

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

TIMBER LAND LICENSE, NO. H-0101

KNOW ALL MEN BY THESE PRESENT:

WHEREAS, Tradewinds Forest Products LLC., a Washington corporation, whose mailing address is 1325 4th Street, Suite 1428, Seattle, Washington, 98101, has applied to the Board of Land and Natural Resources, State of Hawaii, (“Board”) for a Land License (“License”) more particularly described herein; and

WHEREAS, the Board at its meeting held on September 11, 1998, found that public interest would be best served by disposition of a License by negotiation without recourse to public auction; and

WHEREAS, the Board, acting pursuant to Chapter 171-54, Hawaii Revised Statutes (HRS), may issue such License directly without recourse to public auction.

NOW, THEREFORE, the STATE OF HAWAII, by its Board of Land and Natural Resources, hereinafter referred to as the “Licensor”, pursuant to section 171-54, HRS, and for and in consideration of the fees to be paid and the terms, conditions, and agreements herein contained, all on the part of the Licensee to be kept, observed, and performed, does hereby grant said License to Tradewinds Forest Products LLC., hereinafter referred to as the “Licensee”, to enter, remove, and grow forest products of such kinds and in such amounts as hereinafter provided from state lands of the Olaa, Waiakea, and Upper Waiakea Forest Reserves and more particularly identified as the “Waiakea Timber Management Area (WTMA)” on maps attached hereto as Exhibit A and made a part hereof, hereinafter referred to as the “License Area”.

The terms and conditions under which this License is issued are as follows:

1.0 LOCATION AND PRODUCTS

- 1.1 Sale Area and Species.** The Licensee shall be permitted to harvest and remove trees from the WTMA as designated by an approved Forest Management Plan and conditions within this License. The species and acres harvested will be recorded by stand numbers within the following six strata: Eucalyptus Harvest, Queensland Maple Harvest, Toona Harvest, Eucalyptus Replacement, Queensland Maple Replacement, Toona Replacement listed in Exhibit C. Additional stands within the WTMA may be added to this License upon mutual agreement.

- 1.2 **Set Asides.** No harvesting will be allowed in those areas set aside for timber research, experimental planting, education, protective buffer zones for threatened and endangered species and government projects without the written consent of the Division of Forestry & Wildlife, hereinafter referred to as “DOFAW”, Administrator or designee. These areas are designated on the attached map as Exhibit B, except for protective buffer zones for threatened and endangered species which may be added as harvest units are identified and surveys are conducted. Additional set asides may be added at a later date upon mutual consent between the Licensor and the Licensee.
- 1.3 **Non-timber Forest Products.** The Licensor reserves all rights to non-timber forest products within the WTMA. All lands not currently being harvested and all roads not currently in use will remain available to the Licensor and its non-timber forest products gatherers and customers. The Licensee will provide DOFAW, at a minimum, ninety (90) days for DOFAW to harvest non-timber forest products from all areas or units that are scheduled for timber harvesting. All non-timber forest products harvesting activities within a planned harvest unit will cease two weeks prior to Licensee’s harvest operations.

2.0. LICENSE TERM

- 2.1 **Term of License.** The Licensee shall have the exclusive right and privilege for a term of ten (10) YEARS, commencing on _____ and ending on _____, both dates inclusive, or such shorter time as is necessary, within which to enter upon the WTMA to harvest the tree species in accordance with this License. At year eight (8), the Licensee shall have an option to extend for up to an additional twelve (12) years at the end of this license subject to mutual agreement of stumpage prices and other issues as determined by both parties. The Licensor will not unreasonably withhold the extension of the License if the Licensee has satisfactorily met the conditions of the License and is offering a fair market stumpage price for trees that the Licensee established under the terms of the License for a second rotation harvest.
- 2.2 **Commencement of Harvesting.** The Licensee shall commence harvest operations within 60 calendar days after the completion of the facility (See 3.0). If no tree harvesting is conducted within 60 calendar days after the facility is completed, the Board shall be entitled to terminate this License.
- 2.3 **Right of Licensor.** The Licensor reserves the right to sell or grant to others similar rights or privileges; provided, however, that the rights reserved shall not be exercised by the Licensor, or by any other licensee(s) of the Licensor in such a manner as to interfere unreasonably with the Licensee in the free use of said License Area for the purpose specified.

3.0 **VALUE-ADDED PROCESSING.** The Licensor’s objective for the timber within the WTMA is to encourage the domestic processing within the State of Hawaii to ensure the high quality of jobs for the residents of the State. The Licensee proposes to utilize the timber within the WTMA as the catalyst for developing a world class veneer and plywood plant manufacturing facility (herein after referred to as “facility”) on the island of Hawaii.

3.1 **Veneer/Plywood.** The Licensee will begin construction of the facility between the year 2001 and 2003. The Licensor recognizes that the final decision to construct the facility will be dependent on other factors not influenced by this License (e.g. additional private timber, construction of power plant). The Licensor reserves the right to restrict harvesting of certain strata of timber until the facility is completed (See 3.2.1). The Licensor reserves the right to terminate this License if the facility is not substantially completed by December 31, 2003. The Licensor agrees to not unreasonably terminate this License if the Licensee is making good faith efforts to complete the facility, obvious progress has been made, and the completion date is expected in the 2004 calendar year.

3.2 **Restrictions.**

3.2.1 Strata The following strata will not be harvested prior to the construction of the facility: all stands in the Queensland Maple and Toona Harvest Strata, and E22 stands within the Eucalyptus Harvest Stratum (See Exhibit C).

3.2.2 Woodchips No woodchips will be manufactured from merchantable logs, as defined in 11.13, harvested within the WTMA, except as a by product of a veneer or lumber processing activity. Logs which are not suitable for manufacturing lumber or veneer may be harvested and processed as woodchips.

3.2.3 Log exports No unprocessed raw logs harvested from the WTMA shall be exported from the State of Hawaii except for marketing purposes and research approved by the Administrator.

4.0. **METHOD AND RATE OF PAYMENT**

4.1 **Amounts.** Payment for tree species harvested under this License during the first rotation shall be based on the scaled measurement of the harvested trees at the following rates:

- a. *Eucalyptus saligna, grandis, deglupta and pilularis:* \$ 10.00 per cubic meter.
- b. *Eucalyptus robusta:* \$ 8.00 per cubic meter.
- c. *Flindersia brayleyana, Toona ciliata var. australis:* \$ 25.00 per cubic meter.
- d. *Alder nepalensis:* \$ 10.00 per cubic meter.

e. *Cryptomaria japonica*: \$ 10.00 per cubic meter.

The Licensor reserves the right to withdraw the Alder nepalensis and Cryptomaria japonica strata from this License, with a 120 days written notification to the Licensee.

4.2 Scaling. All logs removed from the WTMA shall be measured by weight, unless otherwise agreed to by mutual consent of Licensee and Licensor. Weighing shall be done at Licensee expense at a truck scale authorized by the Hawaii State Department of Agriculture. Payment shall be based on log weight multiplied by a weight-to-volume conversion factor to be based on published weight to volume conversion rates. Licensee will provide Licensor an original copy of all scale, ticket and weight slips. Licensee will cross-reference and reconcile all load tickets returned from all weight destinations against the ticket books issued to the timber harvest unit, and provide Licensor a final reconciliation with payment. The Licensor, its agents and employees, shall at any reasonable time upon twenty-four (24) hours notice to the Licensee, have access to all books, accounts, records, and reports of the Licensee relating to the material removed from the License Area herein described for the purpose of inspection, examination, or audit.

4.3 Payment Method. Payment for logs removed will be made on a monthly basis. Log payments will be made by the 20th of each month for the preceding month's removal. The Licensee shall make all payments to the Department of Land and Natural Resources at the Division of Forestry and Wildlife, P.O. Box 4849, Hilo, Hawaii 96720.

The interest rate on any and all unpaid or delinquent payments shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.

4.4 Compliance Bond. A single payment/performance bond in the amount of \$500,000 will be posted after License execution and no less than 90 days prior to commencement of any operations by the Licensee within the WTMA. The Licensee will maintain the compliance bond to meet the requirements of reforestation harvested areas as well as adhering to all terms, conditions, and covenants of this License. The Forest Management Plan (See 6.2) will provide the proposed silvicultural specifications and performance measures for each species regarding reforestation of harvested areas.

4.5 Other Payments. The Licensee will be solely responsible for the payment of site preparation, maintenance, utilities, insurance and taxes as well as all permits, fees, and other levies associated with the property's entitlement, development, and operation. The Licensor will cooperate with the Licensee in obtaining permits under its jurisdiction.

4.6 Insurance. The Licensee shall procure, at its own cost and expense and keep in full force and effect throughout the term of this License, commercial general liability

insurance with an insurance company or companies acceptable to the Board and licensed to do business in the State of Hawaii, in an amount of at least \$300,000.00 for each occurrence (combined single limit] and \$500,000.00 aggregate. The policy or policies of insurance shall name the State of Hawaii [and the Lessee] additional insured. The insurance shall cover the entire License Area. The Licensee, prior to entry and use of the License Area or within fifteen (15) calendar days after the effective date of this Land License, whichever is sooner, shall furnish the Licensor with a certificate(s) showing the policy(s) to be initially in force, and keep the certificate(s) on deposit during the entire License term, and furnish a like certificate(s) upon each renewal of the policy(s). The insurance shall not be canceled, limited in scope of coverage, or non-renewed until after thirty- (30) calendar days written notice has been given to the Licensor.

The Licensor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this License. If, in the opinion of the Licensor, the insurance provisions in this License do not provide adequate protection for the Licensor, the Licensor may require Licensee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection.. The Licensor*s requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Licensor shall notify Licensee in writing of changes in the insurance requirements and Licensee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Licensor incorporating the changes within thirty (30) calendar days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Licensee*s liability under this License nor to release or relieve the Licensee of the indemnification provisions and requirements of this License. Notwithstanding the policy(s) of insurance, Licensee shall be obligated for the full and total amount of any damage, injury, or loss caused by the Licensee*s negligence or neglect connected with this License.

It is agreed that any insurance maintained by the Licensor will apply in excess of, and not contribute with, insurance provided by Licensee*s policy(s).

5.0 EASEMENTS, ROADS AND ACCESSES

- 5.1 Easements.** It shall be the Licensee's sole responsibility to secure and pay for easements or rights-of-way on private lands across which it is necessary to build roads to transport the forest products included in this License. The Licensor will assist the Licensee in obtaining such easements or rights-of-way. In the event that the Licensee is unable to secure such easements or rights-of- way for ingress and egress into any particular area within the WTMA, then such areas shall be excluded from the WTMA and the parties herein shall be released and relieved from their respective obligations under this License

to the extent of the volume of timber contained in said excluded areas and an amended land license entered into between the parties.

5.2 Road Construction and Location. Roads shall be located in accordance with an approved Forest Management Plan, and in accordance with BMP's referenced in 6.1.

5.2.1 Drainage. Roads shall have culverts installed at points where drainage is blocked by fills except on temporary roads where the Administrator may substitute a requirement that the Licensee will open the drainage when logging has been completed.

5.2.2 Turnouts. One lane roads shall be provided with adequate turnouts as provided in the Forest Management Plan.

5.2.3 Rock Quarry. Rock material for road construction within the WTMA will be made available to the Licensee from quarry sites within the WTMA when authorized by the Administrator. The quarry location and quarry work plan must be approved by the Administrator prior to any quarry activities being initiated. The Licensee shall be responsible for all grubbing, quarrying, stockpiling, loading, and hauling of all material from the quarry sites and will be responsible for the rehabilitation of the quarry sites as specified in the quarry work plan. Quarry rock material shall be used only on roads and landing sites within the WTMA.

5.3 Road Maintenance. All roads within the WTMA used by the Licensee, whether constructed by the Licensee or not, will be maintained by the Licensee at its own cost to a standard such that will permit the Licensee to remove the timber efficiently and by following the guidelines recommended in the BMPs for forestry related activities. Clearance of timber and other vegetation on road rights-of-way must be no wider than is necessary for the installation or improvement of the road. Licensee will make frequent inspections of the main haul roads and make necessary repairs to the roads to minimize soil erosion and damage to the environment.

5.3.1 The Licensee shall maintain a cross section of permanent dirt or graveled roads by blading and shaping surface and shoulders. Banks shall not be undercut. Established berms shall be maintained and additional berms shall be placed where needed to protect fills. Established berms which hold water unnecessarily shall be eliminated.

5.3.2 When logging in a WTMA has been completed, and a permanent road is no longer to be used in logging operations authorized by this License, the Licensee shall shape and grade the crown, clean ditches, open culverts, provide cross-drainage and construct dips.

5.3.3 Closing road audit. The Licensee will be released of any road maintenance obligations not detailed in the Forest Management Plan after completion of harvesting operations upon inspection and signing of a closing road audit by the Licensor and

Licensee. The closing road audit will be held no longer than 60 days after notification of completion of a harvesting unit by the Licensee and final approval of the audit will not be unreasonably withheld by the Licensor.

5.3.4 Licensor will provide as well as maintain appropriate signage to identify all major roads within the WTMA.

5.4 Road Maintenance Fund. The Licensee agrees to contribute one dollar per ton for all logs and other tree products it transports on Stainback Highway towards a road maintenance fund for maintenance or reconstruction of Stainback Highway, contingent on the Stainback Highway being improved to a commercial forest industry standard for mainline roads before harvesting operations begin.

5.5 Access.

5.5.1 Use by the Public. All roads, existing or hereafter constructed within the WTMA may be used by the public when so authorized by the Administrator, provided, that such use shall not interfere with the operations of the Licensee under this License. For safety reasons during logging operations, there will be no hunting within one-quarter mile of the logging site; public will not use active logging roads during working hours; and active logging units and contiguous roads will be closed during all hours, all day. Closure will typically last about 60 days. Licensee will post, maintain, and remove appropriate signs and gates. The Olaa Flume Road, Waiakea Boundary Road (leads to the quarry and farm lots), and Tree Planting Road will be kept open, unless specifically closed by the Licensor and the Licensee is given a 30 day written notification.

5.5.2 Use by Public Officials. Federal, State and County officers having official duties to perform in the area served by roads built by the Licensee in carrying out the provisions of this License shall have the right to use the roads so built in carrying out such official duties.

6.0 CONDUCT OF HARVEST OPERATIONS

6.1 Best Management Practices (BMP's). The Licensee will adhere to the BMP's (Exhibit D) in all of its operations within the WTMA. A breach of the BMP's will constitute the suspension and potential termination of this License if not remedied after 30 days after written notification by the Licensor.

6.2 Forest Management Plan. The Licensee will submit to the Licensor a Forest Management Plan which shall include a section on Harvesting Operations, Fire

Prevention and Control (See 6.10) and Reforestation (See 6.0), which must be approved by DOFAW Administrator or designee, before harvesting operations can begin within the WTMA .

6.2.1 Timing of Harvesting Operations. The Licensee will submit a annual Harvest Schedule for each calendar year for the removal of timber products from WTMA. The Harvest Schedule will be submitted to the Administrator for approval no less than 30 calendar days prior to initiating any harvesting activities for a selected harvesting unit. The Harvest Schedule may be amended quarterly.

6.2.2 Harvesting Operations. The Harvesting Operations Section of the Forest Management Plan will provide information on maps and narrative as to the sequence of harvesting each unit, the principal road network to be used, the harvesting time, main skid trails and landings locations, access, treatment of logging debris and other information that are pertinent to the harvesting of each unit. The Licensee shall not harvest timber products from any area not designated for harvesting.

- 6.3 Utilization Practices.** All merchantable logs will be harvested and utilized to their respective minimum top diameters as defined in 11.13. All stumps shall be cut so as to cause the least waste practicable and shall not exceed, on the side adjacent to the highest ground, a height of 12 inches. Branches and tree tops less than four inches in diameter may be harvested or treated as logging debris.
- 6.4 Treatment of Logging Debris.**
The Licensee shall treat all logging debris by one of the following methods as designated in the approved Forest Management Plan.
- a. Lop all logging debris to cause it to lie within 36 inches of the ground surface and away from stumps;
 - b. Smashing in place of all logging debris;
 - c. Piling of all logging debris in designated windrows or piles;
 - d. Scattering of logging debris with a bulldozer; or
 - e. Other methods mutually agreeable to the Licensor and Licensee.
- 6.5 Damage to Residual Stands.** All harvest and logging debris treatment operations of the Licensee shall be so conducted as to minimize damage to residual stands.
- 6.6 Damage to Intermittent Stream Courses.** All operations of the Licensee under this License shall be so conducted as to minimize damage to intermittent stream courses within the WTMA. Intermittent stream courses in the WTMA shall be cleared of all logs, chunks, and logging debris resulting from operations under this License which may affect the natural flow of the stream. Licensee will be responsible for all costs and repairs for remedial actions under 6.6.

- 6.7 Construction, Improvement and Use of Roads and Other Installations.** The Licensee may construct and will maintain in the WTMA, for the purpose of ingress and egress, all roads and other transportation facilities needed for the harvesting of the forest products included in this License. As used throughout this section, “construct” also means “reconstruct.” All construction and maintenance shall be in accordance with Best Management Practices and the approved Forest Management Plan.
- 6.8 Soil Erosion and Damage to Soil** The Licensee shall take all practical precautions to minimize soil erosion and damage to the soil during harvest operations including, but not limited to:
- 6.8.1 Prevention of Gullyng.** Prevent the gullyng of roads, ditches, skid trails, and landings.
- 6.8.2 Suspension of Operations to Avoid Damage.** Cease operating any of its equipment when ground conditions are such that excessive damage will result to the soil. To avoid such damage the Administrator may suspend operations in whole or in part for such period or periods as are necessary, without liability for any loss of damage.
- 6.8.3** The Licensee shall perform the following soil erosion control work following harvest operations within the WTMA:
1. Maintain all roads as required by this License.
 2. Grade and construct cross drainage and water spreading ditches on all landings and skid trails as necessary to prevent soil erosion.
 3. Soil erosion control work should be completed approximately 2 weeks following harvesting operations.
- 6.9 Waste Disposal.** No waste oil, other waste liquids, chemicals, litter, scrap, and abandoned equipment will be disposed within the WTMA.
- 6.10 Fire prevention and control**
- 6.10.1 Fire plan.** The Licensee will set forth in detail in the Forest Management Plan needed actions and responsibilities for fire prevention, control, and extinguishment of fires in the WTMA and immediate vicinity to be approved by the Administrator before commencing any harvesting or road construction activities.
- 6.10.2 Fire suppression.** The Licensee will take all reasonable precautions to prevent fires by its operations, employees, sub-contractors and their employees. During the period of this License, the Licensee shall, both independently and in cooperation with the Division of Forestry and Wildlife, take all reasonable and practicable actions to suppress fires caused by its operations, employees, sub-contractors and their employees. Independent initial fire suppression action by the Licensee on such fires shall be immediate and shall include the use of all manpower and suitable equipment at its

disposal. Such action shall continue until the fire is brought under control or the Licensee and its manpower and equipment are released by the Administrator. All roads and trails, designated by the Administrator as needed for fire protection or other purposes, shall be kept free of logs or logging debris resulting from operations under this License. All such roads and trails damaged by such operations shall be promptly restored or repaired.

6.11 Native Forest Interface Zone. To minimize disturbance to native vegetation and prevent the spread of non-native invasive weeds, a 150 foot protective buffer zone will be identified by the Licensor within the planted non-native forest areas adjacent to high quality native forest. Specific management actions to reduce impacts of harvesting and the spread on non-native invasive weeds will be specified in the Forest Management Plan for these areas.

6.12 Protection of Existing Improvements. In all phases of construction and other operations under this License, the Licensee shall take precautions to protect, insofar as practicable, all utility lines, ditches, fences and other improvements; and, if any such improvements are damaged by its operations, it shall restore or repair them or cause them to be restored or repaired, promptly and at the Licensee's expense.

6.13 Conformity with Laws, Rules and Regulations, etc. The Licensee shall, during the whole of the term of this License, maintain all areas in which operations are conducted in a sanitary and orderly condition satisfactory to the Licensor and in conformity with the Public Health Regulations of the Department of Health and with the applicable laws, ordinances, rules and regulations of the federal, State and local governments, and the approved Environmental Assessment.

The Licensee shall observe and comply with all laws, ordinances, rules and regulations of the federal, state, municipal or county governments now in force or which may hereinafter be in force, affecting this License or the License Area.

6.14 Hazardous Wastes. The Licensee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. Licensee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the License Area any such materials except for use in the ordinary course of Licensee's business, and then only after written notice is given to Licensor of the identity of such materials and upon Licensor's consent which consent may be withheld at Licensor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Licensee, then the Licensee shall be responsible for the reasonable costs thereof. In addition, Licensee shall execute affidavits, representations and the like from, time to time at Licensor's request concerning

Licensee's best knowledge and belief regarding the presence of hazardous materials on the License Area placed or released by Licensee .

The Licensee agrees to indemnify, defend, and hold Licensor harmless, from any damages and claims resulting from the release of hazardous materials on the License Area occurring while Licensee is in possession, or elsewhere if caused by Licensee or persons acting under Licensee. These covenants shall survive the expiration or earlier termination of this License.

For the purpose of this License "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

7.0 REFORESTATION OF HARVESTED AREAS

- 7.1 **Reforestation.** Reforestation specifications will be submitted as part of the Forest Management Plan prior to harvesting operations. Licensee shall reforest at its sole cost and expense all harvested areas. The object of such reforestation shall be to improve the economic value of the new plantations. The parties acknowledge that the WTMA is a unique environment for commercial forestry, and therefore, technical reforestation or regeneration information is incomplete. Licensee shall use its best efforts and best available science to accomplish this goal.

Licensor reserves the right to request reasonable changes in Licensee's reforestation practices, provided that such requests be based on the best available science. In the event that Licensee fails to comply with such reasonable requests, Licensor may, on ninety (90) days' written notice, assume responsibility for reforestation. In such event, Licensee shall pay Licensor reforestation costs up to \$600 per acre. Licensor will provide reports, to be submitted every three months, detailing reforestation costs for which Licensor has assumed responsibility .

- 7.2 **Stand Conversion** When eucalyptus stands are converted to other species, the Licensor may require the Licensee, at the Licensee's expense, to apply a herbicide on all or a portion of the remaining stumps. Approximately 20 percent of the harvested stands under this License will be converted or remain in Queensland Maple.
- 7.3 **Reforestation closing audit.** The Licensee will be released of all reforestation obligations after an inspection and signing of a reforestation closing audit has determined that a minimum stocking level of seventy-five (75) percent has been achieved after two years.

7.4 Seedlings. The Licensor retains the right to grow seedlings at its own nurseries for the second rotation for the WTMA provided that the seedlings are equal to the price and quality available from the private sector. If the term of the License is extended (See 2.1), the Licensee, upon consultation with and approval by the Licensor, will have the ability to select sources for seedlings (e.g. improved seed, clonal material) for the second rotation crop. Such approval will not be unreasonably withheld by the Licensor.

8.0 REPLACEMENT STANDS It is the desire of the Licensor to have Licensee reforest stands that have not achieved desirable growth levels which are designated as Replacement stands within the Eucalyptus, Toona and Queensland Maple Replacement strata in Exhibit C. The Licensee will harvest all merchantable timber in replacement stands at the going stumpage rate. The Licensee will receive a stumpage credit, not to exceed \$1,000 per acre for the costs of silvicultural activities carried out for each acre in replacement stands that are replanted after initial harvest and judged free to grow by the Licensor. Stumpage credits will be applied as follows: 1) 60 percent will be credited towards the first rotation harvest; and 2) the remaining 40 percent will be credited towards the second rotation harvest, if the Licensee is granted permission to harvest (See 2.1). Licensee will provide reports, to be submitted every three months, detailing costs for harvesting and reforesting replacement stands. Licensee and Licensor will cooperatively discuss problems and amend as needed the reforestation activities recommended for replacement stands. If reforestation costs for replacement stands exceed \$800 per acre, Licensor can amend conditions in 8.0, upon mutual consent with Licensee, which will not be unreasonably withheld. If mutual consent cannot be achieved, Licensor reserves the right to terminate conditions in 8.0 , provided 120 day written notification to Licensee.

9.0 SUSPENSION OR TERMINATION

9.1 Suspension of Contract. All or any part of the harvesting operations under this License may be suspended by the Administrator, by notice in writing, for violation of any of the terms, conditions and covenant herein contained, provided that written notice was given the Licensee and 15 calendar days were given to correct such violation.

9.2 Breach. In the event that the Licensee shall fail to make the said payment or any part thereof at the times and in the manner aforesaid; if any violation, breach or default shall be committed or made by the Licensee of any term, covenant, restriction or condition herein; if the Licensee shall become bankrupt, or shall abandon the premises, and if any such violation, breach or default is not cured or remedied within thirty (30) calendar days after written notice by personal service, registered or certified mail to Licensee and to all holders of security interest in the License, then in any such case, the Board shall be entitled to terminate said License without demand and without legal process and without prejudice to any other remedy or action.

Time is of the essence in this License and if the Licensee fails to pay the royalty rate, or any part thereof, at the times and in the manner provided within thirty (30) days after delivery by the Licensor of a written notice of breach or default, or if the Licensee becomes bankrupt, or abandons the License Area, or if this License and License Area are attached or taken by operation of law, or if Licensee fails to observe and perform any of

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the covenants, terms, and conditions contained in this License and on its part to be observed and performed, and this failure continues for a period of more than sixty (60) days after delivery by the Licensor of a written notice of breach or default, by personal service, registered mail, or certified mail to the Licensee at its last known address and to each mortgagee or holder of record having a security, interest in the License Area, the Licensor may, subject to the provisions of section 171-21, HRS, at once re-enter the License Area, or any part of it, and upon or without the entry, at its option, terminate this License without prejudice to any other remedy or right of action for arrearage of royalty or for any preceding or other breach of contract; furthermore Licensor shall retain all royalty paid in advance to be applied to any damages

- 9.3 Termination at Licensee Request.** Should at any time during the term of this License, the Licensee request termination of the License and the Board agrees to terminate the License, the Licensee shall be liable for all damages and debts incurred up to such time. Upon termination, abandonment, or expiration of this License, the Licensee shall not be relieved of any claims or demands accrued, including claims for property damage, personal injury, or death, caused by any act or omission of the Licensee, or for any breach of the terms and conditions of this License.
- 9.4 Excuse for abnormal interruption.** Licensee shall not be in default by reason of any failure in performance of this License in accordance with its terms and conditions, including any failure by the Licensee to make progress in the performance hereunder which endangers such performance, if the Licensee has notified the Administrator of DOFAW within fifteen (15) days after the cause of the delay and the failure arises out of abnormal interruptions. Upon request of the Licensee, DOFAW shall ascertain the facts and extent of such failure, and, if the Administrator determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Licensee's progress and performance would have met the terms and conditions of the License, the License shall be revised accordingly, subject to Board approval. .
- 9.5 Disputes.** In the event of impasse or an adverse final decision concerning a claim or any matter in dispute under the License, the Chairperson shall resolve the dispute. If the Chairperson cannot resolve the dispute to the satisfaction of either party, then either party may submit the matter to mediation by written notice to the other party. The notice shall briefly summarize the matters in dispute, state the last position taken by each party, name the principal persons with knowledge of the matter and identify the License provisions, statutes, or regulations believed to be pertinent. Notice shall be given as soon as practicable after impasse or an adverse final decision, but not later than 10 days after impasse, mailing or delivery of a final decision. The mediator shall be mutually selected and the costs of mediation shall be shared equally. Each party shall otherwise bear its own costs.

10.0 ADDITIONAL LICENSE PROVISIONS

- 10.1 Confidentiality and Availability of Records.** The State agrees to treat any

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information concerning Tradewinds, its business activities, financial and other information related thereto, including without limitation, its products, customers and similar information, as confidential. The State shall consider all such information as proprietary property of Tradewinds and agrees to take reasonable precautions to preserve its confidentiality. Prior to providing any such information to third parties, permission must be obtained from Tradewinds and such third party must sign an agreement that they understand its nature and will treat such information in accordance with this Paragraph.

Confidential material does not include information that is or becomes generally available to the public other than as a result of a disclosure by or through the State, or becomes available to the State on a non-confidential basis from a source not known by the State to be bound by a confidentiality agreement with, or other legal fiduciary obligations of confidentiality to, any other persons.

10.2 Covenant Against Discrimination. The use and enjoyment of the License Area shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immuno-deficiency virus) infection.

10.3 Indemnity. The Licensee shall indemnify, defend, and hold the Licensor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part, of Licensee relating to Licensee*s use, occupancy, maintenance, or enjoyment of the License Area; 2) any failure on the part of the Licensee to maintain the License Area, and including any accident, fire, or nuisance growing out of or caused by any failure on the part of Licensee to maintain any of Licensee*s equipment within the License Area in a safe condition;, and 3) from and against all actions,* suits, damages, and claims by whomsoever brought or made by reason of the Licensee*s non-observance or non-performance of any of the terms, covenants, and conditions of this License or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

In case the Licensor shall, without any fault on its part, be made a party to any litigation commenced by or against the Licensee (other. than condemnation proceedings), the Licensee shall pay all costs, including reasonable attorney*s fees, and expenses incurred by or imposed on the Licensor; furthermore, the Licensee shall pay all costs, including reasonable attorney*s fees, and expenses which may be incurred by or paid by the Licensor in enforcing the terms and conditions of this License, in recovering possession of the License Area, or in the collection of delinquent royalty, taxes, and any and all other charges.

10.4 Assignment. The Licensee shall not transfer, mortgage, or assign this License for the whole or any part of the term thereof, except with the prior written approval of the Board. Such approval shall not be unreasonably withheld. * [If the Licensee is a partnership, joint venture or corporation, the sale or transfer of 20 % or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed

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a transfer for purposes of this paragraph and subject to the right of the Licensor to terminate this License effective of the date of sale or transfer.]

- 10.5 Entire Agreement.** This written agreement constitutes the entire agreement of the parties and all covenant, promises, representations and agreements existing are contained herein, and shall be binding upon, apply and inure to the benefit of the successors and assigns respectively of the Licensee and the Licensor.
- 10.6 Representations.** Licensee agrees that it has executed this Agreement as a result of its own inspection of the forest products the subject hereof, and the WTMA herein described and not as a result of any representation made by the Licensor or its employees or agents, as to absolute quantity, quality, value or accessibility of timber or logging conditions on any of the areas covered by this Agreement or the commercial feasibility of such timber cutting operations or otherwise.
- 10.7 Community liaison.** Licensee will designate a community liaison within 90 calendar days of License signing to meet with local community members and respond to their questions and concerns for the term of this license. .
- 10.8 Local log sales.** Licensee will maintain an open log yard, using logs from the WTMA that are representative of areas recently harvested, as well as logs purchased from local landowners and then selling logs to local sawmills, craftspeople and artisans. The log yard will be equipped to deal in small quantities appropriate to the scale of existing local businesses. At least 300 cubic meters of wood will be made available each month.
- 10.9 Speaker Pool and Scholarship Fund.** Licensee will maintain a pool of speakers who will be available to local schools and community organizations. Speakers will address such topics as general forestry, engineering, accounting, shipping, international business, and forest products marketing. Licensee will also fund a Waiakea Forest Scholarship program for college tuition scholarships for the children of its employees and contractors. The scholarship fund will start at \$25,000.
- 11.0 DEFINITIONS** The words and terms as used in this License shall be defined and interpreted, unless a different meaning clearly appears from the context, as follows:
- 11.1 Administrator** - The Administrator of the Division of Forestry and Wildlife, Department of Land and Natural Resources, State of Hawaii, or successor, including those designated to act on the Administrator's behalf.
- 11.2 Abnormal Interruption** - Delays caused by acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods, epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.
- 11.3 Agreement** - Same as Timber Land License or License.

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11.4 BMPs - Best Management Practices which were developed for Hawaii and approved by the Board on 10 October 1997.

11.5 Board - The Board of Land and Natural Resources of the State of Hawaii or its successor.

11.6. Chairperson - Chairperson of the Board of Land and Natural Resources or the Chairperson's successor.

11.7 DOFAW - Division of Forestry and Wildlife.

11.8 Facility - Sawmill and/or veneer and plywood plant capable of processing at least 200,000 cubic meters of logs annually.

11.9 Harvest - To cut standing live trees, broken trees, windthrown trees and to remove wood, bark, and other forest product material from a forest.

11.10 Harvest Stands - Stands that have achieved desirable growth levels within ten years and identified in Exhibit C as Harvest strata.

11.11 Licensee - The Licensee, Tradewinds Forest Products, its successors and permitted assigns.

11.12 Licensor - The State of Hawaii.

11.13 Merchantable logs - All logs that are equal to or longer than 17 feet and straight enough to load to a five inch (5") top diameter. All remaining logs that are at least 11 feet in length to a ten inch (10") top diameter.

11.14 Native Forest Interface Zone - A 150 foot strip established within the planted forest (adjacent to high quality native forest) to prevent the spread of non-native invasive plant species into the native forest.

11.15 Reforestation - To cause, either through planting and/or other silvicultural techniques, the regeneration of a forest.

11.16 Replacement Stands - Stands which have not achieved desirable growth levels and are identified as Replacement Strata in Exhibit C.

11.17 Rotation - A period of time in which a forest crop is established, managed, and eventually harvested. Expected rotation period for eucalyptus species within the WTMA is approximately twelve (12) years and twenty-five (25) years for toona and maple.

11.18 Stratum - A group of planted forest stands with similar species, ages, growth rates, or desired management prescription.

11.19 Tree Volume - Total main stem and bark volume for merchantable logs as

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defined in 11.13.

11.20 Waiakea Timber Management Area - An area for which a management plan has been written and approved by the Board. Also referred to as WTMA.

12.0 **RESERVATIONS** The State reserves and saves unto itself, in perpetuity, all historic property, minerals, and surface and ground waters appurtenant to the premises herein described and that in connection therewith, the State shall have the right to enter said premises, protect or recover historic property, sever and remove minerals, or to develop, capture, divert, and impound water.

Proposed Exhibits

- A - WTMA Base Map
- B - Excluded Areas (set asides)
- C - Harvest and Replacement Strata
- D - Best Management Practices (BMPs)