A".

This Agreement shall inure to the benefit of and be binding upon Mauna La'i, its successors and assigns, provided, however, that Mauna La'i may not transfer this Agreement without consent to KAI, which consent cannot be unreasonably withheld and provided that the transferee assumes all obligations of Mauna La'i herein.

12. Default. In the event any party hereto shall commit an Event of Default (hereinafter defined) and shall fail to cure such Event of Default for a period of 60 days after notice specifying such Event of Default, such 60-day period to be extended for up to 90 days while defaulting party is diligently proceeding to cure an Event of Default which is capable of being cured by such party's efforts, then the party not in default shall have the right to declare in writing that the defaulting party is in default due to such event of Default. Within 30 days following delivery of such declaration to the defaulting party, the party making the declaration may terminate this Agreement in total by reason of such Event of Default, effective upon the date of default. If any of the following events

(herein called "Events of Default") shall occur, then such an Event of Default shall be deemed to be a breach of this Agreement:

(a) the willful failure by a party to perform a specific covenant or agreement in or under the terms of this Agreement; or

(b) if a party shall (i) be generally not paying its debts as they become due, (ii) file, or consent by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, (iii) make an assignment for the benefit of its creditors, (iv) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (v) be adjudicated insolvent or be liquidated or (vi) take corporate action for the purpose of any of the foregoing; or

(c) If a court or governmental authority of competent jurisdiction shall enter an order appointing, without consent by a party hereto, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or if an order for relief shall be entered in any case or proceeding for liquidation or reorganization or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of a party, or if any petition for any such relief shall be filed against a party, and such order or petition shall not be dismissed within 30 days.

13. Notices. Any notice, communication, request or advice in this Agreement required or permitted to be given, made or accepted by one party to the other shall be in writing and sent by United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested. For purposes of notice, the address of the parties shall, until changed by notice as herein provided, be as follows:

If to KAI and/or C. Brewer and Company, Limited:

Kilauea Agronomics, Inc. Fax No. (808)544-6182
P. O. Box 1826
Fort and Queen Streets
Honolulu, Hawaii 96805
Attn.: James S. Andrasick, Chairman

If to Mauna La'i Tropicals, Ltd.:

Mauna La'i Tropicals, Ltd. Fax: (617)356-3965
100 Grossman Drive, Suite 300
Braintree, MA 02184

14. Conditioned Upon Releases Between KAI and Ocean Spray.

KAI and Ocean Spray have a Restructure Agreement between them dated November 15, 1991. The guava puree supply arrangement in that Agreement expires August 31, 1997 and KAI and Ocean Spray. This Guava Puree Supply Agreement between Mauna La'i and KAI is conditioned upon KAI and Ocean Spray releasing each other from the terms and conditions of that Restructure Agreement dated November 15, 1991.

15. Miscellaneous

(a) The construction and enforcement of this Agreement shall be governed by the laws of the State of Hawaii.

(b) This Agreement constitutes the entire Agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to the subject matter hereof.

(c) Except as herein provided, each party to this Agreement shall pay all the expenses incurred by it incident to this Agreement and the transactions contemplated hereby.

(d) Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(e) This Agreement shall be executed in three or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of this first day of September 1997, which shall be the effective date of this Agreement except as otherwise provided.

MAUNA LA'I TROPICALS, LTD.

By: *Kevin A. Maguire*
Its: PRESIDENT

KILAUEA AGRONOMICS, INC.

By: *Kent J. Ricci*
Its: Vice President

By: *John T. [Signature]*
Its: Asst. Treasurer

EXHIBIT A

To illustrate, the following is an proforma example for Fiscal Year 1997 assuming that the guava purchase agreement were effective in Fiscal Year 1996:

Guava Puree price in Fiscal Year 1996	\$0.50 per pound
Guava Puree price in Fiscal Year 1997	\$0.50 times (1 + index)

Index is calculated as follows:

Honolulu Consumer Price Index 1995	XXX
Honolulu Consumer Price Index 1996	<u>YYY</u>
Increase/(Decrease)	<u>ZZZ</u>
Percentage Change	ZZZ + XXX

Honolulu Consumer Price Weight	Percentage Change times 50%
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USDA Guava Price in 1995	\$0.145 per pound
USDA Guava Price in 1996	<u>\$0.143</u> per pound
Increase/(Decrease)	(\$0.002) per pound
Percentage Change	(1.38%)

USDA Guava Price weight	(0.68%)
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Total change to Index	HCPI + USDA
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EXHIBIT B

**QUALITY OPERATING GUIDELINES
FROZEN HAWAIIAN GUAVA PUREE**

DATE: September 1, 1997 SUPERSEDES _____

Physical Description

The fruit shall be Hawaiian grown Beaumont Guava (*Psidium guajava L.*), harvested, transported and stored in accordance with Good Manufacturing Practices.

The puree from this fruit is a rosy pink viscous liquid which is derived solely from sound, properly matured, fresh guavas. The product has not been pasteurized or depectinized, is hard frozen, and contains no additives or preservatives. Processing must conform to all provisions of the Food, Drug and Cosmetic Act of 1938.

Specifications

Brix	5.5° minimum 7.0° target
Percent pulp (v/v)	7.0 - 9.0% daily production range
Percent Stone Cells (v/v)	0.10% max. (Gritty material)
Percent Screened Particles (v/v)	0.25% Target 0.25% - 1.0% Actionable 1.0% Unacceptable
Texture	Not gritty when rubbed between thumb & finger
Appearance	Rosy pink in color and free of white fibers (GT 1/16"), green or dark specs, and any other foreign material.
Flavor and Odor	Typical with no fermented or other off notes.

QUALITY OPERATING GUIDELINES
FROZEN HAWAIIAN GUAVA PUREE
Date: June 1, 1997

Microbiological

	<u>Standard</u>	<u>Conditional Acceptance</u>	<u>Reject</u>
Yeast	≤2,000/g	≥2,000≤10,000/g	≥10,000/g
Mold	≤1,000/g	≥1,000≤3,000/g	≥3,000/g
<i>E. Coli</i> 0157	Negative		

Packaging

- 430 pound (195.03 kg) net fill fiberboard barrel, with sealed poly bag liner.
- Pound (18.4 kg) net fill fiberboard box, with sealed poly bag liner.
- 49,000 pound (22,226.3 kg) net fill bulk tanker.

Labeling

Conform to FDA regulations with the following information: Name of Product;
 Company name and address; net contents; and lot code.

Shipping and Storage

Fiber box ship and store at 0°F or below.
 Bulk tanker at 42°F or below.