

TABLE OF CONTENTS

	<u>Page</u>
TERM OF WATER LICENSE.....	1
ANNUAL RENTAL	1
RENT INCREASE	2
INTEREST RATE/SERVICE CHARGE	2
RESERVATIONS:	
1. Minerals and waters	3
2. Right to withdraw	3
AGREEMENTS AND COVENANTS BETWEEN PARTIES:	
1. Payment of rent	5
2. Taxes, assessments, etc.....	5
3. Utility services	5
4. Covenant against discrimination	5
5. Water quality.....	5
6. Waste and unlawful, improper or offensive use of Water Resource.....	5
7. Compliance with laws	5
8. Inspection by Licensor	6
9. Modification of water works	6
10. Liens	6
11. Character of use	6
12. Assignments, etc.....	7
13. Subletting	7
14. Release and indemnity	7
15. Costs of litigation	8
16. Liability insurance	8
17. Bond or security deposit; Performance	9
18. Breach	10
19. Condemnation	10
20. Acceptance of rent not a waiver.....	11



TABLE OF CONTENTS (cont'd)

	<u>Page</u>
21. Extension of time	11
22. Justification of sureties	11
23. Waiver, modification, reimposition of bond and liability insurance provisions.....	12
24. Quiet enjoyment	12
25. Surrender	12
26. Non-warranty	13
27. Hazardous materials.....	13
28. Hawaii law	13
29. Exhibits - Incorporation in license	14
30. Headings	14
31. Partial invalidity	14
32. Force Majeure	14
33. Counterparts	14
 SPECIAL CONDITIONS:	
34. Clearances	15
35. Audit of Water Resource	15
36. Environmental regulations	15
37. Assignment to bondholders	15
38. Watershed Management Plan	15
39. Stream Monitoring Equipment	15
40. Water for farm, ranch and other public uses	16
41. Legislative disapproval	16
 DEFINITIONS	 17
 SIGNATURE PAGE	 18
 ACKNOWLEDGMENT PAGE	 19



STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

WATER LICENSE NO. S-_____

THIS WATER LICENSE ("License"), made this _____ day of _____, 20__, by and between the STATE OF HAWAII, hereinafter referred to as the "Licensor," by its Board of Land and Natural Resources, called the "Board," and SALE AT PUBLIC AUCTION _____, whose address is _____, hereinafter referred to as the "Licensee."

WITNESSETH:

The Licensor, pursuant to Sections 171-14 and 58(c), Hawaii Revised Statutes, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Licensee to be kept, observed and performed, does license unto the Licensee, and the Licensee does license from the Licensor the right to divert, impound, transmit, and use in a non-consumptive manner, surface water from the Wailuku River at Piihonua, South Hilo, Island of Hawai'i, Hawai'i, at Diversion Point(s), and return such water to the Wailuku River at Return Point(s); all more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," attached hereto and made parts hereof, hereinafter referred to as the "Water Resource".

TO HAVE AND TO HOLD the licensed rights unto the Licensee for the term of thirty (30) years, commencing on the day of _____, 20__, up to and including the day of _____, _____, unless sooner terminated as hereinafter provided, the Licensor reserving and the Licensee yielding and paying to the Licensor at the Department of Land and Natural Resources, Fiscal Office, P.O. Box 621 Honolulu, Hawai'i, 96809 an annual rental as provided hereinbelow, payable without notice or demand, on the 31st day of January of each and every year following the first year of the License, beginning January 31st, 202_ and ending on January 31st, 205_ as follows:

A. For the first ten (10) years, the annual rental amount shall be paid by the Licensee in an amount based on the



annual kilowatt hours generated as of the end of the calendar year during the term of the License multiplied by the prevailing FERC rate of \$0.001 per kilowatt hour or the higher rate as established by the winning bid at public auction.

B. Every ten years, the rent shall be increased to be equal to the prevailing FERC rate at the time of reopening applied to the amount of kilowatt hours generated on an annual basis. In the event the winning bid at auction was higher than the prevailing FERC rate at the commencement of the License, the rent at reopening shall reflect the same percentage increase as the prevailing FERC rate at the time of reopening to the FERC rate at the commencement of the License.

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



RESERVATIONS:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Licensee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters not specifically granted by this License provided, however, that as a condition precedent to the exercise by the Licensor of the rights reserved in this paragraph, just compensation shall be paid to the Licensee for any of Licensee's improvements taken.

2. Right to withdraw. Licensor reserves the right to withdraw the Water Resource or any portion thereof to meet the following requirements as the Licensor in its sole discretion may determine:

- a. Constitutionally protected water rights; reservations, including but not limited to the 1.60 million gallons per day reserved by the Department of Hawaiian Home Lands from the Wailuku River to meet the Department of Hawaiian Home Lands' rights under Section 221 of the Hawaiian Homes Commission Act; as well as other statutorily or judicially recognized interests relating to the right to withdraw water for the purposes of and in accordance with the provisions of Section 171-58(d), Hawaii Revised Statutes; and
- b. Amounts of water necessary to remain in the Wailuku River to satisfy instream flow standards,



as set by the Commission on Water Resource Management;

Provided, however, that if any portion of the Water Resource should be withdrawn for any purpose which diminishes the minimum kilowatt hours described in Paragraph A, above, the base rent shall be reduced in proportion to the value of the portion of the Water Resource that is being withdrawn; provided further that where the portion withdrawn renders the remainder unsuitable or of inadequate quantity or flow for the use or uses for which the Water Resource was licensed, the determination of unsuitability being within Licensee's sole discretion, the Licensee shall have the option to surrender this License and be discharged and relieved from any further liability.



AGREEMENTS AND COVENANTS BETWEEN PARTIES:

1. Payment of rent. The Licensee shall pay the rent to the Licensor at the times and in the manner and form provided in this License, and at the place specified above, or at any other place the Licensor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. The Licensee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description associated with the use of the Water Resource or any part, which the Licensor or Licensee, are now or may be assessed or become liable by authority of law during the term of this License.

3. Utility services. The Licensee shall be responsible for obtaining any utility services and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, associated with the use of the Water Resource or any part, for which the Licensor or Licensee may become liable for during the term, whether assessed to or payable by the Licensor or Licensee.

4. Covenant against discrimination. The use and enjoyment of the Water Resource 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 immunodeficiency virus) infection.

5. Water quality. In using the Water Resource, the Licensee shall do all things reasonably necessary to prevent the degradation by Licensee of the quality of the water in the Wailuku River and Licensee is expressly prohibited from engaging in any acts or omissions that may endanger the public health, safety, and welfare with respect to the use of the Water Resource.

6. Waste and unlawful, improper or offensive use of Water Resource. The Licensee shall not commit, suffer or permit to be committed any waste, nuisance, strip, or unlawful, improper or offensive use of the Water Resource or any part.

7. Compliance with laws. The Licensee shall comply



with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the Water Resource, now in force or which may be in force.

8. Inspection by Licensor. (a) The Licensee shall permit the Licensor and its agents, at all reasonable times during the License term, access to the diversion works and hydroelectric generating facility for which the Water Resource is being used and permit the Licensor and its agents at reasonable times during the term of this License to conduct such examinations as may be reasonably related to this License solely for the purpose of confirming Licensee's compliance with the terms and conditions of this License; provided that in the exercise of these rights, the Licensor shall not interfere unreasonably with the Licensee or Licensee's use and enjoyment of the Water Resource.

(b) Licensor shall have reasonable access to the hydroelectric generating facility for purposes of inspecting the same and shall be subject to the requirement that Licensor shall give Licensee prior written notice of at least seventy-two (72) hours of any such inspection, and Licensor shall conduct such inspections in accordance with such reasonable guidelines as Licensee shall provide to protect the security and integrity of such facility.

9. Modification of water works. Prior to any expansion or modification of any works applicable to the Water Resource, the Licensee shall document all such proposed expansions or modifications and obtain all required governmental permits and approvals.

10. Liens. The Licensee shall not commit or suffer any act or neglect which results in the Water Resource or the licensed interest of the Licensee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this License, and shall release, indemnify, defend, and hold the Licensor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

11. Character of use. The Licensee shall use or allow the Water Resource licensed to be used solely for hydroelectric generation purpose(s). Any use of the Water Resource under this License shall be non-consumptive.

12. Assignments, etc. The Licensee shall not transfer, assign, or permit any other person or entities to use the Water Resource, or any portion, or transfer or assign this License or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer of this License, or any portion, may be made in accordance with current industry standards, as determined by the Board.

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 an assignment for purposes of this paragraph.

Notwithstanding the foregoing, if Licensee is a party to any transaction involving a merger or corporate reorganization with an affiliate entity, meaning any entity that directly or indirectly owns, is owned by or is under common ownership with Licensee, such transaction shall not be deemed an assignment for purposes of this Paragraph 12 (Assignments, etc.).

13. Subletting. The Licensee shall not sublet the whole or any part of the Water Resource except with the approval of the Board; provided that prior to the approval, the Board shall have the right to review and approve the rent to be charged to the sublessee; provided further that in the case where the Licensee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee shall be included as part of the Licensee's gross receipts; provided further that the Board shall have the right to review and, if necessary, revise the rent of the Water Resource based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward.

14. Release and indemnity. The Licensee shall release, 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 or enjoyment of the Water Resource; 2) any failure on the part of



the Licensee to protect the quality of the Water Resource; 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.

15. Costs of litigation. In case the Licensor shall, without any fault on Licensor's 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 covenants and agreements of this License, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

16. Liability insurance. The Licensee shall procure and maintain, at its cost and expense and acceptable to the Licensor, in full force and effect throughout the term of this License, general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A- VIII" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured. A Certificate of Insurance required by the Licensor shall be filed with the State of Hawaii, Department of Land and Natural Resources.

The Licensee, prior to the use of the Water Resource or within fifteen (15) days from the effective date of this License, whichever is sooner, shall furnish the Licensor with a Certificate of Insurance required by the Licensor showing the policy(s) to be initially in force, keep the Certificate of Insurance required by the Licensor on deposit during the entire License term, and furnish a Certificate of Insurance required by the Licensor upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been



given to the Licensor. The Licensor may at any time require the Licensee to provide Licensor with copies of the insurance policy(s) that are or were in effect during the License period or other documentation required by 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 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 Certificate of Insurance with the Licensor no later than thirty (30) 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 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.

17. Bond or security deposit; Performance. The Licensee shall, at its own cost and expense, within fifteen (15) days from the effective date of this License, procure and deposit with Licensor and thereafter keep in full force and effect during the term of this License a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Licensee of all the terms, conditions, and covenants of this License, in the amount of \$30,000.00. This bond shall provide that in case of a breach or default of any of the License terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Licensor as liquidated and ascertained damages and not as a penalty.



In the alternative, Licensee may deposit a security deposit, in the amount of \$30,000.00, in lieu of a surety bond. The Licensor shall be authorized to withdraw amounts from the security deposit in case of a breach or default of any of the License terms, covenants, conditions, and agreements, and the costs, expenses or loss incurred by Licensor as a result of such breach or default, on the condition that (a) Licensor provides at least three (3) days prior notice to Licensee of its intent to withdraw from the security deposit and (b) if Licensee disputes Licensor's right to such withdrawal, any such withdrawal by Licensor shall be without prejudice to claims by Licensee that such withdrawal was not appropriate or warranted by Licensor.

18. Breach. Time is of the essence in this agreement. If the Licensee shall fail to pay the rent, or any part thereof, at the times and in the manner provided in this License and this failure shall continue for a period of more than thirty (30) days after delivery by the Licensor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Licensee, or if the Licensee shall become bankrupt, or shall abandon the diversion infrastructure associated with the Diversion Points or the hydroelectric generation facilities associated with this License, or if this License and Water Resource shall be attached or taken by operation of law, or if Licensee shall fail to observe and perform any of the covenants, terms, and conditions contained in this License and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Licensor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Licensee at its last known address, the Licensor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once terminate this License without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination Licensor shall retain all rent paid in advance to be applied to any damages.

19. Condemnation. If at any time, during the term of this License, any portion of the Water Resource should be condemned, or required for public purposes by any county or city and county, the rent shall be reduced in proportion to the value of the portion of the premises condemned. The Licensee shall



not by reason of the condemnation be entitled to any claim against the Licensor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Licensor. The foregoing rights of the Licensee shall not be exclusive of any other to which Licensee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the Water Resource was licensed, the Licensee shall have the option to surrender this License and be discharged and relieved from any further liability.

20. Acceptance of rent not a waiver. The acceptance of rent by the Licensor shall not be deemed a waiver of any breach by the Licensee of any term, covenant, or condition of this License, nor of the Licensor's right to declare and enforce a forfeiture for any breach, and the failure of the Licensor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

21. Extension of time. Notwithstanding any provision contained in this License, when applicable, the Board may for good cause shown, allow additional time beyond the time or times specified in this License for the Licensee to comply, observe, and perform any of the License terms, conditions, and covenants.

22. Justification of sureties. Any bonds required by this License shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Licensee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Licensor security in certified checks, certificates of deposit (payable on demand or after a period the Licensor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Licensor a deed or deeds of trust of real property, all of a character which is satisfactory to Licensor and valued in the aggregate at not less than the principal amount of the bond.



It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Licensor shall be determined by the Licensor, and that the Licensee may, with the approval of the Licensor, exchange other securities or money for any of the deposited securities if in the judgment of the Licensor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Licensee, but only upon the written consent of the Licensor and that until this consent is granted, which shall be discretionary with the Licensor, no surety shall be released or relieved from any obligation.

23. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Licensee with the terms, covenants, and conditions contained in this License on its part to be observed or performed, the Licensor at its discretion may in writing, waive or suspend the performance bond requirements or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Licensor reserves the right to reactivate the bonds or reimpose the bond(s) or liability insurance in and to their original tenor and form at any time throughout the term of this License.

24. Quiet enjoyment. The Licensor covenants and agrees with the Licensee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Licensee to be observed and performed, the Licensee shall have use of the Water Resource for the term of the License, without hindrance or interruption by the Licensor or any other person or persons lawfully claiming by, through, or under it.

25. Surrender. The Licensee shall, at the end of the term or other sooner termination of this License, peaceably cease the use of the Water Resource. Furthermore, upon the expiration, termination, or revocation of this License, should the Licensee fail to cease the use of the Water Resource, the Licensee shall be liable for and shall pay to Licensor an amount that is equal to the annual rental amount in effect on the date of termination, prorated on a daily basis for the period from the date of termination of this License to the date that



Licensee ceases the use of the Water Resource. This provision shall survive the termination of the License.

26. Non-warranty. The Licensor does not warrant the availability or quality of the Water Resource. Availability of the quantity of water is subject to RESERVATIONS, Paragraph 2 (Right to withdraw) above.

27. Hazardous materials. 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 the vicinity of the Diversion Point(s) or Return Point(s) in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials. 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 in or near the Wailuku River placed or released by Licensee.

Licensee agrees to release, indemnify, defend, and hold Licensor harmless, from any damages and claims resulting from the release of hazardous materials in or near the Wailuku River during the term of this License and in association with the use of the Water Resource. These covenants shall survive the expiration or earlier termination of the 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.

28. Hawaii law. This License shall be construed, interpreted, and governed by the laws of the State of Hawaii.



29. Exhibits-- Incorporation in license. All exhibits referred to are attached to this License and hereby are deemed incorporated by reference.

30. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this License.

31. Partial invalidity. If any term, provision, covenant or condition of this License should be held to be invalid, void or unenforceable, the remainder of this License shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

32. Force Majeure. If either party believes an event of Force Majeure, including, without limitation, an act of God, acts of war, terrorism, civil disorders, strikes, government regulation, civil or military authority or any other cause beyond the reasonable control of a party, which excuses performance of either party hereunder is likely to be permanent, such party may notify the other party of such belief. Such notice shall state the reasons for the belief that the event of Force Majeure will be permanent and why there are no steps which can be taken at a commercially reasonable cost to eliminate such Force Majeure event. The party receiving such notice shall respond within thirty (30) days stating either (i) that it concurs that the Force Majeure event is likely to be permanent, or (ii) that it disagrees that such Force Majeure event is likely to be permanent and its reasons therefor. Unless otherwise mutually agreed, this License shall be terminated if both parties concur that the Force Majeure event is likely to be permanent.

33. Counterparts. This License may be executed in two or more counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.



SPECIAL CONDITIONS

34. Clearances. The Licensee shall be responsible for obtaining all necessary federal, state or county clearances.

35. Audit of Water Resource. The Licensee shall, at all reasonable times, permit the Licensor or its authorized agents and employees, upon reasonable notice of at least seventy-two (72) hours given by the Licensor, to audit, examine and to make copies of information relating to Licensee's use of the Water Resource for hydroelectric generation purposes, which shall include the electrical output in kilowatt hours generated by the use of the Water Resource, and any measurements collected by Licensee relating to the use of the Water Resource for hydroelectric generation purposes. Licensor shall not have the right under this Paragraph 35, to audit any other records of Licensee.

36. Environmental regulations. Licensee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.

37. Assignment to bondholders. The Licensee shall be allowed to assign the License to the trustee for the bondholders subject to the prior approval of the Board.

38. Watershed Management Plan. No later than sixty (60) days following the effective date of this License, Licensee shall enter into a written agreement with the Licensor for the implementation of a watershed management plan ("Plan") which Plan shall include, but not be limited to, the prevention of degradation of surface water quality of the Wailuku River to the extent that degradation can be avoided using reasonable management practices. The Licensee shall be solely responsible to pay for its monetary contribution(s), if any, under the Plan.

39. Stream Monitoring Equipment. No later than sixty (60) days following the execution of the License, Licensee shall work with the Commission on Water Resource Management to determine the appropriate stream monitoring equipment and develop a cost share for such equipment to assist with determining the amounts of water necessary to remain in the Wailuku River per RESERVATIONS, Paragraph 2.b (Right to



withdraw) of this License. The cost share requirement in this Paragraph 39 is separate from, and in addition to, the monetary contribution(s), if any, under the Plan.

40. Water for farm, ranch and other public uses.

Pursuant to section 171-58(d), Hawai'i Revised Statutes, as amended, Licensee shall provide from the Water Resource to any farmer or rancher engaged in irrigated pasture operations, crop farming, pen feeding operations, or raising of grain and forage crops, or to those public uses and purposes as may be determined by the Board, at the same rental price paid under this License, plus the proportionate actual costs, as determined by the Board, to make this Water Resource available, so much of the Water Resource as is determined by the Board to be surplus to Licensee's needs and for that minimum period as the Board shall accordingly determine; provided, however, that in lieu of the payment for the Water Resource or such portion as may be taken for public uses and purposes, the Board may elect to reduce the rental price under this License in proportion to the value of the Water Resource and the proportionate actual costs of making the water available. Licensee may have the option to surrender this License and be discharged and relieved from any further liability except for those responsibilities, obligations, liabilities, and claims that accrued prior to the effective date of cancellation, or that are intended to survive the termination or cancellation of the License, or as otherwise agreed, if the portion withdrawn renders the remainder unsuitable or of inadequate quantity for the use or uses for which the Water Resource was licensed. If Licensee exercises Licensee's option to cancel this License, the parties shall execute a cancellation of License.

41. Legislative disapproval. This License shall be subject to disapproval by the Legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of this disposition.



Definitions

1. The use of any gender shall include all genders, and if there is more than one licensee, then all words used in the singular shall extend to and include the plural.

2. As used in this License, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his/her successor.

(b) "Licensee" means and includes the Licensee, its officers, employees, invitees, successors or permitted assigns.

(c) "Wailuku River" shall mean the Wailuku River at Piihonua, South Hilo, Island of Hawai'i, Hawai'i.

(d) "Waste" includes, but is not limited to, (1) utilizing the Water Resource in an uneconomic and inefficient manner; (2) for a purpose not authorized under this License; and (3) permitting significant degradation in the quality of the Water Resource.

(e) "Days" shall mean calendar days, unless otherwise specified.

(f) "Board" shall mean the Board of Land and Natural Resources.

[Remainder of page intentionally left blank;
signatures follow on next page]

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meeting held on August 12, 2022.

By _____
DAWN N.S. CHANG
Chairperson
Board of Land and
Natural Resources

LESSOR

SALE AT PUBLIC AUCTION

LESSEE

APPROVED AS TO FORM:

CINDY Y. YOUNG
Deputy Attorney General

Dated: _____



STATE OF)
) SS.
COUNTY OF)

On this _____ day of _____, 20____, before me personally appeared _____ and _____, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that _____ executed the same as _____ free act and deed.

Notary Public, State of

My commission expires:_____

STATE OF)
) SS.
COUNTY OF)

On this _____ day of _____, 20____, before me appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the _____ and _____, respectively of _____, a _____ corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said _____ and _____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public, State of

My commission expires:_____



STATE OF)
) SS.
COUNTY OF)

On this _____ day of _____, 20_____,
before me personally appeared _____
and _____, to me personally known,
who, being by me duly sworn or affirmed, did say that such
person(s) executed the foregoing instrument as the free act and
deed of such person(s), and if applicable in the capacity shown,
having been duly authorized to execute such instrument in such
capacity.

Notary Public, State of

My commission expires:_____



EXHIBIT "A"
(DESCRIPTION)

TO BE PROVIDED BY THE SUCCESSOR BIDDER



EXHIBIT "B"
(MAP)

TO BE PROVIDED BY THE SUCCESSOR BIDDER

