

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

February 8, 2019

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Board Members:

SUBJECT: APPROVE AMENDMENT OF 2017-2018 LEGACY LAND CONSERVATION PROGRAM GRANT AWARD TO WAI'ANAE COMMUNITY RE-DEVELOPMENT CORPORATION FOR THE ACQUISITION OF 21.1 ACRES AT WAI'ANAE, O'AHU, TAX MAP KEY NUMBER (1) 8-7-010:006, TO INCORPORATE THE CONSTRUCTION AND OPERATION OF A SOLAR POWER GENERATING FACILITY BY EXISTING LICENSEE

SUMMARY:

Through the Legacy Land Conservation Program, the Board of Land and Natural Resources approved an award of grant funds to Wai'anae Community Re-development Corporation, a nonprofit land conservation organization, for the purchase of 21.1 acres at Wai'anae, Island of O'ahu, for the protection of agricultural resources and open space and scenic resources. On behalf of Wai'anae Community Re-development Corporation, the Division seeks approval to amend the grant award by removing about 11% of the total acreage from agricultural use to accommodate a pre-existing license for the construction and operation of a solar power generating facility, which would provide substantial revenue to the Land Conservation Fund and to the Awardee.

BACKGROUND:

At its meeting on April 27, 2018, under agenda item C-1, the Board approved the Division's recommendations to (1) authorize the Chairperson to enter into a Legacy Land Conservation Program (LLCP) grant agreement and encumber FY18 and FY19 funds with Wai'anae Community Re-development Corporation (WCRC) for \$750,000 for the acquisition of 21.1 acres at Wai'anae, O'ahu, with a conservation easement held by The Trust for Public Land (TPL), Hawaiian Islands Land Trust, or other suitable entity, subject to standard conditions, and (2) authorize the Department to proceed with all due diligence and negotiations that may be necessary to carry out the 2017-2018 Legacy Land Conservation Program grants and acquisitions

approved by the Board and the Governor. On June 6, 2018, the Governor approved the Department's request for approval and release of grants from the Land Conservation Fund for the 2017-2018 Legacy Land Conservation Program; WCRC accepted the Department's grant award offer on June 8, 2018; and the Department encumbered FY18 funds for the approved acquisition before the end of the fiscal year, which ended on June 30, 2018.

Thereafter, TPL (which purchased the property in June 2018) became aware of an unrecorded license agreement between a previous landowner and a private business enterprise that allows the construction and operation of a solar power generating facility on about 2.4 acres of the property, while also providing for substantial revenue to the property owner. Because this type of facility and its use do not align with the existing WCRC grant application, the purposes of the approved grant award, and the priorities of the grant program, WCRC went back to the Legacy Land Conservation Commission (LLCC) on October 12, 2018 to review the situation (Meeting 61, agenda item 2), resulting in a LLCC recommendation that the Board approve amendment of the grant application to incorporate the construction and operation of a solar power generating facility as specified in the solar license documentation.

On November 1, 2018, the Department requested consultation with the President of the State Senate and the Speaker of the State House of Representatives about the LLCC recommendation, and met with the legislators on December 20, 2018 (Exhibit I, Request for Consultation; Exhibit II, Solar License Documentation), who did not raise concerns or objections about the proposed amendment of the grant application.

WCRC recently submitted amended application materials for the Board to consider, consisting of a revised Form 2, Property Information Worksheet Notes; Section G, Overall Significance and Importance of the Property; and Section H, Stewardship and Management (Exhibit III, Amended Application Materials). The proposed amendments also address the future fate of an existing Unilateral Agreement and Declaration for Conditional Zoning (UADCZ), executed between a previous landowner and the City and County of Honolulu, that is a remnant of a zoning change that permits development of the property as a golf course (Exhibit IV). WCRC intends to abide by the requirements of the UADCZ as enforced by the City Department of Planning and Permitting, and will seek to remove it after taking ownership of the Property (*see* Exhibit II-A).

DISCUSSION:

The proposed amendment to the existing grant award would replace, temporarily, about 2.4 acres of cropland with a two-acre solar generating facility. If the Board approves the recommended amendment of the grant award, then the Division will complete a Legacy Land Conservation Program Grant Agreement with the Applicant that specifically incorporates the statutory Legacy Land revenue sharing requirements for the solar license agreement (71% of revenue based on State contribution of \$750,000 towards total purchase price of \$1,060,000). Over the first twenty years of the license agreement, this would provide the Land Conservation Fund with about \$424,528 of revenue (a return of 71% of State's investment), and about

\$653,978 (87% return) if the license agreement continues to the end of its maximum thirty-year term.

The proposed amendment involves an unusual situation of pre-acquisition Board approval for the “disposal of lands acquired with moneys from the [Legacy Land Conservation] fund.” Under post-acquisition circumstances, the relevant factors that the Board may consider in deciding whether to approve such a disposition include:

- (1) eligibility to receive awards under Chapter 13-140 Hawai‘i Administrative Rules (Haw. Admin. R.) and Chapter 173A, Hawai‘i Revised Statutes (*see* Haw. Admin. R. § 13-140-34(c)(1)(A));
- (2) capability for managing the land in accordance with the purposes for which the board awarded a grant (*see* § 13-140-34(c)(1)(B));
- (3) whether the net proceeds of the sale will allow the State to recover its appropriate portion of the funds that were originally contributed pursuant to section 173A-10, HRS (*see* § 13-140-34(c)(1)(C)); and
- (4) best interests of the State (*see* § 13-140-34(c)(3)), based on criteria listed under § 13-140-39, such as:
 - presence of environmental hazards, § 13-140-39(5);
 - status and adequacy of management planning, § 13-140-39(10);
 - community support, § 13-140-39(11);
 - connection to regional planning and protection efforts, § 13-140-39(13); and
 - capacity for long-term management, § 13-140-39(14).

The solar licensee, a private, for-profit, power production corporation, does not appear to be eligible to receive awards from the Land Conservation Fund. However, given the passive nature and somewhat low profile of solar farm operations, the licensee may be capable of managing the land in a manner that complements the adjoining agricultural and open space grant purposes, in partnership with WCRC and the ultimate holder of the conservation easement. The net proceeds of the disposition will allow the State to recover a considerable portion of the funds that were originally contributed, and the best interests of the State may be furthered by the low risk of environmental hazards associated with solar power generation, and the capacity of WCRC and its partners for management planning, community support, regional connection, and long-term management.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

At its meeting of April 27, 2018, the Board, under item C-1 on its agenda, approved the Division’s recommendation to declare that each approved award of 2017-2018 grant funds from the Legacy Land Conservation program to a nonprofit land conservation organization for land acquisition will probably have minimal or no significant effects on the environment; is an action for the award of grants under Haw. Rev. Stat. Chapter 173A that does not fund an activity that causes any material change of use of land or resources beyond that previously existing; and is exempt from the preparation of an environmental assessment in accordance with Sections 343-5 and 343-6, Hawai‘i Revised Statutes; Section 11-200-8, Hawai‘i Administrative Rules; and

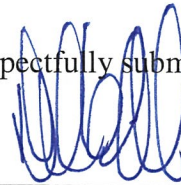
Exemption Class 1, Action Type 49 on the Exemption List for the Department of Land and Natural Resources, reviewed and concurred on by the Environmental Council on June 5, 2015. In this case, the solar license agreement created land use entitlements that existed prior to the Legacy Land grant award and that are independent of land ownership, such that the amendment of the Legacy Land grant award does not fund or otherwise enable an activity (post-acquisition revenue sharing) that in and of itself causes any material change of use of land or resources beyond that previously existing.

RECOMMENDATIONS

That the Board:

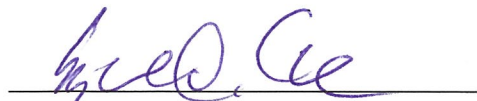
1. Approve amendment of the 2017-2018 Legacy Land Conservation Program grant award to Wai‘anae Community Re-development Corporation, for the purchase of 21.1 acres at Wai‘anae, Island of O‘ahu, for the protection of agricultural resources and open space and scenic resources, to incorporate the construction and operation of a solar power generating facility by an existing licensee for a period not to exceed thirty years.
2. Delegate authority to the Chairperson to specifically incorporate the statutory Legacy Land revenue sharing requirements for the existing solar license agreement into the Legacy Land Conservation Program Grant Agreement with Wai‘anae Community Re-development Corporation.

Respectfully submitted,



David Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

- Exhibit I: DLNR Request for Consultation with Senate President and House Speaker
Exhibit II: Solar License Documentation (Execution Copies provided by Awardee)
II-A Memorandum of Solar License Agreement
II-B Solar License Agreement dated February 20, 2015
II-C First Amendment to Solar License Agreement
II-D Acknowledgement; Consent, and Estoppel Certificate
Exhibit III: Amended Application Materials

III-A Form 2, Revised
III-B Section G, Revised
III-C Section H, Revised

Exhibit IV: Unilateral Agreement and Declaration for Conditional Zoning, with related
correspondence

EXHIBIT I
February 8, 2019

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 01, 2018

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

The Honorable Ronald D. Kouchi
President of the Senate
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki
Speaker of the House of Representatives
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi and Speaker Saiki:

The Department of Land and Natural Resources submits, for your review and consultation, a recommendation from the Legacy Land Conservation Commission to amend a grant application and grant award from the Land Conservation Fund to the Wai'anae Community Re-development Corporation (WCRC) for WCRC's acquisition of 21.138 acres of land at Wai'anae, O'ahu, for the preservation of agricultural production and open space and scenic resources. Under the proposed amendment to the grant application and grant award, the area of land operated for agricultural production would temporarily shrink (for 20-30 years) by 2.38 acres (11.1% of the total area), in order to accommodate an existing license agreement for developing and operating a solar power generating facility on the property. Under statutory and contractual revenue sharing requirements with WCRC, the current form of the existing solar license agreement would provide the Land Conservation Fund with nearly 71% of license revenue, totaling about \$424,528 over a 20-year license period; \$535,967 over a 25-year license period; or \$652,978 over a 30-year license period.

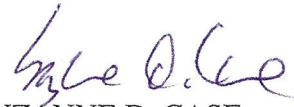
Pursuant to Hawai'i Revised Statutes, Chapter 173A, the Department requests consultation with each of you about the Commission's recommendation and the Department's forthcoming submittal to the Board of Land and Natural Resources (Board). At this point, the Department intends to recommend in its submittal that the Board approve, as is, the recommendation from the Legacy Land Conservation Commission. We hope to complete the consultation process and receive your written responses no later than November 30, 2018, so that we can meet internal deadlines to schedule action by the Board for its meeting of January 11, 2019, and execute a grant agreement with WCRC immediately thereafter.

At its meeting of April 27, 2018 the Board approved a grant award of \$750,000 to WCRC from the Land Conservation Fund. Governor Ige approved the release of this funding on June 6, 2018, and the Department encumbered the full amount of the grant award from its Fiscal Year 2018 appropriation for the Land Conservation Fund. The grant application indicated "full-scale agricultural production" as the expected use of the property ("the property will then, in its

entirety, be put into organic food production . . . except for minor infrastructure such as a restroom, a secure tool storage area, and similar farm-related functions”), with no existing encumbrances of record. However, WCRC and its application partner, The Trust for Public Land (TPL, the current landowner), later informed the Department about the existence of an unrecorded “Solar License Agreement” between the previous landowner (Licensor) and a private business entity (Licensee). The Legacy Land Conservation Program, with assistance from its Deputy Attorney General, worked with WCRC and its attorney to provide detailed information about the license agreement for consideration by the Legacy Land Conservation Commission and the Board of Land and Natural Resources.

Please contact me at 587-0401 or David G. Smith, Administrator of the Division of Forestry and Wildlife, at 587-4181, at your convenience to arrange a consultation meeting. Should you need additional information about the Legacy Land Conservation Program and the 2017-2018 application and recommendation process, please contact David Penn, Program Specialist, at 586-0921.

Sincerely,

A handwritten signature in purple ink, appearing to read 'Suzanne D. Case', is written over the typed name.

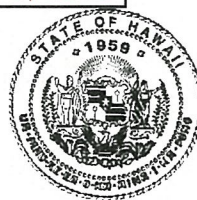
SUZANNE D. CASE
Chairperson

encl: Legacy Land Conservation Commission, Agenda for Meeting 61, October 12, 2018

copy: Theresa Cabrera Menard, Chairperson, Legacy Land Conservation Commission

FILE

EXHIBIT II-A
February 8, 2019



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

December 20, 2018 3:29 PM

Doc No(s) A-69280959



/s/ LESLIE T. KOBATA
REGISTRAR

1 1/1 ICL
B-33264607

LAND COURT SYSTEM

REGULAR SYSTEM

Return By: Mail (x) Pickup () To:

Kobayashi, Sugita & Goda
999 Bishop Street, Suite 2600
Honolulu, Hawaii 96813
Attn: David B. Tongg, Esq.
Tel: (808) 535-5700

Total Pages: 9

Tax Map Key: (1) 8-7-010-006

MEMORANDUM OF SOLAR LICENSE AGREEMENT

THIS MEMORANDUM OF SOLAR LICENSE AGREEMENT (the "Memorandum"), is made and entered into this 11th day of December, 2018, by and between **THE TRUST FOR PUBLIC LAND**, a California nonprofit public benefit corporation, whose address is 101 Montgomery Street, Suite 900, San Francisco, California 94104, hereinafter referred to as the "**Licensor**", and **OAHU SPE 101-14 LLC**, a Hawaii limited liability company, whose address is c/o Kobayashi, Sugita & Goda, 999 Bishop Street, Suite 2600, Honolulu, Hawaii 96813, hereinafter referred to as the "**Licensee**".

WITNESSETH

WHEREAS, Licensor is the owner of that certain property located at Lualualei, District of Waianae, City and County of Honolulu, State of Hawaii, identified as Tax Map Key No. (1) 8-7-010-006, as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "**Property**");

WHEREAS, Tropic Land LLC, a Hawaii limited liability company ("**Tropic**"), predecessor-in-interest to Licensor, as "Licensor", and Licensee, as "Licensee", executed and delivered that certain unrecorded Solar License Agreement dated February 20, 2015 (as amended heretofore

and hereinafter, the "**License**"), relating to the development and operation of a solar power generating facility on a portion of the Property (the "**Licensed Premises**"); and

WHEREAS, Licensors and Licensee desire to place this Memorandum on record solely to provide notice of the existence of the License.

NOW, THEREFORE, Licensors hereby licenses to Licensee, and Licensee hereby accepts the license of the Licensed Premises from Licensors upon all of the terms, conditions and covenants contained in the License and in this Memorandum, including without limitation, the following:

1. The Term of the License commenced on February 20, 2015, and shall run through the end of the term of the Feed-In-Tariff Agreement dated December 15, 2017, by and between Licensee and Hawaiian Electric Company, Inc. (the "**FIT Agreement**"), which commences on the In-Service Date (as defined in the FIT Agreement) and ends twenty (20) years thereafter (the "**Term**"). Licensee shall have the right to extend the Term for up to two (2) successive five (5) year periods (for a total of ten (10) years if both extensions are exercised), commencing upon the expiration of the initial Term on the terms and conditions set forth in the License. Except as otherwise agreed to in writing by Licensors and Licensee or expressly provided in the License, all of the terms and conditions of the License shall remain in effect during the extended Term. The License shall terminate automatically upon termination or expiration of the FIT Agreement, as the case may be.

Upon determination of the In-Service Date under the FIT Agreement, the parties shall record an amendment to this Memorandum setting forth the In-Service Date and the expiration date of the initial Term of the License.

2. The rental for the Licensed Premises and the terms of the License are more fully set forth in the License.

3. Licensee acknowledges and agrees that the License and this Memorandum are automatically, and without any further action required, subordinate to all lien and other rights in favor of the State of Hawaii Legacy Lands Program ("**LLP**") pursuant to any instruments recorded by, for or on behalf of LLP with respect to the Property (the "**LLP Instruments**"), whether recorded prior to or after this Memorandum; provided, however, in connection with any financing of the solar project covering the Licensed Premises, Licensors, LLP and Wai'anae Community Re-Development Corporation dba MA'O Farms ("**MA'O**") (to the extent of their respective interests) will execute and record a non-disturbance agreement containing standard and customary terms with respect to the Memorandum reasonably acceptable to Licensee and its financing party; provided, further, any mortgage by the Licensee will (a) expressly cover only the Licensed Premises, and (b) expressly confirm that it does not cover any other portion of the Property. In addition, (i) Licensee shall, upon the request of Licensors, MA'O and/or LLP, promptly execute and record any further instrument(s) containing customary and standard terms reasonably acceptable to Licensee and its financing party confirming the subordination of the License and this Memorandum to the LLP Instruments, and (ii) Licensors, LLP and MA'O shall, upon the request of Licensee, promptly execute and record any further instrument(s) containing customary and standard terms reasonably acceptable to Licensee and its financing party for the solar project confirming the non-disturbance of Licensee's use and possession of the Licensed Premises.

4. Licensee further acknowledges and agrees that the License and this Memorandum are automatically, and without any further action required, subordinate to the lien and charge of any

mortgage covering the fee simple interest in the Property; provided, however, any mortgagee of the fee simple Property shall execute and deliver a non-disturbance agreement containing standard and customary terms with respect to the Memorandum reasonably acceptable to Licensee and any financing party for the solar project. In addition, (a) Licensee shall, upon the request of Licensors, MA'O, LLP and/or any mortgagee of the Property, promptly execute and record any further instrument(s) containing customary and standard terms reasonably acceptable to Licensee and its financing party confirming the subordination of the License and this Memorandum to the LLP Instruments, and (b) Licensors, LLP and MA'O shall, upon the request of Licensee, promptly execute and record any further instrument(s) containing customary and standard terms reasonably acceptable to Licensee and its financing party for the solar project confirming the non-disturbance of Licensee's use and possession of the Licensed Premises.

5. All of the terms, conditions, covenants and exhibits of the License are hereby incorporated herein by this reference. Except as provided in Sections 3 and 4 above, this Memorandum is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the License. In the event of any conflict between the terms and provisions of this Memorandum and the terms and provisions of the License, the terms and provisions of the License shall control.

6. Upon the expiration or earlier termination of the License, Licensee shall, at Licensors' request, promptly and without cost to Licensors execute an instrument in recordable form reflecting the expiration or earlier termination of the License and Licensee authorizes Licensors to record the same. If Licensee fails to comply with the terms of this paragraph, Licensee shall be liable to Licensors for all reasonable fees and costs Licensors incurs in having the License removed from title.

7. This Memorandum may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed these presents on the day and year first above written.

THE TRUST FOR PUBLIC LAND, a California
nonprofit public benefit corporation

By: 

Name: Gilman Miller
Its: Senior Counsel

"Licensor"

OAHU SPE 101-14 LLC, a Hawaii limited liability
company

By: _____

Name:
Its:

"Licensee"

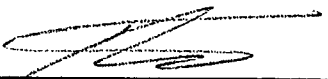
IN WITNESS WHEREOF, the parties hereto have executed these presents on the day and year first above written.

THE TRUST FOR PUBLIC LAND, a California
nonprofit public benefit corporation

By: _____
Name: Gilman Miller
Its: Senior Counsel

"Licensor"

OAHU SPE 101-14 LLC, a Hawaii limited liability
company

By:  _____
Name: Kevin^{Alan} White
Its: Authorized Representative

"Licensee"

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF

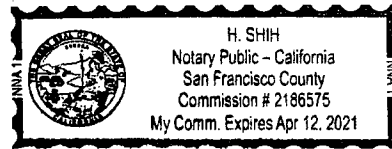
San Francisco

On Dec 11, 2018 before me, H. Shih, Notary Public,
personally appeared Gilman Milner who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: [Signature] (Seal)



OPTIONAL

Description of Attached Document

Title or Type of Document: Memorandum Number of Pages: _____

Document Date: Dec 11, 2018 Other: Mato Farms

Solar License Agreement

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA

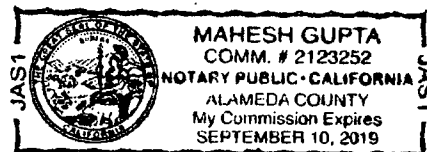
COUNTY OF Alameda

On December 10, 2018, before me, Mahesh Gupta, a Notary Public, personally appeared Kevin Alan White, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument to be the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Mh
NOTARY PUBLIC



Tax Map Key No.: (1) 8-7-010-006

Exhibit A

Legal Description of the Property

All of that certain parcel of land situate in Lualualei, District of Waianae, City and County of Honolulu, State of Hawaii, being the land(s) described in deregistered Transfer Certificate of Title No. 785,873, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2011-108704, described as follows:

LOT 1, area 21.138 acres, more or less, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 174 of Kabushiki Kaisha Oban and others, which lot has been deregistered from the Land Court System pursuant to Hawaii Revised Statutes Section 501-261.

Being the land(s) described in Transfer Certificate of Title No. 785,873 issued to Tropic Land LLC, a Hawaii limited liability company.

Being the premises acquired by Warranty Deed dated April 25, 2018, by and between Tropic Land LLC, a Hawaii limited liability company, as Grantor, and THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation, as Grantee, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-66940346.

Exhibit B

Legal Description of the Licensed Premises

Being a portion of LOT 1, area 21.138 acres, more or less, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 174 of Kabushiki Kaisha Oban and others, which lot has been deregistered from the Land Court System pursuant to Hawaii Revised Statutes Section 501-261, described as follows:

Beginning at the Westerly corner of the Licensed Premises, being also the Northerly corner of Tax Map Key No. (1) 8-7-010-010, on the Easterly side of Hakimo Road, the coordinates of said point of beginning referred to Government Triangulation Station "MAILILILI", being 5,359.12 feet South and 12,420.78 feet East and running by azimuths measure clockwise from true South:

- | | | | | |
|----|------|-----|--------|---|
| 1. | 213° | 22' | 222.63 | feet along the Easterly side of Hakimo Road; |
| 2. | 306° | 43' | 476.90 | feet along a portion of Lot 1; |
| 3. | 36° | 43' | 222.25 | feet along a portion of Lot 1; |
| 4. | 126° | 43' | 463.89 | feet along a portion of Lot 1 and Tax Map Key No. (1) 8-7-010-010 to the point of beginning and containing an area of 2.40 acres. |

EXHIBIT II-B
February 8, 2019

SOLAR LICENSE AGREEMENT

THIS SOLAR LICENSE AGREEMENT (this "**License**") is made and entered into as of the 20th day of February, 2015 (the "**Effective Date**"), by TROPIC LAND LLC, a Hawaii limited liability company ("**Licensor**"), and OAHU SPE 101-14 LLC, a Hawaii limited liability company ("**Licensee**"). Licensor and Licensee are at times collectively referred to hereinafter as the "**Parties**" or individually as the "**Party**".

WITNESSETH:

A. Licensor is the owner of that certain property located at Lualualei, District of Walanae, Honolulu, City and County of Honolulu, State of Hawaii, identified by Tax Map Key No. (1) 8-7-010-006, and more particularly described in Exhibit A attached hereto (the "**Property**").

B. Licensee desires to license from Licensor and Licensor desires to license to Licensee, a portion of the Property along with other rights, for purposes of building, constructing, installing, rebuilding reconstructing, reinstalling, operating, maintaining and repairing an approximately 500 kW solar power generating facility under Hawaiian Electric Company, Inc.'s ("**HECO**") Feed-In-Tariff program as described in Exhibit B attached hereto (the "**Project**"), which includes, without limitation, a photovoltaic solar panel array together with connector equipment and any and all other related and/or necessary equipment, structures and facilities, including, without limitation, above and/or underground wires, pipes, conduit and concrete footings (collectively, the "**Equipment**"), all on the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee hereby agree as follows:

1. License. Licensor hereby grants to Licensee, during the Term hereof and subject to the restrictions set forth herein, an irrevocable right and license, to use the portion of the Property depicted in the site plan attached hereto as Exhibit C (the "**License Area**"), together with (i) all solar rights, interests, privileges and appurtenances pertaining to the License Area (the "**Solar Rights**"), and (ii) all other rights, interests, privileges and appurtenances pertaining to the License Area, including any easements and other rights as may be necessary for ingress and egress and maintenance of the Property and any and all right, title and interest of Licensor in and to adjacent roads, trails or rights-of-way necessary to access the Property (collectively, the "**Other Rights**") (collectively, the "**Licensed Premises**"), for purposes of building, constructing, installing, rebuilding, reconstructing, reinstalling, operating, maintaining, repairing and removing the Project; such right is exclusive with respect to any photovoltaic solar panels and connector equipment on the Licensed Premises. Subject to the terms and conditions set forth in this License, Licensee shall have (i) the exclusive right to use the License Area for the building, construction, installation, rebuilding, reconstruction, reinstallation, operation, maintenance, repair and removal of the Project, and (ii) the exclusive right to use and exploit the Solar Rights on or over the Licensed Premises.

Licensee agrees and understands that, except to the extent specifically provided to the contrary in this Agreement, this Agreement authorizes Licensee to use only the Licensed Premises and Licensee is not authorized or privileged to enter or remain upon any of Licensor's

other real property ("**Licensor's Other Property**"), as the case may be. Except as set forth herein, nothing in this Agreement is to be construed as creating an implied right or authorization for Licensee to use or occupy Licensor's Other Property; provided however, that Licensor shall provide reasonable access through Licensor's Other Property to access the Licensed Premises as designated herein, and Licensee shall have the right to install connector equipment as described below, as approved by Licensor.

2. **Term.** This License shall commence on the Effective Date and shall run concurrently with the term of the Feed-in-Tariff Agreement, by and between Licensee and HECO (the "**FIT Agreement**"), which is initially twenty (20) years from the In-Service Date (as defined in the FIT Agreement), unless this License is otherwise terminated earlier or extended for an additional length of time, pursuant to this License. Licensee shall have the right to renew this License for an additional period, up to an additional two (2) five (5) year extensions under the same terms and conditions as provided during the Term, and such additional period(s) shall extend the Term. This License shall terminate automatically upon termination or expiration of the FIT Agreement, as the case may be.

3. **License Fee.** In consideration of the rights granted hereunder, Licensee shall pay to Licensor a license fee (the "**Fee**") in the amount specified in Exhibit D, attached hereto and made a part hereof, and payable as set forth in Exhibit D.

4. **Access.** Licensor hereby grants Licensee easements over, across, and through the Licensed Premises in connection with Licensee's use of the Licensed Premises as provided herein. Licensor specifically agrees not to (i) construct, plant or allow any construction or planting to block sunlight from reaching the photovoltaic panel systems within the Equipment, or (ii) do anything to interfere, impair or impede Licensee's Solar Rights as it relates to the Licensed Premises.

If at any time during the Term of this License, any governmental authority with jurisdiction requires, through appropriate action from which no appeal lies, that the Licensed Premises be legally subdivided or that a legally distinct separate area therefore be created in order for this License to be kept in effect, Licensor may, at Licensee's expense, undertake all steps necessary to obtain the designation of an easement area encompassing the Licensed Premises; provided however, that if any such action materially interferes with Licensee's use or enjoyment of the Licensed Premises, Licensee may upon sixty (60) days' written notice to Licensor terminate this License.

5. **Conditions Precedent.**

(a) The respective rights and obligations of the Parties under this License (other than those contained in this Section 5 (Conditions Precedent), and Sections 2 (Term), 4 (Access), 8 (Licenses, Permits, Laws and Rules), 10 (Default and Remedies), 12 (Indemnification), 15 (Assignment/Subletting), 16 (Ownership of Equipment), which are binding upon the Parties as of the Effective Date) are conditioned upon Licensee having satisfied in full or waived each of the following prior to December 31, 2015:

(i) Licensee shall have obtained or caused to be obtained initially and funded the financing for acquisition and installation of the Equipment;

(ii) Licensee shall have obtained or caused to be obtained all necessary approvals, permits, entitlements, contracts, and agreements from any applicable

governmental entity for the construction, installation, operation and maintenance of the Equipment;

(iii) Licensee shall have obtained and approved any and all necessary forms of utility interconnection agreements and interconnection study requirements;

(iv) Licensee shall have executed the contract(s) for installation of the Equipment, subject to the terms of any financing therefor; and

(v) Licensee shall have completed its due diligence review of any issues of concern to Licensee, including any technical or legal issues, and shall have provided to Licensors a letter providing notification of its completion of its due diligence review and agreement to proceed.

(b) On or before the date specified in Section 5(a) above, Licensee shall provide notice to Licensors, promptly after all of the above conditions precedent have been satisfied. Such notice shall also serve as certification that all conditions precedent in Section 5(a) has been satisfied (the "Notice to Proceed"). If Licensee does not provide the Notice to Proceed on or before December 31, 2015, then Licensee may cancel this License upon ninety (90) days' prior written notice to Licensors.

6. Additional Terms and Conditions. In addition to the other terms of this License, the rights and obligations herein shall be subject to the following terms and conditions:

(a) The installation, operation and maintenance of the Equipment shall not cause undue damage to the License Area during the Term hereof.

(b) Licensors and Licensee acknowledge and agree that as between Licensors and Licensee, Licensee is to have the benefit of all federal, state and local tax credits associated with the generation of electricity from solar or a renewable power source.

(c) Except as otherwise provided herein, Licensors shall have no liability on account of any damage to or interference with the Equipment, except to the extent caused by Licensors' negligence or willful misconduct, or the negligence or willful misconduct of any of Licensors' officers, agents, contractors, employees or invitees.

(d) Licensee shall be solely responsible for installing, operating, maintaining and repairing the Equipment, at Licensee's sole cost and expense in a good and workmanlike manner.

(e) Licensee shall pay all fees, taxes, charges, impositions and levies as may be required by any governmental authority in relation to the Equipment. Licensee shall pay for all utility services related to Licensee's use of the Licensed Premises as described hereunder. Licensors shall pay, prior to delinquency, all real property taxes levied or assessed against the Property and all buildings and improvements thereon (other than the Equipment); provided, however, Licensee shall promptly reimburse Licensors for its proportionate share of such real property taxes, which proportionate share shall be based on the total acreage of the License Area divided by the total acreage of the Property.

(f) Licensee shall keep and maintain the Equipment and the Licensed Premises free of debris and trash.

(g) At or before the expiration or earlier termination of the Term hereof or of Licensee's right to possession of the Licensed Premises hereunder, Licensee shall either (i) allow Licensor to purchase the Equipment at fair market value as determined in agreement by the Parties, or (ii) remove the Equipment pursuant to Section 11 and shall repair any damage resulting from such removal and restore the affected portions of the Licensed Premises to the condition they were in (ordinary wear and tear excepted) before Licensee installed the Equipment.

(h) It is understood and agreed by and between Licensor and Licensee that the License Area will be used for the building, construction, installation, rebuilding, reconstruction, reinstallation, operation, repair, maintenance and removal of the Equipment.

(i) In connection with Licensee's installation of connector equipment such as wires, pipes and conduit for the purpose of transmitting electric energy from the Licensed Premises to the electrical grid (or other connection point), which connector equipment will be located and installed by Licensee in accordance with all applicable HECO standards, Licensor will cooperate with and provide assistance to Licensee in obtaining all necessary easements and/or other rights in favor of Licensee and/or HECO (or other similar utility company) upon, through, under, across and/or over property adjacent to the Licensed Premises for ingress and egress to the Licensed Premises and/or for the installation of such connector equipment on such adjacent property.

(j) Licensor reserves for itself, its agents, employees, permittees, and tenants, the rights of access, ingress, egress and use of and to, all roads presently existing or to be constructed in the future on Licensor's Other Property that will serve the Licensed Premises.

7. Modifications to Licensed Premises. Any improvements to the Licensed Premises in connection with the rights granted to Licensee hereunder shall be subject to Licensor's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed) and shall be made in accordance with any and all applicable governmental guidelines, laws, ordinances, codes, rules, regulations and requirements of all federal, state or local governmental units or agencies having jurisdiction over the Licensed Premises (collectively, "Laws") in effect from time to time; provided, however, no such consent shall be necessary for the construction of the Project.

8. Licenses, Permits, Laws and Rules. Licensee shall secure and maintain throughout the Term of this License from the proper governmental authorities all licenses or permits required by applicable Laws for the installation, location, maintenance and operation of the Equipment on the Licensed Premises. Licensee shall, at Licensee's sole cost and expense, promptly observe and comply with any and all Laws, as such Laws may relate to the use, location, maintenance or operation of the Equipment, and Licensee shall pay any and all fines, penalties, damages or costs arising directly or indirectly from Licensee's failure to observe or comply with any of said Laws. Licensor shall provide reasonable cooperation and assistance to Licensee in obtaining all governmental approvals required by Licensee, with any reasonable expenses to be paid by Licensee. In the event the Property is part of a condominium property regime, Licensee shall also comply with all terms and conditions of the condominium declaration, bylaws and other rules and regulations applicable to the Property.

9. Maintenance of the Licensed Premises. Licensee shall, at Licensee's expense, promptly repair any damage to the Licensed Premises to the extent such damage is caused by Licensee or any of its employees, agents or contractors. To the extent that any repairs or

replacements of the Licensed Premises are Licensor's responsibility and are necessary during the Term hereof, Licensor shall promptly notify Licensee thereof, and shall coordinate such repairs or replacements with Licensee so as to not interfere with Licensee's exercise of its rights hereunder. All such repairs or replacements that are Licensor's responsibility shall be conducted by Licensor in a prompt manner so as to minimize the amount of time that the Equipment is displaced from the License Area.

10. Default and Remedies.

(a) In the event of any breach of any provision of this License by Licensee, which breach shall remain uncured for fifteen (15) days after written notice thereof to Licensee (or such longer period of time, in the event that such cure will reasonably take longer than fifteen (15) days, so long as Licensee begins the cure in such fifteen (15) day period and diligently pursues completion of the same thereafter), Licensor may declare Licensee to be in default hereunder and may terminate this License. In addition, Licensor shall be entitled to exercise all available rights and remedies at law or in equity as a result of such default.

(b) In the event of any breach of any provision of this License by Licensor, which breach shall remain uncured for fifteen (15) days after written notice thereof to Licensor (or such longer period of time, in the event that such cure will reasonably take longer than fifteen (15) days, so long as Licensor begins the cure in such fifteen (15) day period and diligently pursues completion of the same thereafter), Licensee may declare Licensor to be in default hereunder and may terminate this License. In addition, Licensee shall be entitled to exercise all available rights and remedies at law or in equity as a result of such default.

(c) In addition to the default provisions in Sections 10(a) and 10(b), in the event that a Party (i) files or has filed against it a petition in bankruptcy (and such filing against it is not discharged within forty-five (45) days of filing), (ii) or if a custodian, receiver or trustee is appointed for that Party or for a substantial part of its assets, (iii) or if any substantial part of that Party's property becomes subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency, such Party shall be deemed in default and the non-defaulting Party shall have the remedies specified in Sections 10(a) and 10(b), respectively.

11. Cancellation; Termination; Removal of Equipment. Unless Licensor purchases the Equipment pursuant to Section 6(g), upon the expiration or earlier termination of this License, Licensee shall have forty-five (45) days to remove the Equipment and any related property from the Licensed Premises and restore the surrounding area where such Equipment was located to the condition existing prior to the installment of the Equipment (reasonable wear and tear excepted). If all of the Equipment is not so removed or such restoration is not so completed, Licensor may remove the Equipment at Licensee's reasonable cost and expense, and Licensee agrees to pay within thirty (30) days after receipt thereof all invoices received from Licensor in connection with such removal and restoration by Licensor.

If at any time during the Term of this License, any governmental authority with jurisdiction determines, through appropriate action, that the Licensed Premises violate any law with respect to conveyance of unsubdivided property, Licensor or Licensee may terminate this License without liability to the other party for any damages in connection with such termination.

12. Indemnification. Licensor shall indemnify, defend and hold Licensee, and Licensee's officers, directors, members, managers, agents and employees, harmless from and against any and all losses, injuries, damages, demands, costs, expenses, fines, penalties,

lawsuits, claims and/or liabilities (including reasonable attorneys' fees), occasioned by, arising out of or resulting in connection with, Licensor's activities at or from the Licensed Premises, any act or failure to act by Licensor, its officers, directors, members, managers, agents, contractors, employees or invitees, or any default by Licensor hereunder, except to the extent arising from the negligence or willful misconduct of Licensee or its officers, directors, members, managers, agents, contractors, employees or invitees.

Licensee shall indemnify, defend and save Licensor, and Licensor's officers, directors, members, managers, agents and employees, harmless from and against any and all losses, injuries, damages, demands, costs, expenses, fines, penalties, lawsuits, claims and/or liabilities (including reasonable attorneys' fees), occasioned by, arising out of or resulting in connection with, Licensee's activities at or from the Licensed Premises, any act or failure to act by Licensee, its officers, directors, members, managers, agents, contractors, employees or invitees, or any default by Licensee hereunder, except to the extent arising from the negligence or willful misconduct of Licensor or its officers, directors, members, managers, agents, contractors, employees or invitees. The provisions of this Section 12 shall survive the expiration or earlier termination of this License in perpetuity.

13. Emergencies. In the event of an emergency, Licensor shall promptly notify Licensee of such emergency at or within the Licensed Premises and the surrounding Property.

14. Insurance.

(a) Licensee agrees during the Term to carry the following insurance in the following amounts:

(i) A general liability policy covering bodily injury and property damage combined single limit of at least Two Million Dollars (\$2,000,000) per occurrence. Licensee shall name Licensor and Licensor's mortgagee and agents, if any (if requested by Licensor), as additional insureds (as applicable).

(ii) A policy of worker's compensation insurance as required by Hawaii law covering all employees of Licensee entering the Licensed Premises.

(b) Each Party shall, prior to the commencement of the Term hereof and thereafter during the Term within thirty (30) days of any change or renewal, furnish the other Party policies or certificates evidencing such coverage, which policies or certificates shall state that such insurance coverage may not be changed or canceled without at least ten (10) days' prior written notice to the other Party.

(c) Licensor and Licensee and all parties claiming under them hereby mutually release and discharge each other from all liability, whether for negligence or otherwise, in connection with loss covered by any insurance policies which the releasor carries with respect to the Licensed Premises, Equipment or any interest or property therein or thereon (whether or not such insurance is required to be carried under this License), but only to the extent that such loss is collected under said insurance policies. Such release is also conditioned upon the inclusion in the policy or policies of a provision whereby any such release shall not adversely affect said policies or prejudice any right of the releasor to recover thereunder. Each Party agrees that it will request from its insurer that its insurance policies will include such a provision. In the event of a loss sustained by Licensee which would have been covered by the insurance required to be maintained by Licensee hereunder, but for Licensee's

failure to do so, Licensee shall be deemed to be fully insured with respect to the same and to have recovered the entire amount of its loss. In the event of a loss sustained by Licensor which would have been covered by the insurance Licensor agrees to maintain hereunder, but for Licensor's failure to do so, Licensor shall be deemed to be fully insured with respect to the same and to have recovered the entire amount of its loss.

(d) The Parties to this License agree to promptly notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

15. Assignment/Subletting.

(a) Licensee shall have the right to assign its rights under this License, upon written notice to Licensor, provided that any such assignee agrees in writing to assume and perform the obligations of Licensee under this License. Upon any such assignment, and subject to Licensor approval, Licensee shall be released from any of its obligations under this License.

(b) Licensor shall have the right to assign its interest in this License, upon written notice to Licensee, provided that any such assignee agrees in writing to assume and perform the obligations of Licensor under this License.

(c) Either party may assign this License to an Affiliate without the further consent or approval of the non-assigning party upon not less than twenty (20) days' prior written notice and upon delivery to the other party of an executed original counterpart of an instrument by which an assignee assumes all rights and obligations under this License; provided, however, that at the time of such assignment, the assigning party shall not be in material default under this License beyond any applicable cure period; provided, however, that any such pledge shall be subject to all of the terms and conditions of this License. No such assignment shall be deemed to be a release of the assigning party or any guarantor of this License of its obligations under this License or any such guaranty.

For purposes of this Agreement, an "Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with, such Person; for purposes of this definition, "control", "controlling", "controlled by" and "under common control" shall mean the possession, directly or indirectly, of the power (i) to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise or (ii) to own fifty percent (50%) or more of the voting securities or other interests of the Person. "Person" shall mean an individual, partnership, corporation, limited liability company, trust, unincorporated association, joint stock company, or other entity or association.

16. Ownership of Equipment.

(a) Notwithstanding the Equipment's presence and operation on the Licensed Premises, Licensee shall at all times retain title to and be the legal and beneficial owner of the Equipment and all alterations, additions or improvements made thereto by Licensee, and the Equipment shall remain the property of Licensee or Licensee's assigns, and Licensee shall have the right to remove the Equipment from the Licensed Premises in accordance with the terms of this License. In no event shall anyone claiming by, through or under Licensor (including but not limited to any present or future mortgagee of the Property) have any rights in or to the Equipment at any time, except as otherwise provided in this License. Licensor

acknowledges and agrees that Licensee may be required to grant or cause to be granted to Licensee's financing parties a security interest in the Equipment and Licensor expressly disclaims, waives and agrees not to assert any lien, security interest or any other rights in the Equipment, pursuant to this License, at law or in equity. Licensor shall not cause the Equipment or any part thereof, to become subject to any Lien, encumbrance, pledge, levy or attachment arising by, under or through Licensor, and Licensor will promptly, at its expense, take such action as may be necessary to duly discharge any such lien, encumbrance, pledge, levy or attachment if the same shall arise at any time.

(b) The Parties specifically acknowledge and agree that Licensee intends to pursue certain tax benefits as the owner of the Equipment for federal and state income tax purposes, and in that connection, Licensee and/or Licensee's financing parties intend to pursue all tax benefits associated with the Equipment. Licensor shall not pursue such tax benefits or any environmental attributes generated by the Equipment, or assert any right, title or interests therein.

17. Notice. Any notice, request, demand, instruction or other communication to be given to any Party hereunder shall be in writing and hand delivered or sent by overnight courier or registered or certified mail, return receipt requested, as follows:

To Licensor: Tropic Land LLC
1001 Bishop Street, Suite 2690
Honolulu, Hawaii 96813

To Licensee: Oahu SPE 101-14 LLC
c/o Kobayashi, Sugita & Goda
999 Bishop Street, Suite 2600
Honolulu, Hawaii 96813
Attn: David B. Tongg, Esq.

Either Party may, upon prior notice to the other, specify a different address for the giving of notice. Except as otherwise provided herein, if delivered in person, the notice shall be deemed given when received. If sent by overnight courier, the notice shall be deemed to have been given one (1) day after sending. If mailed, the notice shall be deemed to have been given on the date that is three (3) business days following mailing. Either Party may change its address by giving written notice thereof to the other Party.

18. Dispute Resolution. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this License (a "**Dispute**") within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party. If after such negotiation the Dispute remains unresolved, the Parties shall submit the Dispute to arbitration in Honolulu, Hawaii, pursuant to the Arbitration Rules, Procedures, and Protocols of Dispute Prevention and Resolution, Inc. (the "**DPR Rules**") then in effect. The Dispute shall be heard by a panel of three (3) arbitrators selected by the Parties in accordance with the DPR Rules. The decision of a majority of the arbitrators shall be final, conclusive and binding on the Parties hereto and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. All proper costs and expenses of such arbitration, including, without limitation, witness fees, attorneys' fees and the fees of the arbitrator shall be charged to the Party or Parties in such amounts as the arbitrators shall determine at the time of award. In the resolution of any Dispute, each Party hereby irrevocably waives any claim or entitlement to exemplary, punitive or statutory damages.

19. Waiver. Failure or delay on the part of Licensor or Licensee to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

20. Prior Negotiations. This License constitutes the entire agreement of the Parties with respect to the subject matter hereof and shall supersede all prior offers, negotiations and agreements in connection herewith.

21. Amendment. No modification of this License shall be valid unless made in writing and signed by an authorized representative of Licensor and an authorized representative of Licensee.

22. Default Interest. Any amount due hereunder which is not paid when due shall bear interest at a rate (the "Default Interest Rate") equal to one percent (1%) per month from the date due until paid, unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default under this License.

23. Governing Law and Waiver of Jury. THIS LICENSE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF HAWAII, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE NON EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT IN HAWAII WITH RESPECT TO ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS LICENSE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATING TO A DISPUTE AND FOR ANY COUNTERCLAIM WITH RESPECT THERETO.

24. No Partnership. Neither Party, by virtue of this License, in any way or for any purpose, shall become a partner of the other Party in the conduct of its business, nor become a joint venturer or a member of a joint enterprise with the other Party, nor become responsible for any of the debts, liabilities or obligations of the other Party.

25. Headers and Captions. The Section headings in this License are inserted only as a matter of convenience in reference and are not to be given any effect whatsoever in construing any provision of this License.

26. Successors and Assigns. The covenants and agreements contained in this License shall apply to, inure to the benefit of, and be binding upon the Parties hereto and upon their respective successors and permitted assigns, except as expressly otherwise herein provided.

27. Severability. If any term, covenant or condition of this License or any portion of any term, covenant or condition hereof or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term, covenant or condition or portion thereof to persons, entities and circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this License and each portion thereof shall be valid and be enforced to the fullest extent permitted by law.

28. Construction. This License shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties. Words of any gender in this License shall be held to include any other

gender and words in the singular number shall be held to include the plural where the sense requires. Words importing persons shall include firms, associations, partnerships (including both general and limited partnerships), trusts, corporations and other legal entities, including, but not limited to, public bodies, as well as natural persons. The use of the term "including" in this License shall mean in all cases "including but not limited to" unless specifically designated otherwise, and the use of "or" is not exclusive. All references to "Articles" and "Sections" without reference to a document other than this License, are intended to designate articles and sections of this License. The words "herein," "hereof," "hereunder" and other words of similar import refer to this License as a whole and not to any particular Article or Section, unless specifically designated otherwise. Unless otherwise specified in this License, any reference to "days" shall be construed as a reference to calendar days, and shall include in the counting thereof all Saturdays, Sundays and holidays; provided, however, if the final day of any period specified in "days" falls on a Saturday, Sunday or holiday, the period shall be deemed extended to include the next regular business day occurring thereafter.

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Licensor and Licensee have executed this Instrument as of the day and month first above written.

LICENSOR:

TROPIC LAND LLC, a Hawaii limited liability company

By: 

Name:

Title: *Member*

LICENSEE:

OAHU SPE-101-14 LLC, a Hawaii limited liability company

By: 

Name: Ian Craig

Title: *Manager*

Tax Map Key No. (1) 8-7-010-006

Exhibit A

Legal Description of the Property

All of that certain parcel of land situate in Lualualei, District of Walanae, Honolulu, City and County of Honolulu, State of Hawaii, being the land(s) described in deregistered Transfer Certificate of Title No. 785,873 recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2011-108704, described as follows:

LOT 1, area 21.138 acres, more or less, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 174 of Kabushiki Kaisha Oban and others, which lot has been deregistered from the Land Court System pursuant to Hawaii Revised Statutes Section 501-261.

Being land(s) described in Transfer Certificate of Title No. 785,873 issued to TROPIC LAND LLC, a Hawaii limited liability company.

Being the premises acquired by Warranty Deed dated November 21, 2005, by and between Kabushiki Kaisha Oban, a Japan corporation, as Grantor, and TROPIC LAND LLC, a Hawaii limited liability company, as Grantee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 3371920.

END OF EXHIBIT A

EXHIBIT B

Description of Project

Oahu Tier 2 FIT Active Queue
Applicant: OAHU SPE 101-14 LLC
Owner: OAHU SPE 101-14 LLC
Application No.: 101-14
System Size: 500 kW AC
Technology: PV System
Project Name: Tropic Land G
Project Address: 87-1239 Hakimo Road, Waianae, Hawaii 96792
TMK No.: (1) 8-7-010-006

EXHIBIT C

Site Plan Showing Location of License Area

(copy attached)

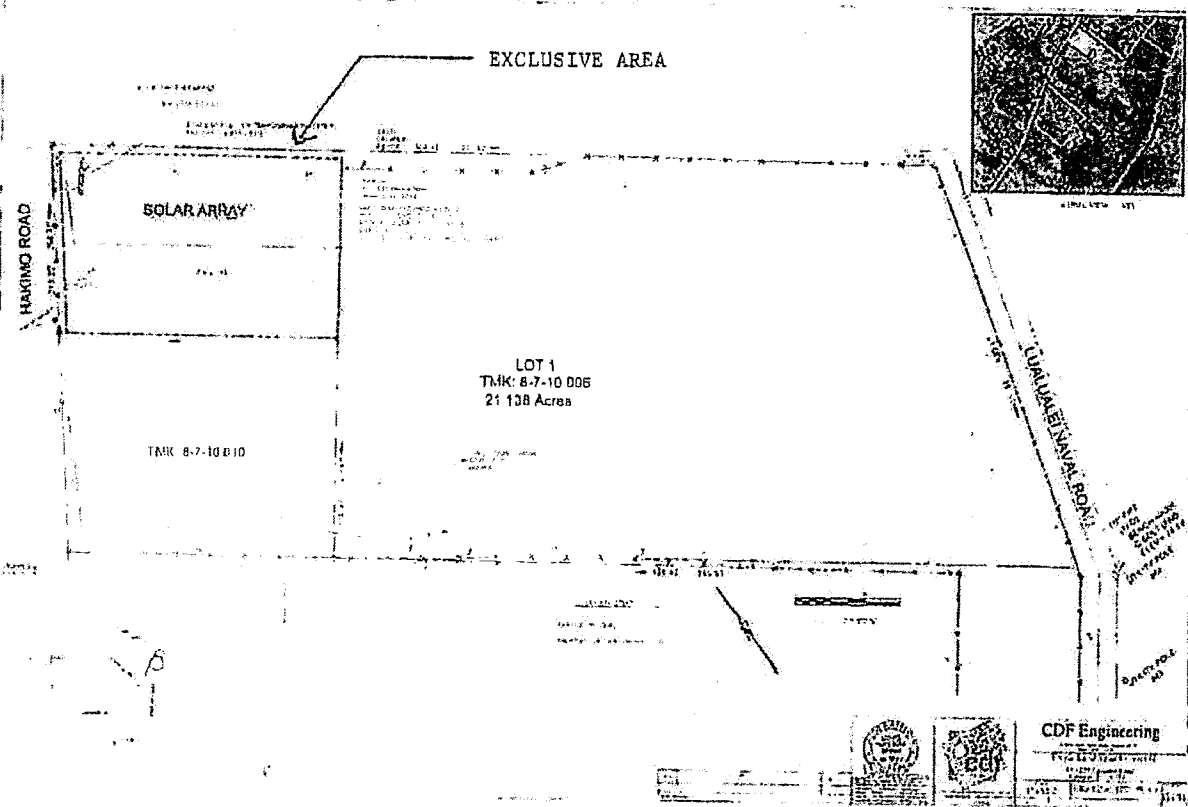


EXHIBIT D

Schedule of License Fee Payments

1. The Annual License Fees shall be as follows:

<u>License Years</u>	<u>Annual License Fees</u>
1 through 20	\$25,000.00
20 through 25	\$26,250.00
25 through end	\$27,562.50

"License Year" means the twelve (12) month period beginning on the first (1st) day of the month following the In-Service Date (as defined in the FIT Agreement). The Annual License Fees shall commence on the first (1st) day of License Year 1.

2. The License Fee shall be prepaid in equal quarterly installments on or before the first (1st) day of each calendar quarter during the Term of the License, with a grace period of five (5) days but thereafter there shall be a late fee of seven percent (7%) of the License Fee due if payment is made after the grace period. The License Fee payable under the License for partial License Years shall be prorated on a per diem basis. All payments becoming due under the License and remaining unpaid when due, including but not limited to the License Fee, shall bear interest until paid at the Default Interest Rate (as defined in Section 22 of the License).
3. Within five (5) business days of the full execution of this License, Licensee shall pay to Licensors a one-time fee equal to TEN THOUSAND AND NO/100 DOLLARS (U.S. \$10,000.00) (the "License Execution Fee"). Additionally, within five (5) business days of the full execution of the designation of grant of easement agreement described in Section 4 below, Licensee shall pay to Licensors a one-time fee equal to FIFTEEN THOUSAND AND NO/100 DOLLARS (U.S. \$15,000.00) (the "Easement Execution Fee"). Additionally, within five (5) business days of the recordation of the grant of easement described in Section 4 below, Licensee shall pay to Licensors a one-time fee equal to SEVENTY FIVE THOUSAND AND NO/100 DOLLARS (U.S. \$75,000.00), which fee shall include the prepayment of the Annual License Fees for the License Year 1 (i.e., U.S. \$25,000.00).

The Easement Execution Fee in the amount of \$15,000.00 shall be paid no later than March 20, 2015. The \$75,000.00 payment related to the recording of the grant of easement shall be paid no later than June 20, 2015. All payments made under this License shall be non-refundable when paid. If Licensee does not pay any fee required in this Section 3 when due, Licensee shall not be in default, however, this License shall automatically terminate.

4. Licensors shall reasonably cooperate with and provide its best efforts in respect to Licensee's exercise of its Other Rights, including but not limited to, the execution of any documents requested by Licensee relating to the designation of an easement area covering the Licensed Premises and the granting of an easement over said easement area, the terms of which shall be consistent with the terms and conditions of this License. Upon granting of said easement to Licensee, this License shall automatically terminate and be of no further force or effect.

EXHIBIT D

Schedule of License Fee Payments

1. The Annual License Fees shall be as follows:

License Years	Annual License Fees
1 through 20	\$30,000.00
20 through 25	\$31,500.00
25 through end	\$33,075.00

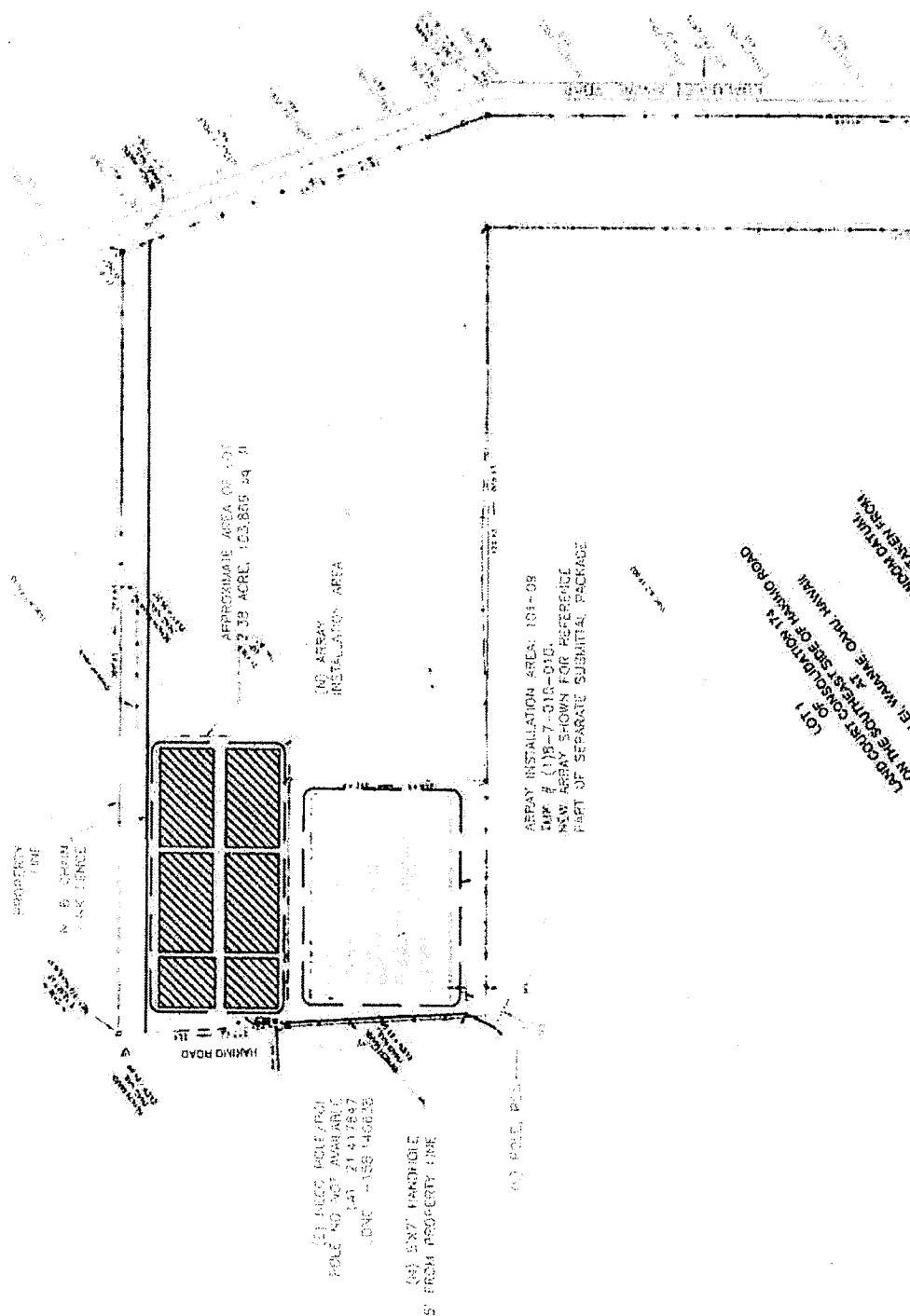
"License Year" means the twelve (12) month period beginning on the first (1st) day of the month following the In-Service Date (as defined in the FIT Agreement). The Annual License Fees shall commence on the first (1st) day of License Year 1. In the event the "In-Service Date" is later than June 1, 2016, Licensee shall pay a License Fee in the amount of \$2,500.00 per month from February 20, 2016 until the "In-Service Date"

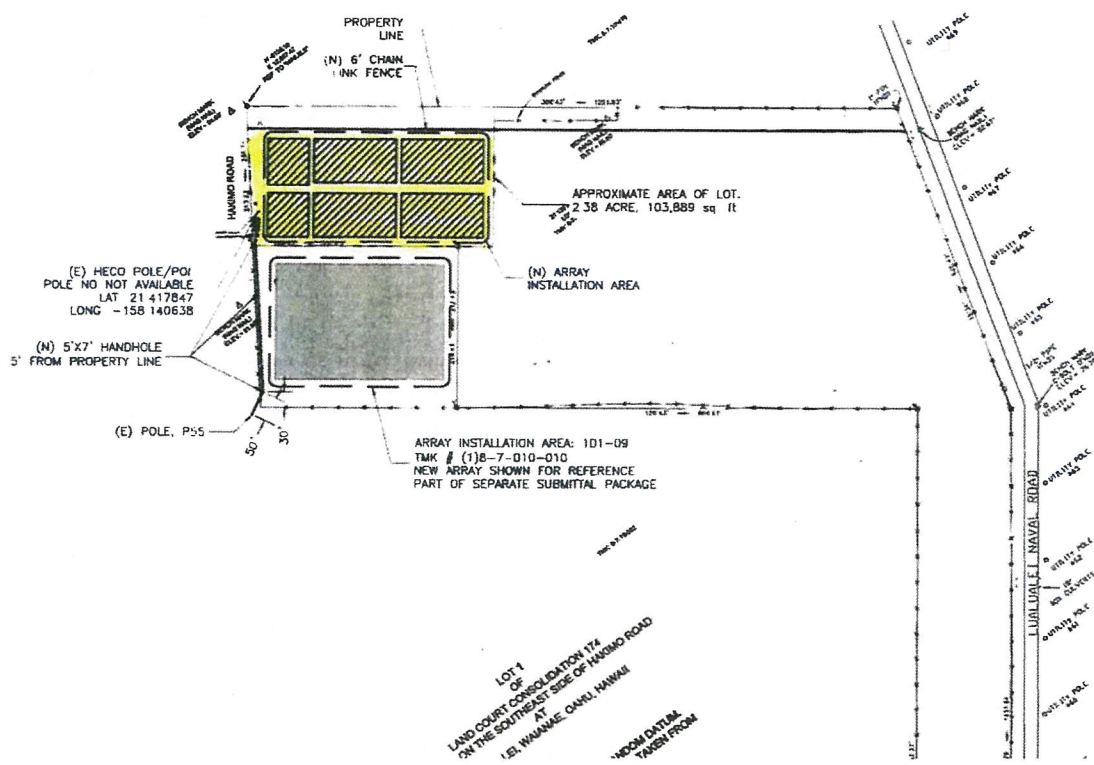
2. The License Fee shall be prepaid in equal quarterly installments on or before the first (1st) day of each calendar quarter during the Term of the License, with a grace period of five (5) days but thereafter there shall be a late fee of seven percent (7%) of the License Fee due if payment is made after the grace period. The License Fee payable under the License for partial License Years shall be prorated on a per diem basis. All payments becoming due under the License and remaining unpaid when due, including but not limited to the License Fee, shall bear interest until paid at the Default Interest Rate (as defined in Section 22 of the License).

3. Within five (5) business days of the full execution of this License, Licensee shall pay to Licensor a one-time fee equal to TEN THOUSAND AND NO/100 DOLLARS (U.S. \$10,000.00) (the "License Execution Fee"). Additionally, within five (5) business days of the full execution of the designation of grant of easement agreement described in Section 4 below, Licensee shall pay to Licensor a one-time fee equal to FIFTEEN THOUSAND AND NO/100 DOLLARS (U.S. \$15,000.00) (the "Easement Execution Fee"). Additionally, within five (5) business days of the recordation of the grant of easement described in Section 4 below, Licensee shall pay to Licensor a one-time fee equal to EIGHTY THOUSAND AND NO/100 DOLLARS (U.S. \$80,000.00), which fee shall include the prepayment of the Annual License Fees for the License Year 1 (i.e., U.S. \$30,000.00).

The Easement Execution Fee in the amount of \$15,000.00 shall be paid no later than March 20, 2015. The \$80,000.00 payment related to the recording of the grant of easement shall be paid no later than June 20, 2015. All payments made under this License shall be non-refundable when paid. If Licensee does not pay any fee required in this Section 3 when due, Licensee shall not be in default, however, this License shall automatically terminate.

4. Licensor shall reasonably cooperate with and provide its best efforts in respect to Licensee's exercise of its Other Rights, including but not limited to, the execution of any documents requested by Licensee relating to the designation of an easement area covering the Licensed Premises and the granting of an easement over said easement area, the terms of which shall be consistent with the terms and conditions of this License. Upon granting of said easement to Licensee, this License shall automatically terminate and be of no further force or effect





FIRST AMENDMENT TO SOLAR LICENSE AGREEMENT

THIS FIRST AMENDMENT TO SOLAR LICENSE AGREEMENT (the "**Amendment**") is made and executed effective as of the ____ day of _____, 2018 (the "**Effective Date**"), by and between **THE TRUST FOR PUBLIC LAND**, a California nonprofit public benefit corporation ("**Licensor**"), and **OAHU SPE 101-14 LLC**, a Hawaii limited liability company ("**Licensee**").

RECITALS

WHEREAS, Tropic Land LLC, a Hawaii limited liability company ("**Tropic Land**"), as licensor, and Licensee, as licensee, entered into that certain Solar License Agreement dated February 20, 2015 (the "**License**"), demising a portion of that certain real property located at Lualualei, District of Waianae, Honolulu, City and County of Honolulu, State of Hawaii, identified as Tax Map Key No. (1) 8-7-010-006 (the "**Property**"), for the development of a solar power generating facility under the Hawaiian Electric Company, Inc. ("**HECO**") Feed-In-Tariff program (the "**Project**"), pursuant to an agreement between HECO and Licensee (the "**FIT Agreement**");

WHEREAS, by that certain Warranty Deed dated April 25, 2018, recorded on April 30, 2018, in the Bureau of Conveyances of the State of Hawaii as Document No. A-66940346, Tropic Land conveyed all of its right, title and interest in the Property to Licensor, including Tropic Land's interest in the License, and Licensor assumed all of Tropic Land's obligations under the License;

WHEREAS, Licensor and Licensee have agreed to amend the License as provided herein, including the replacement of Exhibit C attached to the License, which provided a depiction of the License Area, with Exhibit C attached hereto, which provides for a metes and bounds description of the License Area, and Exhibit D setting forth the schedule of fees.

NOW, THEREFORE, pursuant to Section 21 of the License and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee hereby agree to amend the License as follows:

1. **Licensor's Assumption of License.** Effective as of April 30, 2018, Licensor assumed all of Tropic Land's rights and obligations under the License.

2. **Section 1.** The first sentence of Section 1 of the License is hereby deleted in its entirety and replaced with the following:

"Licensor hereby grants to Licensee, during the Term hereof and subject to the restrictions set forth herein, an irrevocable right and license, to use the portion of the Property described in Exhibit C, attached hereto and incorporated herein by reference (the "**License Area**"), together with (i) all solar rights, interests, privileges and appurtenances pertaining to the License Area (the "**Solar Rights**"), and (ii) all other rights, interests, privileges and appurtenances pertaining to the License Area, including any easements and other rights as may be necessary for ingress and egress and maintenance of the Property and any and all right, title and interest of Licensor in and to adjacent roads, trails or rights-of-way necessary to access the Property (collectively, the "**Other Rights**") (collectively, the "**Licensed Premises**"), for purposes of building, constructing, installing, rebuilding, reconstructing, reinstalling, operating, maintaining, repairing and removing the Project; such right is exclusive with respect to any photovoltaic solar panels and connector equipment on the Licensed Premises."

3. Section 2. Upon determination of the In-Service Date under the terms of the FIT Agreement, the Parties shall execute and record an amendment to the License and Memorandum (as defined below) to set forth the actual date of the In-Service Date.

4. Section 5(a). In Section 5(a) of the License, the date "December 31, 2015" is hereby replaced with "June 14, 2019".

5. Section 5(b). In Section 5(b) of the License, the date "December 31, 2015" is hereby replaced with "June 14, 2019".

6. Section 6(e). The third sentence in Section 6(e) of the License is hereby deleted in its entirety and replaced with the following:

"Licensor shall pay, prior to delinquency, all real property taxes levied or assessed against the Property and all buildings and improvements thereon (other than the Equipment); provided, however, Licensee shall promptly reimburse Licensor for its proportionate share of such real property taxes, which proportionate share shall be based on the total acreage of the License Area divided by the total acreage of the Property, which shall be equal to 11.35%."

Beginning on the Effective Date and continuing for the remainder of the Term of the License, Licensee shall undertake and perform its obligation to pay to Licensor, Licensee's proportionate share of real property taxes for the Property as set forth in Section 6(e) of the License.

7. Section 18. The third, fourth and fifth sentences of Section 18 of the License are hereby deleted in their entirety and replaced with the following:

"The Dispute shall be heard by a single arbitrator selected by the Parties in accordance with the DPR Rules. The decision of the arbitrator shall be final, conclusive and binding on the Parties hereto and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. All proper costs and expenses of such arbitration, including, without limitation, witness fees, attorneys' fees and the fees of the arbitrator shall be charged to the Party or Parties in such amounts as the arbitrator shall determine at the time of award."

8. Water Meter. Licensee agrees and acknowledges that the water meter for the Property previously installed by the Board of Water Supply ("BWS") shall be the sole property of Licensor. Licensee may, at its sole cost and expense, and upon the issuance of all necessary permits and approvals, install a submeter for water service. In the alternative, Licensor, in its reasonable discretion, shall determine Licensee's water usage, and Licensee shall promptly pay such sum to Licensor. Licensor may, at its sole cost and expense, build, construct, install, rebuild, reconstruct, reinstall, operate, maintain, repair and remove one underground waterline in the Licensed Premises (but outside of the solar array); provided, however, such actions shall not adversely affect the installation and operation of the solar project.

9. Recordation of Memorandum of Solar License Agreement. As soon as practicable after the execution of this Amendment, the Parties shall execute, deliver and record in the Bureau of Conveyances of the State of Hawaii a Memorandum of Solar License Agreement in the form attached hereto as **Exhibit E** and incorporated herein by reference (the "Memorandum").

Concurrently with the recordation of the Memorandum, Licensee shall pay to Licensor the sum of Fifteen Thousand and No/100 Dollars (\$15,000.00) in consideration for execution by Licensor and recordation. Licensee shall also pay all recordation fees and conveyance taxes (if any) for the Memorandum.

10. Exhibit C. Exhibit C attached to the License is hereby deleted in its entirety and replaced with **Exhibit C** attached to this Amendment and incorporated herein by reference.

11. Exhibit D. Exhibit D attached to the License is hereby deleted in its entirety and replaced with **Exhibit D** attached to this Amendment and incorporated herein by reference. Prior to the date hereof, Licensee paid to Tropic Land, as the then "Licensor" under the License, the Execution Fee in the amount of \$10,000.00, the Easement Execution Fee in the amount of \$15,000.00 and the additional fee for the recordation of the grant of easement in the amount of \$80,000.00 (which included prepayment of the Annual License Fees for License Year 1 (*i.e.*, in the amount of \$30,000.00)) (all as set forth in Exhibit D as previously revised and agreed to by Tropic Land and Licensee and was paid by Licensee even though a designation of grant of easement agreement was never executed and a grant of easement was never recorded). In the event the License is ever converted to an easement under Section 4 of the License or at the request of Licensee as provided in Exhibit D, no additional fee shall be payable by Licensee in connection with the designation and/or granting of the easement.

12. Ratification and Confirmation. Except as specifically modified by this Amendment, all of the terms, conditions and provisions of the License shall be unmodified and shall remain in full force and effect. The terms and conditions of the License, as modified herein, shall be binding upon each Party hereto and their respective heirs, devisees, personal representatives, executors, successors and assigns, according to the context thereof.

13. Due Authorization. Each party represents and warrants to the other party that it has all requisite power and authority to execute this Amendment and to consummate the transactions contemplated by this Amendment. The execution and delivery of this Amendment by the respective persons signing on behalf of Licensor and Licensee have been duly authorized by all requisite action on the part of Licensor and Licensee. This Amendment constitutes a legal and binding obligation of Licensor and Licensee, enforceable in accordance with its terms.

14. Counterpart and Electronic Signatures. This Amendment may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes and all of which together will constitute one agreement. Delivery of an executed signature page to this Amendment by facsimile or other electronic transmission (e.g., e-mailed pdf file) will be effective as delivery of a manually signed counterpart of this Amendment.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Licenser and Licensee hereby execute this Amendment as of the Effective Date.

THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation

By: _____
Name: Gilman Miller
Its: Senior Counsel

"Licenser"

OAHU SPE 101-14 LLC, a Hawaii limited liability company

By: _____
Name:
Its:

"Licensee"

Exhibit C

Legal Description of the License Area

Beginning at the Westerly corner of the License Area, being also the Northerly corner of Tax Map Key No. (1) 8-7-010-010, on the Easterly side of Hakimo Road, the coordinates of said point of beginning referred to Government Triangulation Station "MAILIILI", being 5,359.12 feet South and 12,420.78 feet East and running by azimuths measured clockwise from true South:

- | | | | | |
|----|------|-----|--------|---|
| 1. | 213° | 22' | 222.63 | feet along the Easterly side of Hakimo Road; |
| 2. | 306° | 43' | 476.90 | feet along a portion of Lot 1; |
| 3. | 36° | 43' | 222.25 | feet along a portion of Lot 1; |
| 4. | 126° | 43' | 463.89 | feet along a portion of Lot 1 and Tax Map Key No. (1) 8-7-010-010 to the point of beginning and containing an area of 2.40 acres. |

Exhibit D

Schedule of License Fee Payments

1. The Annual License Fees shall be as follows:

<u>License Years</u>	<u>Annual License Fees</u>
1 through 20	\$30,000.00
20 through 25	\$31,500.00
25 through end	\$33,075.00

"License Year" means the twelve (12) month period beginning on the first (1st) day of the month following the In-Service Date (as defined in the FIT Agreement). The Annual License Fees shall commence on the first (1st) day of License Year 1. Additionally, from February 20, 2016 until the In-Service Date, the Licensee shall pay to the Licensor a License Fee in the amount of \$2,500.00 per month.

2. The License Fee shall be prepaid in equal quarterly installments on or before the first (1st) day of each calendar quarter during the Term of the License, with a grace period of five (5) days but thereafter there shall be a late fee of seven percent (7%) of the License Fee due if payment is made after the grace period. The License Fee payable under the License for partial License Years shall be prorated on a per diem basis. All payments becoming due under the License and remaining unpaid when due, including but not limited to the License Fee, shall bear interest until paid at the Default Interest Rate (as defined in Section 22 of the License).
3. Within five (5) business days of the full execution of this License, Licensee shall pay to Licensor a one-time fee equal to TEN THOUSAND AND NO/100 DOLLARS (U.S. \$10,000.00) (the "**License Execution Fee**"). Additionally, within five (5) business days of the full execution of the designation of grant of easement agreement described in Section 4 below, Licensee shall pay to Licensor a one-time fee equal to FIFTEEN THOUSAND AND NO/100 DOLLARS (U.S. \$15,000.00) (the "**Easement Execution Fee**"). Additionally, within five (5) business days of the recordation of the grant of easement described in Section 4 below, Licensee shall pay to Licensor a one-time fee equal to EIGHTY THOUSAND AND NO/100 DOLLARS (U.S. \$80,000.00), which fee shall include the prepayment of the Annual License Fees for License Year 1 (i.e., U.S. \$30,000.00).

The Easement Execution Fee in the amount of \$15,000.00 shall be paid no later than March 20, 2015. The \$80,000.00 payment related to the recording of the grant of easement shall be paid no later than June 20, 2015. All payments made under this License shall be non-refundable when paid. If Licensee does not pay any fee required in this Section 3 when due, Licensee shall not be in default, however, this License shall automatically terminate.

4. Licensor shall reasonably cooperate with and provide its best efforts in respect to Licensee's exercise of its Other Rights, including, but not limited to, the execution of any documents requested by Licensee relating to the designation of an easement area covering the Licensed Premises and the granting of an easement over said easement area, the terms of which shall be consistent with the terms and conditions of this License.

Upon granting of said easement to Licensee, this License shall automatically terminate and be of no further force or effect.

Exhibit E

Form of Memorandum of Solar License Agreement

(attached)

**ACKNOWLEDGEMENT; CONSENT
AND ESTOPPEL CERTIFICATE**

The Trust for Public Land
101 Montgomery Street, Suite 900
San Francisco, California 94104

Dear Sir or Madam:

This letter is provided in connection with that certain Solar License Agreement dated February 20, 2015, as amended by that certain First Amendment to Solar License Agreement dated _____, 2018 (as amended, the "**License**"), by and between Tropic Land LLC, a Hawaii limited liability company, as licensor, and Oahu SPE 101-14 LLC, a Hawaii limited liability company ("**Licensee**"), as licensee, of which a Memorandum of Solar License Agreement was recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-_____, said licensor's interest now being held by The Trust for Public Land ("**Licensor**").

Section 17 of the License is hereby amended to update the notice information for Licensee as follows:

To Licensee: Oahu SPE 101-14 LLC
 c/o AES Distributed Energy, Inc.
 4875 Pearl East Circle, Suite 200
 Boulder, Colorado 80301
 Attn: Rodion Emelyan, Senior Counsel
 Tel. No.: (720) 457-3006
 Email: rodion.emelyan@aes.com

Furthermore, in connection with that certain Membership Interest Purchase and Sale Agreement dated as of May 4, 2017 (as amended, amended and restated, supplemented or modified, the "**MIPA**"), by and among AES Distributed Energy, Inc. or its affiliate ("**Purchaser**"), and Calwail Power Holdings, LLC ("**Seller**"), which provides for the sale of all of the membership interests in Licensee by Seller to Purchaser, Licensor hereby consents to the transfer of the membership interests in Licensee to the Purchaser. Licensor and Licensee, by their respective signatures below, confirm, certify and represent the following to and for the benefit of Purchaser:

1. The License is in full force and effect and constitutes the entirety of the agreements between Licensor and Licensee relating to the matters set forth therein.
2. No party to the License is in default thereunder or has breached the License, and, to the best of Licensor's and Licensee's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice or both, would constitute a default or breach by any such party under the License. All payments due and payable as of the date hereof, either by Licensee to Licensor or by Licensor to Licensee under the License, have been paid in full. The covenants and obligations of Licensee, made to or for the benefit of Licensor under the License and required to be performed on or before the date hereof (including the payment of any amounts due and payable), have been properly performed or expressly waived in writing. There exists no dispute between Licensor and Licensee under the License.

3. As of the date hereof, Licenser is the fee simple owner of the Property (as defined in the License) and holds the entire interest of "Licenser" under the License. Licenser consents to the acquisition by Purchaser of all of the membership interests in Licensee.

4. Licenser has no option to terminate or otherwise modify the terms and conditions of the License other than as specifically provided in the License.

5. Licenser's interest in the Property (as defined in the License) is not currently encumbered by a mortgage.

OAHU SPE 101-14 LLC, a Hawaii limited liability company

By: _____

Name: Kun Fong Lee
Its: Manager

Dated: 12/7/2018

ACKNOWLEDGED AND AGREED TO BY:

THE TRUST FOR PUBLIC LAND,
a California non-profit public benefit corporation

By: _____

Name: Gilman Miller
Its: Senior Counsel

Dated: _____



Form 2 **2018-2019 Property Information Worksheet**

Notes (on any of the items above

The property was formerly zoned AG-2, but was downzoned for building a golf course. Although the property could be re-zoned for AG-2, agricultural crop production is a permissible use for P-2-zoned land, which comports with the expected use of the property.

The following section is added new:

Just under 2.4 acres of the property is encumbered by a license to put solar panels on the property entered into by a prior owner. The license is for 25 years but can be extended to 30 years. MA'O would prefer to farm the entire property as it would make substantially more money from farming the 2.4 acres than from any solar license revenue. Although MA'O used its best efforts to persuade the solar licensee not to exercise its rights under the license, the licensee pushed forward to do so, because it is selling its portfolio to AES, one of the world's largest utilities, which also operates the Kahe power plant on the Leeward side. When the license ends, the 2.4 acres will be returned to MA'O and put into agricultural production. Most of the revenue from the license (over 70 percent) will be provided to the Legacy Land Conservation Program pursuant to its Rules, and this will be formalized in the grant agreement between the State of Hawai'i and WCRC/MA'O.

A remnant of the golf course zoning is subject to a unilateral declaration by a prior owner agreeing to provide benefits to the City and community in exchange for the right to build the golf course. The Honolulu Department of Planning and Permitting (DPP) has stated in writing that it will not enforce any of those material requirements, and will only require the current owner to comply with the Land Use Ordinance, notify SHIPD of any burials found on the property, inform DPP of any changes in ownership and submit an annual letter to DPP informing it of the property status. the process for removing the unilateral declaration is a minimum 9-month to over a year-long process. Post-closing, MA'O will remove the unilateral declaration. Councilmember Pine has offered her assistance in helping MA'O remove the unilateral declaration, as has DPP.

EXHIBIT III-B
February 8, 2019

Applicant: Wai'anae Community Re-Development Corporation
Application Title: MA'O Organic Farms Palikea Expansion – Phase One

Section G: Describe the overall significance and importance of the property to be acquired (REVISIONS IN RAMSEYER FORMAT):

Almost daily, Hawai'i media lament the lack of food security should a disaster strike, while concurrently discussing a new real estate development project, oftentimes on historically agricultural land. Even in the Wai'anae moku, suitable parcels for agriculture are increasingly difficult to find because of competition from development interests and speculators. Parcels of over 20 acres that are not developed with housing (and thus cost-prohibitive), or do not have substantial problems (e.g., landfills or other soil-impacting waste), are virtually nonexistent.

The Palikea parcel is over 21 acres, is flat, was historically in agricultural production, and has access to utilities and water. The soil on the property is Lualualei Vertisol series, a unique, high quality soil that is "very fertile, neutral to alkaline soils capable of supporting good crop growth. Cultivation is possible in conjunction with proper water management to control soil moisture. Their physical properties can be improved by adding organic matter" (Deenik, J. and McLellan, A.T. 2008). In contrast to more commonly found acidic soils on O'ahu, the Lualualei series does not require amendments to reduce acidity. Instead, comparable to high quality soils found in Kunia, Lualualei soils can quickly be put into production of a wide variety of fruits and vegetables. Wai'anae Community Re-Development Corp. d/b/a MA'O Organic Farms has been and is successfully farming on similar soils, including on 11 acres obtained in part with a 2008 Legacy Land Conservation Fund grant. Ensuring land of this quality is put into agricultural production is of paramount importance both for food security and for maintaining the agricultural character of Lualualei Valley.

The Palikea property's location is also significant. It borders both Lualualei Naval Road and Hakimo Road. This provides convenient access between the property and the 24 acres that MA'O currently farms just a few minutes' drive away, which includes MA'O Organic Farms' processing facilities. Close proximity to processing facilities will enable putting 18.7 acres of the [entire] Palikea property immediately into production with minimal infrastructure on the property, maximizing output of organic food. While MA'O would prefer to farm the entire parcel, a solar license entered into by a prior owner will encumber just under 2.4 acres for 20-30 years and the licensee is adamant about exercising its rights. When the solar license ends, MA'O will be able to put the entire 21.1 acres into production.

With the Palikea property, MA'O will increase food production capacity by 125 percent and youth empowerment impact by ~~[75]~~ 40 percent. By 2021 [A]n estimated [12,000] 18,000 pounds of organic fruits and vegetables will be produced monthly from this property, increasing total [monthly] output to almost [30,000] 400,000 pounds total per annum.

This acquisition will also set the stage for the Palikea Expansion Phase Two, through which on a separate parcel in Lualualei not part of this acquisition, assuming an agreement with the landowner can be reached, MA'O hopes to provide ag-cluster affordable housing for 24 farm managers/apprentices. This will provide incentives for managers to continue farming in a tight housing market, and also provide a

home base for interns seeking university level education subsidized by the MA'O youth leadership development program, and needing stable living arrangements.

Identify and assess conditions that threaten the significance and importance of the property. Address, where applicable, erosion, sedimentation, polluted runoff, flooding, invasive species, conflicting activities:

Presently, the area surrounding the property is predominantly agricultural, with most housing in the area situated on larger lots. Thus, the property is very suitable for agriculture. While there are landfills in Lualualei Valley (in particular PVT), the distance is sufficient so as to not be an issue with agricultural use of the property. Preventing further construction or expansion of landfills will be important in the future to ensure that Lualualei Valley remains high quality agricultural land. The Trust for Public Land currently holds title to the property, which has removed the threat of development provided that funding to transfer the property from TPL to MA'O is ultimately secured. Otherwise the primary threat to the property is [that it is listed for sale and could be acquired] its potential for development. The property was formerly zoned AG-2 before being down-zoned for potential golf course development. There is accordingly a possibility of the land being re-zoned to AG-2 to make it attractive to developers. While 2.4 acres of the property will be used for solar panels during the license period, the solar panels will not impact the agricultural potential of the surrounding land during the license period or the land underneath the panels when the license ends, at which time the licensee is responsible for removing all of the solar equipment.

Applicant: Wai'anae Community Re-Development Corporation
Application Title: MA'O Organic Farms Palikea Expansion – Phase One

Section H: Stewardship and Management (REVISIONS IN RAMSEYER FORMAT)

1. Goals and Resource Management. The short-term goal after acquisition is to prepare the property for cultivation. It has been fallow for approximately 20 years, so initial actions would include soil remediation using compost, animal manures, and cover crops. An irrigation system will be installed, and orchard trees will be planted.

Subsequently, 18.7 acres of the property ~~(would in its entirety)~~ (except for minor infrastructure such as a restroom, a secure tool storage area, and similar farm-related functions) will be put into organic food production, with the goal of reaching both peak production and USDA organic certification in approximately three years. This will be accomplished through following the Wai'anae Community Re-Development Corporation (WCRC), d/b/a MA'O Organic Farms' current organic farm management plan, which adheres to the federal USDA National Organic Program. At the end of the solar license on 2.4 acres of the property, MA'O will put the entire 21.1 acres into agricultural production.

MA'O Organic Farms will additionally update its current conservation plan to include management of this property. Cultivation of this land is estimated to result in revenues that will allow WCRC / MA'O to hire five new full-time farm apprentices and pay tuition waivers to Leeward Community College for an additional 25 youth leadership training college interns.

2. Funding Sources for Start Up, Operations, and Maintenance After Acquisition. WCRC / MA'O has an established track record for leveraging government, NGO, and philanthropic grants to support its agricultural and educational programs. Key sources would include private foundations such as Stupski, Kellogg, Freeman, and the Omidyar Network.

3. Permit Requirements. No permits are anticipated to be required.

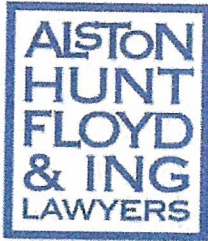
4. Management Entity. A community with a rich agricultural heritage, fertile soils, and perennial growing conditions, Wai'anae is nonetheless one of the most "food insecure" and poorest regions in Hawai'i. Homelessness, hunger, and poverty, as well as oftentimes diet-related preventable diseases, pervade the community. Sixteen years ago, the Wai'anae Community Re-Development Corporation (WCRC) was established as a non-profit 501(c)(3) Hawaiian social enterprise to develop systemic approaches to helping to solve or at least mitigate some of these problems. With the challenges came opportunities in the form of an untapped youth population – an asset ready to be mobilized to lead the community to a healthy and just future.

In 2002, WCRC started MA'O Organic Farms on 5 leased acres of land and eight young people enrolled at Leeward Community College. MA'O Organic Farms operates a certified organic farm that combines place-based experiential education and "green industry" entrepreneurship to create college and career pathways for new leaders. That 5 acres is now 24, on which MA'O Organic Farms produces over 75 tons of food per year growing 50 different varieties of fruits and vegetables, and selling them in "co-

producer” relationships to natural foods and grocery stores, restaurants, farmers markets, and through a Community Supported Agriculture program with over 100 members.

MA’O Organic Farms currently has 4 employees working in management, 2 in transportation, 2 in education and 5 in farming. MA’O’s two-year internship annually provides 50 youth college tuition, a monthly stipend, and a savings program. This program produces new community leaders who are empowered to take on leadership positions in local organizations.

5. Integration of Existing Cultural Resources. There are no known cultural sites on the property, but WCRC / MA’O Organic Farms has always and will continue to emphasize in its practices the cultural stewardship of those who came before us, and who treated the land not as a commodity, but as a partner whose health is as important as the health of those who take from it.



In affiliation
with K & L DENTONS

OAHU OFFICE:
1001 Bishop Street
Suite 1800
Honolulu, HI 96813

BIG ISLAND OFFICE:
26-238 Hawai'i Belt Road
Hilo, HI 96720

Phone: (808) 524-1800
Fax: (808) 524-4591
www.ahfi.com

William C. Byrns
E-mail:
Wbyrns@ahfi.com

February 2, 2018

EMAIL: KSOKUGAWA@HONOLULU.GOV AND U.S. MAIL

Kathy K. Sokugawa
Acting Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street, 7th Floor
Honolulu, HI 96813

Re: 87-1239 Hakimo Road (TMK (1) 8-2-010:006)

Dear Director Sokugawa:

We represent Wai'anae Community Re-Development Corporation, a Hawaii non-profit corporation doing business as MA'O Farms ("MA'O Farms"). MA'O Farms is under contract to purchase the above-referenced property and is currently in due diligence.

One of the encumbrances recorded against the property is that certain Unilateral Agreement and Declaration for Conditional Zoning (the "Declaration"), dated September 24, 1996, executed by Kabushiki Kaisha Oban, a Japan corporation ("Kabushiki"), in connection with Kabushiki's proposed golf course development on the property and adjacent properties. A copy of the Declaration is enclosed.

The golf course was never built. However, the Declaration remains in place and my client, which intends to use the property for agriculture, is concerned about the possible continuing effect of the Declaration. The Declaration appears to place many obligations on the Declarant above and beyond obligations that are directly related to the development operation of a golf course.

Kathy K. Sokugawa
Acting Director
February 2, 2018
Page 2

For example, paragraph 3 on page 3 requires Declarant to pay its pro rata share contribution towards the cost of construction of certain roadway improvements. Paragraph 5 requires the submittal of a master water plan. Paragraph 9 requires the creation of a separate non-profit foundation consisting of representatives of Nanakuli community organizations, and subparagraph (c) requires a \$2 Million contribution to the foundation.

We are unsure of what the affect of the Declaration would be on my client.

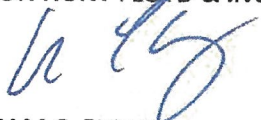
To assure that none of these obligations are ongoing we would like to have the Declaration rescinded or have the City file an instrument confirming the Declaration is void and no longer in effect.

Our timing is fairly short. We would greatly appreciate hearing back from you or your staff as soon as possible.

Thank you for your assistance.

Sincerely,

ALSTON HUNT FLOYD & ING



WILLIAM C. BYRNS
Stockholder / Director

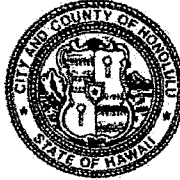
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cc: Client

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.gov/dpp • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

2018/ELOG-282(III)
1564993

March 19, 2018

Mr. William C. Byrns
Stockholder/Director
Alston Hunt Floyd & Ing Lawyers
1001 Bishop Street, Suite 1800
Honolulu, Hawaii 96813

Dear Mr. Byrns:

Thank you for your letter of inquiry dated February 2, 2018, concerning the possible adverse impacts of conditions in the Unilateral Agreement (UA), adopted as a condition of zoning for a parcel (TMK: 8-7-010:006), which is located at 87-1239 Hakimo Road. The UA also applies to two other nearby parcels, TMK: 8-7-010:010 and 8-7-009:002. You asked that the Department of Planning and Permitting (DPP) either rescind the UA conditions or file an instrument confirming that the UA conditions are void and no longer in effect.

Unfortunately, the DPP does not have the authority to rescind the UA conditions, which were adopted by the City as part of a zone change ordinance (Ordinance 96-60; DPP file 94/Z-10). Only the City Council has the authority to amend or delete the UA conditions. The DPP is able to release UA conditions from a project, but only if such conditions have been fulfilled.

We confirm your understanding that many of the UA conditions were intended to mitigate the impacts associated with the development of a new golf course, and that the golf course was never built; however, the P-2 zoning designation and the associated UA conditions remain in effect, despite the fact that the property is not being used for that purpose.

We understand that your client intends to use the subject property for agricultural activities. It should be noted that agricultural activities such as aquaculture, crop production, forestry, livestock grazing, and game preserves are outright permitted uses on P-2 designated land.

The proposed agricultural activities will not trigger UA conditions that are specific to golf course development, including the requirement to contribute toward construction of roadway improvements or the requirement to create a non-profit foundation, which you mentioned in your letter. UA conditions 1 through 11 would only be triggered if your client submits the applications for construction of a golf course, and subsequently opened and operated such a course.

Mr. William C. Byrns
March 19, 2018
Page 2

The remaining conditions 12 through 17 are standard conditions that would still apply, but pose no unreasonable burden to your client's intent to develop agricultural uses on the property. Your client should consult with the Board of Water Supply and the DPP Site Development Division for what requirements might be placed on permits associated with the planned agricultural uses of the site.

Should your client desire to conduct agricultural activities other than those that are permitted uses or permitted with a Conditional Use Permit in the P-2 zoning district, they will need a zone change to the appropriate agricultural zoning district. For more information on permitted uses in the P-2 zoning district, please refer to Table 21-3 of the Land Use Ordinance, a copy of which is available at:

<http://www.honolulu.gov/ocs/roh/193-site-ocs-cat/975-roh-chapter-21.html>

Information on zone change procedures and application instructions are available at:
<http://www.honoluludpp.org/Planning/ZoneChanges.aspx>

We understand, based on conversations and correspondence with your client in 2017, that agricultural use of this parcel is part of a larger project, which would involve a zone change from P-2 to AG-2 for approximately 50 acres of the adjoining parcel, TMK 8-7-009:002.

Your client may want to consider expanding that zone change application to change the zoning for both TMKs 8-7-010:006 and 8-7-009:002 to AG-2, and requesting, as part of the zone change, that the existing UA be repealed or amended to delete or revise all the conditions concerning golf course development, which were established for both parcels by Ordinance 96-60.

Should you have further questions, please contact Lisa Imata, of our staff, at 768-8041 or by email at lisa.imata@honolulu.gov.

Very truly yours,



Kathy K. Sekugawa
Acting Director

KKS:js

L-218

STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

SEP 24 1996 11:15 AM

Doc. No(s) 2337953

on Cert(s) AS LISTED HEREIN

/s/ CAROL T. WATANABE
ASSISTANT REGISTRAR

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation Return By: Mail (X) Pickup () To:

Louie Lee Stone
Attorney at Law
Dillingham Transportation Building
701 Bishop Street
Honolulu, Hawaii 96813
Telephone: (808) 531-8311

UNLATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration") dated September 24, 1996, is made by KABUSHIKI KAISHA OBAR, a Japan corporation, whose mailing address is 1347 Kapiolani Boulevard, Suite 404, Honolulu, Hawaii 96814 (hereinafter referred to as "Declarant").

UNLATERAL AGREEMENT AND DECLARATION

WITNESSETH:

WHEREAS, the Declarant is the owner of certain parcels of land situated in Luahalei, Nanakuli, City and County of Honolulu, Island of Oahu, State of Hawaii, Tax Map Key Nos. 8-7-09: 2, 8-7-10: 6 and 10, comprising approximately 254.047 acres of land and being more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Land"), and desires to make the Land subject to this Unilateral Agreement; and

WHEREAS, the Declarant plans to develop an 18-hole privately owned public play golf course and accessory uses on the Land (the "Project"); and

WHEREAS, the City Council of the City and County of Honolulu, State of Hawaii (the "Council"), pursuant to the provisions of the Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-8.40, as amended, relating to conditional zoning, is considering a change in zoning under the LUO for approximately 188 acres out of the total 254.047 acres of the Land from AG-1 Restricted Agricultural District and AG-2 General Agricultural District with 25-foot height limits to P-2 General Preservation District with a 25-foot height limit, as shown on the portion of Zoning Map No. 15 attached hereto as Exhibit "B" and incorporated herein; and

WHEREAS, a public hearing regarding the change in zoning, Bill 61 (1996), was held by the Council on August 7, 1996; and

WHEREAS, the Council recommended by its Zoning Committee Report No. 421 that the said change in zoning be approved, subject to the following conditions contained in this Declaration to be made pursuant to the provisions of ROH Section 21-8.40, as amended, relating to

conditional zoning, to become effective on the effective date of the zoning ordinance approving the change of zoning (the "Rezoning Ordinance").

NOW, THEREFORE, the Declarant hereby covenants and declares as follows:

1. The Declarant shall execute a written agreement, to be recorded in the Bureau of Conveyances and/or the Office of the Assistant Registrar of the Land Court, as is appropriate, with the owner of Luahalei Access Road to provide access to the proposed golf course until such time as Luahalei Access Road may be acquired by the City and County of Honolulu (the "City"). A copy of the recorded executed agreement shall be submitted to the Department of Land Utilization prior to the application for a grading permit for the golf course or accessory uses.

2. The Declarant shall provide a pro rata share contribution (based upon vehicle trip generation) towards the costs of construction in the event that State Department of Transportation ("DOT") initiates the construction of a left-turn storage lane along Farrington Highway for southbound traffic turning left into Luahalei Access Road, as approved by the DOT, within ten (10) years from the date of opening of the golf course.

3. In the event Luahalei Access Road is acquired by the City within ten (10) years from the date of opening of the golf course, Declarant will provide a pro rata share contribution (based upon vehicle trip generation) towards the costs of construction of extensions of the existing left-turn and right-turn storage lanes for westbound traffic along Luahalei Access Road, as approved by the Department of Transportation Services ("DTS").

4. The Declarant shall establish programs necessary to meet the Department of Health's ("DOH") guidelines applicable to golf courses in Hawaii, dated August, 1994 (Version 5), attached as Exhibit "C" and incorporated herein. Declarant shall submit annually to the Department

of Land Utilization ("DLU") verification from the DOH that the golf course is operating in compliance with these guidelines.

5. The Declarant shall submit a water master plan showing the proposed water facilities and necessary hydraulic calculations to the Board of Water Supply for review and approval prior to application for a building permit. Prior to the opening of the golf course, the Declarant shall obtain all governmental approvals --including but not limited to all necessary permits from the State Commission on Water Resource Development--necessary to meet the Project's water demands.

6. Prior to the application for any building permit, the Declarant shall submit site plans and elevation to the Department of Land Utilization for review and approval for compliance with LUO Section 21-5.10-2(b), requiring uses accessory to a golf course to be designed and scaled to meet only the requirements of the members, guests or users of the facility.

7. Prior to the application for grading permits, the Declarant shall submit drainage plans to the Department of Public Works for review and approval. The Declarant shall construct improvements pursuant to the approved drainage plans prior to the issuance of a Certificate of Occupancy for the golf course or accessory uses, and at its own expense.

8. Declarant shall provide affordable public play at the golf course to residents of the City and County of Honolulu in the following manner:

(A) A minimum of one and one half (1.5) days per week or a minimum of one hundred and sixty-eight (168) tee times per week (for 18-hole rounds) shall be reserved for public play by residents of the City and County of Honolulu. Of these public play times, a minimum of one-half day or fifty-six (56) tee times shall, at the affordable rates set forth in Section 8(B), be either on every Saturday afternoon or on every Sunday afternoon. The Declarant shall make the

selection between Saturday afternoons versus Sunday afternoons prior to the initial operation of the golf course and may change the selection (between Saturday and Sunday) no more frequently than one time per year.

(B) Green fees for public play times provided under Section 8(A) at a maximum shall be equal to resident municipal green fee rates for the City and County of Honolulu multiplied by a factor of one and one-half (1.5), for a period of ten (10) years from the date of opening of the golf course. At the expiration of the ten-year period, these green fees may be increased to up to two times the resident municipal green fee rates for the City and County of Honolulu. The golf rates referred to in this subsection include green fees only and do not include fees for rental of motorized carts, handcarts, or golf clubs, but City and County of Honolulu residents paying green fees established pursuant to this subsection shall not be charged rental fees higher than standard rental fees for such times.

The golf course rates referred to in this condition are the rates applicable to residents of the City and County of Honolulu playing an 18-hole round at an 18-hole golf course facility operated by the City.

(C) Tee times that are provided for local golf clubs shall qualify as public play within the meaning of this condition but shall not constitute more than fifty percent (50%) of the weekend public play. Tee times that are lost as a result of golf course closure due to inclement weather or holidays shall be credited towards this public play requirement on a proportionate basis.

(D) The golf course operator shall keep a log of all play on the golf course and the green fees applicable thereto. This log shall be subject to review by the Department of Parks and Recreation upon request for compliance with the requirements set forth in this condition.

(E) The Declarant shall establish (1) a Junior golf program open to youths from Nanakuli and Waiannae; and (2) a Senior golf program open to senior citizens. Pursuant to these programs, Juniors and Seniors shall be able to play on the golf course at rates which shall be further discounted from the special rate for residents of the City and County of Honolulu as set forth in Section 8(B), at times and rates as determined by the management of the course.

9. The Declarant shall cause the creation of a separate non-profit foundation consisting of representatives from community organizations within the Nanakuli region, the Councilmember of the district and the Declarant's representative. The non-profit foundation shall be established before the opening of the golf course.

(A) The non-profit foundation shall be operated by a Board of Directors ("Board of Directors") consisting of seven (7) members and one non-voting member who shall be a representative of the Declarant. The Board of Directors shall be selected as follows:

(1) One member of the Board of Directors shall be the City Councilmember from the District;

(2) One member of the Board of Directors shall be a director or officer of the Mikilua Farm Bureau Center, a Hawaii non-profit corporation ("Mikilua"), and shall be selected by Mikilua;

(3) One member of the Board of Directors shall be a member of the Nanakuli Hawaiian Homestead Community Association and shall be selected by the Association;

(4) One member of the Board of Directors shall be an employee of a representative from a financial institution that serves the community, selected by the Declarant;

(5) One member of the Board of Directors shall be a faculty member of Nanakuli High School, selected by the principal of Nanakuli High School;

(6) One member of the Board of Directors shall be a member of the Waiānae Coast Neighborhood No. 24 and shall be selected by the Board; and

(7) One member shall be a Kūpuna that resides in the district. The initial term shall be served by Hosiiku Draka. Thereafter, the six other voting members of the Board of Directors shall select the Kūpuna representative.

A representative of the Declarant, selected by the Declarant, shall serve as a non-voting member of the non-profit foundation.

(B) The terms of the Directors shall be as follows:

(1) City Councilmember shall serve for the duration of his/her elected term;

(2) The Māhina representative will serve on the Board of Directors for a period of three (3) years;

(3) The representative from the Nanakuli Hawaiian Homestead Community Association will serve for a period of two (2) years;

(4) The representative from the financial institution will serve for a period of three (3) years;

(5) The representative selected by the principal of Nanakuli High School shall serve for a period of three (3) years;

(6) The representative selected by the Waianae Coast Neighborhood No. 24 shall serve for a period of three (3) years; and

(7) The Kupuna representative shall serve for a period of two (2) years.

Members of the Board of Directors shall serve no more than two (2) terms as a Director. Elected officials, with the exception of the City Councilmember from the district, shall be prohibited from serving as a member of the Board of Directors. If, after being selected to serve as a member of the Board of Directors, a member is elected to public office, he/she shall resign from the Board of Directors immediately.

If organizations that are represented on the original foundations are subsequently dissolved or disbanded, replacement members will be nominated and approved in compliance with the foundation's by-laws. At no time, however, shall the number of members on the Board of Directors (other than the non-voting representative of the Declarant) be less than seven (7).

Board members and officers of the foundation shall not receive monetary compensation.

(C) The Declarant shall contribute a total of TWO MILLION DOLLARS (\$2,000,000.00) to the foundation as follows:

(1) \$250,000.00 shall be contributed to the foundation when the golf course is opened for play.

(2) \$250,000.00 shall be contributed to the foundation no later than five (5) years from the date of opening of the golf course.

(3) The balance in the amount of ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000.00) shall be contributed on a per round basis as follows: \$1.00 per round for green fees paid pursuant to Section 8(B) and (E) herein and \$1.50 per round for all other green fees collected by the Declarant. This amount shall be contributed to the foundation on a quarterly basis commencing on the date of opening of the golf course and shall continue until the ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000.00) is paid in full, provided that the balance shall be paid in full within fifteen (15) years from the date of opening of the golf course.

(D) The foundation may expend only the interest portion of the payments with the principal being placed in a separate interest-bearing account.

(E) The foundation shall be responsible for receiving the contributions from the Declarant, reviewing funding requests, and disbursing funds in accordance with the foundation's purposes as stated in its mission statement and in its organizational documents.

Initially, the foundation's mission statement shall be to: Promote the welfare of the Nanakuli community by providing contributions to various individuals and/or organizations for the purpose of furthering educational, cultural, social and health-related activities. Generally, foundation awards must be used to fund:

(1) Scholarships, facility improvements or equipment purchases benefitting elementary, intermediate and high school(s) servicing residents of Nanakuli;

(2) Youth-related programs and activities in Nanakuli, including anti-drug, crime prevention, and recreational programs or activities;

(3) Health-related or job training programs in Nanakuli that provide rehabilitation and counseling; and

(4) Cultural programs or facilities in Nanakuli that promote cultural preservation and education.

Foundation awards shall not be limited to a single recipient or type of program, but shall be used in a variety of programs.

(F) The foundation shall engage the services of an established trust company to oversee the administration of the fund:

(1) The trust company shall receive, hold, and account for all assets.

(2) The trust company shall be responsible for asset management of the fund, or shall carry out the directions of an independent investment manager or account administrator managing the investment of the fund.

(3) The trust company shall prepare and maintain the foundation's fiscal recordkeeping, including periodic financial statements. All records shall be subject to review by the City and County of Honolulu, upon request.

(4) The trust company shall act in an administrative capacity to receive grant requests and correspondence, distribute requests to board members of the foundation, and prepare and distribute grants as directed by the Board.

(G) The foundation shall be established as a permanent vehicle for charitable giving. However, in the event the dissolution of the foundation is required, remaining

funds shall be contributed to the City and County of Honolulu's general fund for disposition to activities or improvements which shall benefit the Nanakuli community.

10. A development premium of \$23,000,000.00 will be paid to City Council if the golf course operation is changed from one hundred percent (100%) public play to a semi-private or private membership club within twelve (12) years from the date of opening of the golf course. The provisions for resident plays set forth in Section 8 shall remain in effect. This fee will be paid in quarterly increments over a five year period to reflect the time required to complete membership sales. The first increment of this fee shall be due within ninety (90) days of the first private membership sale.

11. Declarant shall establish and utilize a brackish (non-potable) water system to irrigate the fairway areas of the golf course until such use is shown by Declarant to be unfeasible.

12. The Declarant shall immediately stop work and contact the State Historic Preservation Division (SHPD) for review and approval of proposed mitigation measures should any previously unidentified historic sites (including but not limited to artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls) be encountered during the development of the Project. Work in the immediate area shall be stopped until the SHPD is able to assess impacts and make further recommendations for appropriate mitigation measures. The Declarant shall, within 90 days of the effective date of the Rezoning Ordinance, designate an archaeologist to be used to prepare a mitigation plan for the Project site should previously unidentified sites as described above be encountered during development of the Project.

13. Approval of this zone change does not constitute compliance with other Land Use Ordinance or governmental agencies' requirements. They are subject to separate review and

approval. The Declarant shall be responsible for insuring that the final plans for the Project comply with all applicable Land Use Ordinance and other governmental agencies' provisions and requirements.

14. The Declarant shall give notice to the Department of Land Utilization of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the Land prior to commencement of construction on the Land; provided, however, that Declarant may transfer ownership in the Land to an affiliate or joint venture of which Declarant is a member or in a manner consistent with prior representations to the City, and may mortgage the property at any time without notice to the City. A mortgagee under such mortgage may foreclose the mortgage, by judicial foreclosure or under a power of sale contained in such mortgage (provided notice of the date of such foreclosure sale is given to the City), or may with notice to the City, acquire title to such property in lieu of foreclosure.

15. On an annual basis, corresponding with the anniversary of the effective date of the rezoning ordinance, the Declarant shall submit a written status report to the Department of Land Utilization ("DLU") documenting its satisfaction of and/or describing its progress toward complying with each condition of approval for this zone change. The status report shall be submitted until such time as the DLU has determined that all conditions of approval have been satisfied.

16. In the event of non-compliance with any of the conditions set forth herein, the Director of DLU shall inform the Council and may initiate action to rezone the property, seek civil enforcement, or take appropriate action to terminate or stop the Project until applicable conditions are met.

17. Failure to fulfill any conditions to the zone change may be grounds for revocation of the permits issued under this zoning and grounds for the enactment of ordinances making further zone changes, including revocation of the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

NOW, THEREFORE, the Declarant hereby makes the following additional Declaration:

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested change in zoning and rationally relate to the objective of preserving the public health, safety and general welfare and the further implementation of the General Plan of the City and County of Honolulu.

Development of the Land by the Declarant shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant, and upon the satisfaction of the condition(s) set forth in this Unilateral Agreement, the Department of Land Utilization may fully or partially release any of the foregoing conditions that have been fulfilled.

That, if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the Land and shall bind and constitute notice to all parties hereto and subsequent lessees, grantees, mortgagees, heirs, successors and assigns, and any other persons who have or claim to have an interest in the Land, and the City and County of Honolulu or the State of Hawaii shall have the right to enforce this Declaration by rezoning, appropriate action

at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may file a petition with the Department of Land Utilization for the amendment or removal of any of the conditions contained in this Declaration or for the termination of this Declaration, such petition to be processed in the same manner as petitions for zone changes.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

KABUSHIKI KAISHA ORAN, a Japan corporation

By Hiroshi Nakade
its President

"Declarant"

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 24th day of September, 1996, before me appeared Hiroshi Nakade to me personally known, who, being by me duly sworn, did say that he is the President of KABUSHIKI KAISHA ORAN, a Japan corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said Officer acknowledged said instrument to be the free act and deed of said corporation.

Debra L. Jones
Notary Public, State of Hawaii

My commission expires: 10-26-98

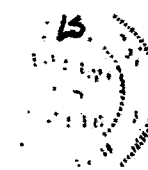


EXHIBIT "A"

FIRST:

ALL of that certain parcel of land situate at Lualualei, District of Waianae, City and County of Honolulu, State of Hawaii, described as follows:

LOT 1, 21.138 acres, Map 1, Land Court Consolidation 174 of Kabunhiki Kalaha Oban and others.

BEING a portion of the property described in and covered by Transfer Certificate of Title No. 330,094.

SUBJECT, HOWEVER, to the following:

1. A perpetual easement for ingress and egress in favor of and appurtenant to Lot 205-A, to provide access to Hakimo Road, across Lot 205-C-2, as set forth by Land Court Order No. 45711.

2. Terms, provisions and conditions as contained in that certain Elaine Loui Chang Revocable Living Trust Agreement herein referred to and the effect of any failure to comply with such terms, provisions and conditions.

3. Covenants and agreements as contained in that certain Exchange Deed dated July 23, 1981 and filed as Document No. 1078605.

SECOND:

ALL of that certain parcel of land situate at Lualualei, District of Waianae, City and County of Honolulu, State of Hawaii, described as follows:

LOT 205-A, area 236.154 acres, as shown on Map 62, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 130 of A.C. Dowsett and others.

Together with an easement for access over Lots 205-B and 205-C to Hakimo Government Road, as set forth in Land Court Order No. 45,711, filed October 27, 1976.

Being the same premises described in Transfer Certificate of Title No. 317,136. /

SUBJECT, HOWEVER, to the following:

1. Easement T (1.240 acres), as shown on Map 62, filed with Land Court Application No. 130, for road widening purposes, located along the westerly boundary of Lot 205-A.

2. Easement U (.100 acre), as shown on Map 62, filed with Land Court Application No. 130, for fence line purposes, located along the northerly boundary of Lot 205-A.

3. Unrecorded Lease dated July 15, 1977, expiring June 30, 1992, in favor of Ryoel Higa and Nancy Yukiiko Higa, at a base rental of \$950.00 per month, subject to withdrawal for a higher and better use by giving the lessees six months' prior written notice.

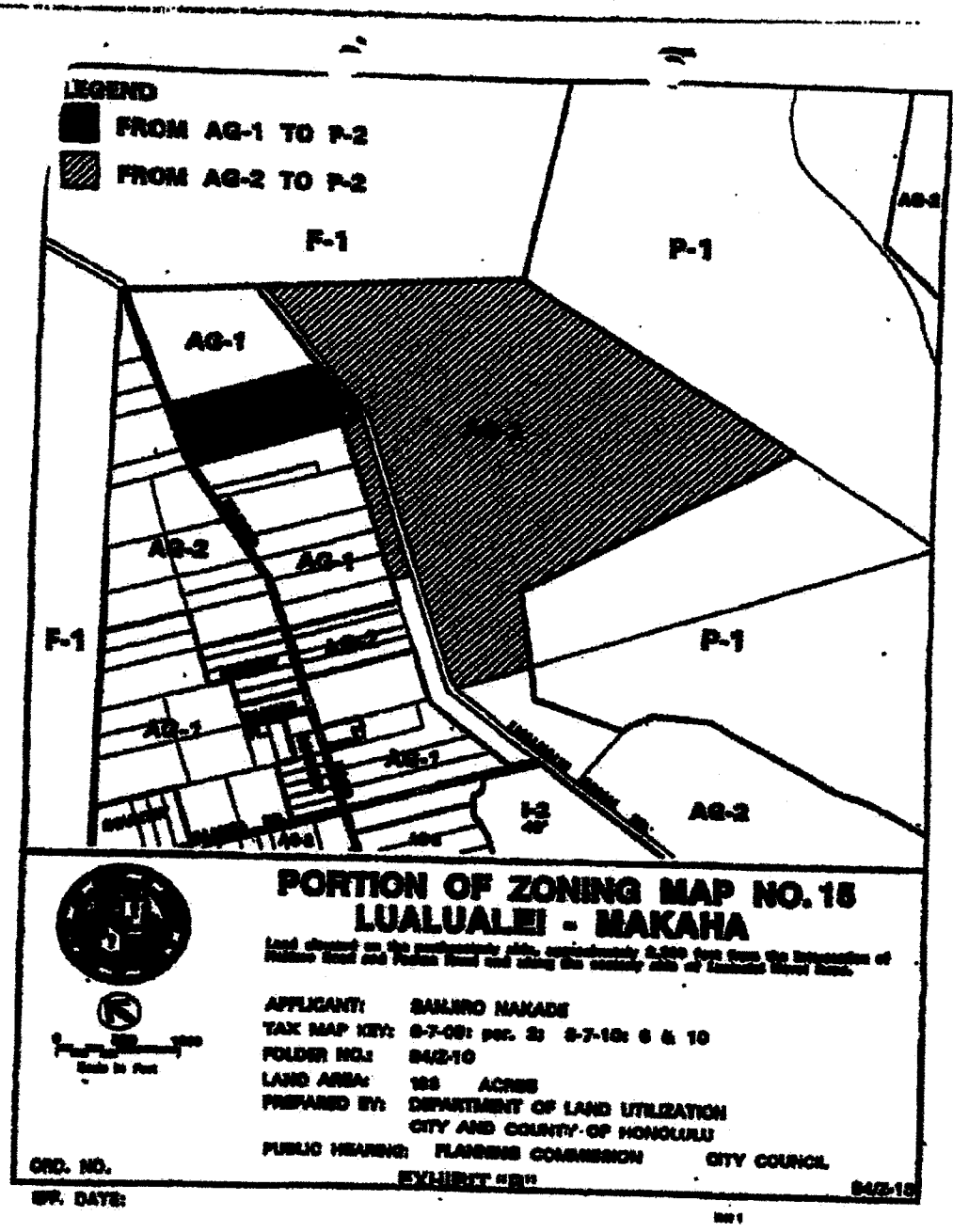
4. Unrecorded month-to-month grazing permit in favor of Edward Kallifone at a base rental of \$165.00 per month.

THIRD:

ALL of that certain parcel of land situate at Lualualei, District of Waianae, City and County of Honolulu, State of Hawaii, described as follows:

LOT 204, area 2.755 acres, as shown on Map 39, filed with Land Court Application No. 130 of A.C. Dowsett and others.

Being all of the land described in and covered by Transfer Certificate of Title No. 314,804. /





115 FEB 28 1994
HAWAIIAN ISLANDS
COUNTY OF HAWAII
DEPARTMENT OF HEALTH

**STATE OF HAWAII
DEPARTMENT OF HEALTH**

August, 1994 (Version 5)

GUIDELINES APPLICABLE TO GOLF COURSES IN HAWAII

In order to assure that environmental quality is promoted, protected and enhanced, the State Department of Health (DOH) recommends the following for all golf courses in Hawaii. The owner/operator must also comply with all applicable DOH rules.

1. Baseline groundwater quality and, if appropriate, coastal water quality should be established.
2. The owner/operator should establish a groundwater and, if appropriate, a coastal water monitoring plan. The groundwater and coastal water monitoring plans should minimally describe the following components:
 - a. A routine monitoring schedule of at least once every six (6) months for the first three (3) years of operation and once a year thereafter, or more frequently in the event that the monitoring data indicates a need for more frequent monitoring.
 - b. Compounds which should be tested for include compounds associated with fertilizers, biocides, and effluent irrigation. These data should be permanently retained by the golf course and submitted periodically to the State DOH and the Planning Department of the county in which the golf course is being proposed. These data should be provided both in detail and in summary format and should relate to the baseline data and to adverse impact levels.
 - c. If the monitoring data indicate increased levels of a contaminant associated with golf course maintenance activities that poses, or may pose, a threat to public health or the environment, the owner should immediately inform the State Department of Health and the County Planning Department. Subsequently, the owner must mitigate any adverse effects caused by the contamination.
3. If a wastewater treatment works with effluent reuse becomes the choice of wastewater disposal, then the owner/developer and all subsequent owners should develop and adhere to a wastewater reuse plan which should incorporate the provisions of the Department of Health's Guidelines for the Treatment and Use of Reclaimed Water, developed by the Wastewater Branch and dated November 22, 1993. A copy of the

EXHIBIT "C"

guidelines may be obtained by contacting the Wastewater Branch at 586-4294.

4. Above ground storage tanks for storing petroleum products for fueling golf carts, maintenance vehicles, and emergency power generators should be used rather than underground storage tanks (USTs). USTs may pose a potential risk to the groundwater and should not be encouraged.
5. Buildings designed to house fertilizers and biocides should be bermed to a height sufficient to contain a catastrophic leak of all fluid containers. It is also recommended that the floor of this room be made waterproof so that all leaks can be contained within the structure in order to facilitate a cleanup.
6. A golf course maintenance plan should be prepared and implemented with regards to the use of fertilizers and biocides as well as an irrigation schedule. This maintenance plan should be based on operational practices that would minimize or prevent environmental pollution, including, but not limited to, practices that are taught at the certification school of the National Association of Golf Course Superintendents.
7. Every effort should be made to minimize the amount of noise from golf course maintenance activities. Essential maintenance activities (e.g., mowing of greens and fairways) should be conducted at times that do not disturb nearby residents.
8. Solid waste should be managed in a manner that does not create a nuisance. Whenever possible, composting of green wastes for subsequent use as a soil conditioner or mulching material is encouraged. The composting and reuse should be confined to the golf course property to eliminate the necessity for offsite transport of the raw or processed material. In addition, during construction the developer should utilize locally-produced compost and soil amendments whenever available.
9. Pesticides and other agricultural chemicals should be applied in a manner that prevents the offsite drift of spray material. The State Department of Agriculture should be consulted in this regard.
10. To avoid soil runoff during construction, the developer should consult with the U.S. Department of Agriculture, Soil Conservation Service to assure that best management practices are utilized.

If there are any questions regarding the guidelines recommended above, please contact the Environmental Planning Office at 586-4337. We appreciate your cooperation in preserving and protecting environmental quality in Hawaii.

