

DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



JAMES J. NAKATANI  
Executive Director

STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT CORPORATION**

235 S. Beretania Street, Room 205  
Honolulu, HI 96813  
Phone: (808) 586-0186 Fax: (808) 586-0189

**Meeting of the Board of Directors**

Held via Teleconference

April 20, 2022  
9:00 a.m.

*Pursuant to Public Act 220, SLH 2021, this meeting will be held using interactive conference technology (ICT). Board members, staff, persons with business before the Board, and the public may participate remotely online using ICT, or may participate via the in-person meeting site which provides ICT.*

*Interested persons may submit written testimony in advance of the meeting, which will be distributed to Board members prior to the meeting. We request that testimony be submitted not less than 72 hours prior to the meeting to ensure time for Board members to review it. Written testimony may be submitted electronically to [hdoa.adc@hawaii.gov](mailto:hdoa.adc@hawaii.gov) or sent via U.S. Postal Service to: Agribusiness Development Corporation, 235 South Beretania Street Rm 205, Honolulu HI 96813.*

*When testifying via ITC, via telephone, or in-person, you will be asked to identify yourself and the organization you represent, if any. Each testifier will be limited to two (2) minutes of testimony per agenda item.*

*The public may participate in the meeting via:*

**ICT:** <https://zoom.us/j/99378910168>  
**Telephone:** (669) 900-6833, Web ID: 993 7891 0168  
**In-Person:** at the meeting location indicated below

**ICT ACCESS**

To view the meeting and provide live oral testimony, please use the link at the top of the agenda. You will be asked to enter your name. The Board requests that you enter your full name, but you may use a pseudonym or other identifier if you wish to remain anonymous. You will also be asked for an email address. You may fill in this field with any entry in an email format, e.g., \*\*\*\*@\*\*\*\*.com.

Your microphone will be automatically muted. When the Chairperson asks for public testimony, you may click the Raise Hand button found on your Zoom screen to indicate that you wish to testify about that agenda item. The Chairperson or staff will individually enable each testifier to unmute their microphone. When recognized by the Chairperson, please unmute your microphone before speaking and mute your microphone after you have finished speaking.

For both ITC, phone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

**TELEPHONE ACCESS**

If you do not have ITC access, you may get audio-only access by calling the Telephone Number listed at the top on the agenda.

Upon dialing the number, you will be prompted to enter the Meeting ID which is also listed at the top of the agenda. After entering the Meeting ID, you will be asked to either enter your panelist number or wait to be admitted into the meeting. Please wait until you are admitted into the meeting.

When the Chairperson asks for public testimony, you may indicate you want to testify by entering “#” and then “9” on your phone’s keypad. After entering “#” and then “9”, a voice prompt will let you know that the host of the meeting has been notified. When recognized by the Chairperson, you may unmute yourself by pressing “#” and then “6” on your phone. A voice prompt will let you know that you are unmuted. Once you are finished speaking, please enter “#” and then “6” again to mute yourself.

For both ITC, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

Instructions to attend State of Hawaii virtual board meetings may be found online at <https://cca.hawaii.gov/pvl/files/2020/08/State-of-Hawaii-Virtual-Board-Attendee-Instructions.pdf>.

#### **IN-PERSON ACCESS**

There will also be one meeting location, open to the public, which will have an audio-visual connection. That meeting will be held at:

State of Hawaii, Department of Agriculture  
Hale Waiolama Board Room  
1428 South King Street  
Honolulu, Hawaii 96814-2512

For both ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

#### **LOSS OF CONNECTIVITY**

In the event of a loss of ICT connectivity, the meeting will be recessed for a period not to exceed thirty (30) minutes to restore connectivity with all board members and the public in-person access noted above. In the event that audio connectivity is re-established within 30 minutes without video connectivity, interested participants can access the meeting via the telephone number and Meeting ID number noted above.

In the further event that connectivity is unable to be restored within 30 minutes, the meeting will be automatically continued to a date and time to be posted on the ADC website at <https://hdoa.hawaii.gov/adc/> no later than close of business the next business day. New ICT, telephone, and in-person access information will also be posted on the website no less than twenty-four (24) hours prior to the continued meeting date. Alternatively, if a decision is made to terminate the meeting, the termination will be posted on the ADC website.

[agenda begins on the following page]

**AGENDA**

A. Call to Order

B. Roll Call

C. Approval of Minutes

1. Board of Directors Meeting, February 16, 2022
2. Board of Directors Meeting, March 16, 2022

D. New Business

1. Request for Approval to Hartung Brother Hawaii, LLC, Inc. Under General Lease No. S-4654 to Construct an Alfalfa Drying Facility in Kekaha, Kauai, Tax Map Key (4) 1-2-001:035
2. Request to Consent to the Assignment of License Agreement Nos. LI-K1102 and LI-KA1501 from Green Energy Team, LLC to Mahipapa, LLC for Biomass Production Purposes in Kalepa, Kauai, Tax Map Key (4) 3-9-002:001 (por), (4) 3-9-001:004 (por), (4) 3-9-002:009 (por), (4) 3-9-002:020 (por), (4) 4-2-001:003 (por)
3. Request for Approval to Terminate "Right-of-Entry and License Agreement" Dated January 13, 2014 Issued to Pohaku O'Kauai Materials, LLC for Rock and Sand Removal Purposes in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por)
4. Request for Approval to Amend the Water User Agreement for Bott Well Pump Station in Wahiawa, Oahu
5. Discussion on the Request for Proposals to Construct and Operate a High Pressure Processing Machine and Agricultural Facilities in the Whitmore Food Hub, Wahiawa, Oahu
6. Request for Approval to Enter into a Memorandum of Understanding with Ms. Susan Hendry for the Security and Maintenance of an Access Easement, Whitmore, Oahu, Tax Map Key (1) 7-1-001:005 (por)

E. Old Business

1. For Information Only: Progress Report on the Continuing Work of the Investigative Committee on Agricultural Policy and Strategic Planning Regarding the Development of Policies and Procedures
2. Request to Delegate Authority to ADC Executive Director to Negotiate and Purchase Three Deep Wells in Paalaa Uka, District of Waiialua, Oahu from Dole Food Company, Inc.

F. Executive Director's Update

G. Adjourn

The Board may go into Executive Session pursuant to exceptions provided under Section 92-5, Hawaii Revised Statutes (HRS), including to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities, pursuant to Section 92-5(4), HRS."

If you require special assistance or auxiliary aids or services to participate in the public hearing process, please contact staff at (808) 586-0186 at least three (3) business days prior to the meeting so arrangements can be made.

NOTE: MATERIALS FOR THIS AGENDA WILL BE AVAILABLE FOR REVIEW ON OUR WEBSITE ON AND AFTER THURSDAY, APRIL 14, 2022.

The Agribusiness Development Corporation does not discriminate on the basis of race, color, sex, national origin, age, or disability, or any other class as protected under applicable federal or state law, in administration of its programs, or activities, and, the Agribusiness Development Corporation does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in actions protected, or oppose action prohibited, by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.

If you have any questions about this notice or any of the Agribusiness Development Corporation's non-discrimination programs, policies, or procedures, you may contact:

Delanie Prescott-Tate, Acting Non-Discrimination Coordinator  
Agribusiness Development Corporation  
425 Queen Street  
Honolulu, HI 96813  
(808) 586-1180  
[hdoa.adc.titlevi@hawaii.gov](mailto:hdoa.adc.titlevi@hawaii.gov)

If you believe that you have been discriminated against with respect to an Agribusiness Development Corporation program or activity, you may contact the Acting Non-Discrimination Coordinator identified above.

To request language or accessibility for Agribusiness Development Corporation programs or public meetings, please contact the office, at (808) 586-0186 or email: [hdoa.adc@hawaii.gov](mailto:hdoa.adc@hawaii.gov). Please allow sufficient time for the Agribusiness Development Corporation to meet accommodation requests.

To request language interpretation for this document, please contact: LEP Coordinator located at 1428 South King Street, Honolulu, HI 96813 (Phone: 808-973-9469 Email: [hdoa.hr@hawaii.gov](mailto:hdoa.hr@hawaii.gov)). Individuals may request oral interpretation services in order to request a written translation of this document.

**AGRIBUSINESS DEVELOPMENT CORPORATION**

Minutes of the Board of Directors Meeting held Virtually on February 16, 2022

Via Zoom Teleconference

*Considering the evolving COVID-19 situation, protecting the health and welfare of the community is of utmost concern. As such, the meeting was held remotely with Board members, Staff and Applicants, and the Public, participating via Zoom meeting venue.*

**Members Present, virtually:**

Frederick Lau, City & County of Honolulu, Chairperson (Chair)  
Mary Alice Evans, Designated Representative, DBEDT, Ex-Officio Member (Ms. Evans)  
Glenn Hong, Member-At-Large (Mr. Hong)  
Karen Seddon, Member-At-Large (Ms. Seddon)  
Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture, Ex-Officio Member (Ms. Shimabukuro-Geiser)  
Lyle Tabata, Kauai County Member (Mr. Tabata)  
Warren Watanabe, Member-At-Large (Mr. Watanabe)  
Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)  
Lloyd Haraguchi, Member-At-Large (Mr. Haraguchi)  
James Gomes, Maui County Member (Mr. Gomes)

**Counsel Present, virtually:**

Delanie Prescott-Tate, Deputy Attorney General (Ms. Prescott-Tate)

**Staff Present, virtually:**

James Nakatani, Executive Director (Mr. Nakatani)  
Myra Kaichi, Sr. Executive Assistant (Ms. Kaichi)  
Ken Nakamoto, Project Manager (Mr. Nakamoto)  
Lyle Roe, Property Manager (Mr. Roe)  
Lance Tashima, Administrative Services Officer  
Lynette Marushige, Executive Secretary  
Mr. Stephen Dalton, IT Specialist (Mr. Dalton)

**Guests Present, virtually:**

Isaac Miller, Corteva Agri Sciences dba Pioneer Hi-Bred (Mr. Miller)  
Tierra Bartolotti  
Mike Faye, Kekaha Agriculture Association (Mr. Faye)  
Erwin Quinanola  
Representative Amy Perruso (Rep. Perruso)

**A. Call to Order**

Chair called the virtual meeting to order at 9:04 a.m.

**B. Roll Call**

Chair conducted a roll call of the Board. In accordance with the Governor's emergency proclamation dated January 26, 2022, related to COVID-19 (Omicron Variant), Chair called the name of each board member and asked them to identify their presence with a "here" or "present" and to state who if anyone was present in the room with them. Chair stated that the roll call served as the roll call vote, and for each subsequent

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vote, the Chair would ask if there were any objections. If there were no objections the motion would be approved on the same basis as the initial roll call.

Roll call: Ms. Evans, Mr. Gomes, Mr. Haraguchi, Mr. Hong, Mr. Manuel, Ms. Seddon, Ms. Shimabukuro-Geiser, Mr. Tabata, and Mr. Watanabe acknowledged attendance with no guests present.

### **C. Approval of Minutes**

None

### **D. NEW BUSINESS**

1. Request for Approval to Conditionally Rescind Tenant Approval to Rey Pin for 6.023 Acres of Lot 3 at Galbraith Small Farmer Lots in Wahiawa, Oahu, Tax Map Key (1) 7-1-001-002 (por)

Motion to Approve: Ms. Seddon, Second: Ms. Evans

Mr. Roe stated he stands on the written submittal except to note that since the publication of the submittals he received documentation that the certified letter sent to Ms. Pin advising her of the deadline, the conditional rescission, and the potential board action was not delivered. He arranged to meet with her on Friday, February 11, and delivered the letter personally and verbally explained to her the contents of the letter. She signed a copy of the letter acknowledging her receipt. He also spoke with Mr. Jason Shitanishi of USDA Farm Services Agency who was acquainted with Ms. Pin and he'll be assisting her with her interactions with NRCS as she works through her conservation plan. Mr. Roe would note, with the board's indulgence that the board amend the motion to change the rescission date to be effective June 1, 2022 based on the later than anticipated notice to Ms. Pin.

Chair asked if anyone from the public wished to provide testimony.

Mr. Dalton stated there was no raised hands.

Chair asked if there was any board discussion.

Mr. Gomes said he was opposed to this applicant. Staff had tried many times to get a hold of her to make it happen and without any reply. Now it feels like she's trying to get back into the game. So, he's opposed to this; we should find another tenant. He would also like to ask staff, if in the future they could provide pictures of the lay of the land on all of the applicants that come before the board.

Chair asked if there was any other discussion.

Mr. Manuel wanted to confirm that because there was no formal license in place, was any payment received? So basically, we had a parcel we weren't collecting any money from? He wanted to confirm that there were no actual payments made to ADC for six years since the initial action.

Mr. Roe confirmed that there was none.

Mr. Manuel made a recommendation for the policy committee to have timely review, like a one-year period to execute all agreements and not wait so long. He knows there were intermittent conversations and staff had reached out to this potential tenant, but six years of no payment was a lot of lost revenue for this agency.

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Chair agreed. He said the policy committee was working on timelines to receive all required items and the repercussions of not receiving. He agreed with Mr. Gomes, and he was not sure we should give this person another four months. Chair asked if there was any further discussion.

Ms. Seddon said she agreed as well but thinks they should go with the four-months at this point but make it so that 100% of the documents have to be in, approved, complete, no questions asked and if its rescinded then they don't even have to come back to the board. She said at that point, we're done. Either it's 100% turned in, finalized by that date or it's done, and this doesn't have to come back to the board. That's her suggestion.

Chair asked if there was anyone else?

Mr. Hong said he had a question. Since the lease was issued, there has been no payment on the terms for six years?

Mr. Roe said no lease was issued she was only approved as a tenant. Prior to executing a license, ADC generally required a conservation plan, certificate of insurance for general liability, and then the license is executed. It hadn't gotten to that point yet.

Mr. Hong asked, so she's under no legal obligation to make any payment?

Mr. Roe answered that's correct.

Mr. Hong remarked that more concerning than the unpaid amount was the fact that this property remained fallow for all this time.

Chair asked if there was any other discussion. Hearing none, he asked for an amended motion to extend the deadline to June 30, 2022.

Ms. Seddon said that since she made the motion, she agreed to amend the motion to change the rescission date to June 30, 2022.

Ms. Evans said she made the initial second and she agreed with the amended motion.

Chair called for the vote, hearing no objection the motion was approved.

Ms. Prescott-Tate said that first there must be a motion to amend. Then they take a vote on whether to approve the motion to amend. The motion to amend has been approved. Now they need to vote on the motion as amended.

Chair asked if anyone was opposed to the amended motion.

Mr. Gomes and Mr. Tabata opposed. Chair with reservations.

Motion approved. Vote: 8/2, Chair with Reservation; No votes, Mr. Gomes and Mr. Tabata

2. Request for Approval for Pioneer Hi-Bred International, Inc. Under General Lease No. S-4741 to Install Photovoltaic Panels on Certain Structures in Kekaha, Kauai, Tax Map Key (4) 1-2-002:042

Motion to Approve: Mr. Haraguchi, Second: Mr. Tabata

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Mr. Roe said he had no presentation but was available to answer questions.

Chair asked if there was anyone from the public who wished to give testimony.

Mr. Dalton said there were none.

Chair asked if there was any discussion.

Mr. Hong asked if it's a ten-year lease with the right to purchase after ten-years by Pioneer, the lease actually ends in 2030. If the lease were not to be renewed who has liability on the remaining lease of the PV panels?

Chair said that from what he read they would have the right to remove the panels.

Mr. Roe said that Pioneer would have the liability, but it was highly likely they would request an extension. How the board chose to respond was up to them but at some point, the board may receive a request to extend the lease.

Mr. Hong said he just wanted to make sure ADC doesn't have any liability in the event it's not extended; any liability for the remaining lease of the PV panel with RC Energy.

Mr. Roe said the agreement was with Pioneer. The actual request was to obtain consent of ADC as the landowner for permission to install the PV system and remove it if necessary. That would be ADC's only obligation under this.

Ms. Evans asked if the purpose of the panels was to power the equipment like pumps Pioneer uses for their agricultural purposes?

Mr. Roe said yes, on site. There won't be any exportation of power.

Chair asked if there was any other discussion.

Mr. Manuel said he had a few questions. Is this kind of like a sub-license? Has ADC issued these prior or was this the first time that the board has taken an action like this?

Mr. Roe said, to his knowledge, it's the first time.

Mr. Manuel said maybe another thing for the policy group to consider was sub-licensing criteria and some of the liability issues that Mr. Hong mentioned. One of the concerns he had was if there was language that protects ADC as the "landlord" if the lessee defaults on their lease. Then the lessor, which was the utility, cannot come after ADC for the remaining lease payments. That's important to build in before anything is approved, at least that's his concern. Lastly, there were citations to the actual lease document. It would be nice to have the whole lease attached as an exhibit. He has made this request prior. It's so they can understand the context of the entire structure of the lease. At least for him it would help him understand the agreements in place and if other conditions exist that could cover some of these liabilities.

Mr. Gomes said Mr. Manuel asked the questions he was going to ask.

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Mr. Manuel stated to the Chair he doesn't know if he needs to make an amendment to the motion, but the request was to approve the document as drafted. He's wondering if the AG could work with RC Energy to add a condition that we're not responsible for defaulting on that license agreement or that sub-license agreement as the landowner. He's not saying Pioneer will, but it's more of a liability issue so ADC's not stuck with the bill.

Mr. Gomes added it's a safety net.

Chair asked if Mr. Manuel's motion would be to put this on hold?

Mr. Manuel said he would say it's a recommendation to Mr. Haraguchi or Mr. Tabata to consider as an amendment to work with the AG to discuss and negotiate with the Executive Director and RC Energy to protect ADC as the landowner from potential liability if lease payments were not made during the license term.

Mr. Roe said Mr. Miller of Corteva was present, and he could speak to the issue if the Board would care to hear from him.

Chair responded, absolutely.

Mr. Dalton asked Mr. Miller to please state his name and organization.

Mr. Miller stated he's from Corteva Agri Sciences dba Pioneer Hi-Bred, and the landlord waiver outlined that ADC would not be liable for any payments in the event Pioneer was not able to make payments to RC Energy or if they default on their lease. He thinks that protection was built into the landlord waiver Pioneer was requesting ADC to sign upon board approval.

Mr. Manuel asked Mr. Miller if he was talking about the waiver that was attached to the submittal because he doesn't see what provision talks about a waiver and asked Mr. Miller to explain that to him. It doesn't talk about payments in items 1, 2 or 3, unless he's not understanding the waiver document.

Mr. Roe said he has to take a look at it.

Mr. Manuel said the first bullet point says we consent to the operation/installation. The second one says if for any reason it's...

Mr. Miller interrupted, if we're unable to pay our lessee, ADC guys wouldn't consider it a fixture ...

Mr. Manuel apologized and said he had to finish reading till the end of the sentence. This was still something for the policy committee to consider, how we handle sub-licensing situations in the future.

Chair asked if there was any other discussion. Hearing none, he called for the vote. There were no objections. Motion approved. Vote: 10-0

3. Request for Approval for Pioneer Hi-Bred International, Inc. Under License Agreement No. LI-K0803 to Construct a Critical Equipment Storage Building in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por)

Motion to Approve: Ms. Evans, Second: Mr. Haraguchi.

Mr. Roe said he had no presentation but was available for questions.

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Chair asked if there was anyone from the public who wished to give testimony.

Mr. Dalton said there was no one.

Chair asked if there was any discussion.

Mr. Gomes said this was another submittal he would have liked to see pictures, but it does say 272.72 untillable acres. What were the untillable acres; what does it look like; what was the footprint.? Does the requestor have a conservation plan to say that they're going to keep the fuel load down, in other words the vegetation was not going to overrun the property, just in case there's a brushfire, it will cause issues to the neighboring farms or residents in the surrounding area. He's just curious, what's untillable; what does it look like; what was their conservation plan; can animals be put on it?

Mr. Roe said all the major tenants have conservation plans. He couldn't tell you what the plan says for untillable acres, but that conversation plan was approved by the board although he could not say when. There were a number of board actions and amendments to this license. He would have to go back through them to get an accurate answer. As far as animals, this again was something the policy committee will be looking at. The Kekaha area was under a clean water act settlement agreement and one of the things they test for was enterococcus. Having animals out there would potentially affect ADC's compliance with that settlement agreement.

Mr. Gomes said that would be good for board members to know; to look at the conservation plan he would have a little more background.

Mr. Roe said understood.

Chair asked if the building was going to be used to help the incubator farmers for their operation?

Mr. Roe responded, no it would be used for storage of planters, tractors, items critical for their operation and to do maintenance of equipment.

Chair asked if ADC already has approved buildings for areas in Kekaha.

Mr. Roe responded, yes.

Mr. Hong stated he saw on the plan concrete pads on the outside of the building, and he assumes the building also sat on a concrete pad.

Mr. Roe responded he believed so.

Mr. Hong said he asked because if they were using it for maintenance, do they have a hazmat plan in case there's spillage of oil, fluid, degreasers and things like that? Would they be required to do a site survey, a tier 1 environmental assessment of the site?

Mr. Roe said he doesn't believe so, there's a section in the submittal directly on Chapter 343 and this act falls under ADC's exemption class 3. ADC could require it.

Mr. Hong said if they're going to do maintenance, maintenance facilities tend to be big polluters if they are not well kept. That would be his recommendation.

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Mr. Manuel said that was also his concern. We should build-in some environmental protection and mitigation considering the activities that are being proposed within the maintenance shed as a condition of this approval. The submittal specifically says there's no plumbing and bathroom, but for maintenance purposes it seems awkward that you don't have access to water, like for flushing of eyes, like a flush station for emergency. It doesn't make sense that this was going to be a workshop and there's no actual facilities for the people doing the repair and maintenance. Can it be confirmed by the tenants that this may be something they'll build in afterwards? How was this facility going to be operated?

Ms. Evans said one page of Corteva's presentation includes utilities, scope and location, septic, city water, exterior hose bits, men's and women's restroom, utility sink, electrical panel, interior lights, etc. So, it sounds like they are providing for these.

Mr. Manuel said the submittal says that none of that was being built now. That was in the presentation but the submittal itself says because of cost, there's no plumbing, basically minimal utilities and no water. That's why it's awkward that it was built into the presentation and now it's being cut out. It went from a \$450,000 project to an \$800,00 project. He's wondering how those shifts happened and is it seriously something they should be agreeing to, knowing there are potential safety issues with this kind of structure without the amenities.

Mr. Roe said that Mr. Miller was still present and could speak to this.

Mr. Miller said he understands the concerns. The original scope of the project was to include a maintenance shop having a bathroom, eye wash stations, all that stuff. After they went out for initial bids, they realized the cost structure in Hawaii is much higher. They reduced the scope of the building being strictly for equipment storage. No maintenance activities will occur in the facility and there will be no chemical storage in the facility; it is strictly for equipment storage. The 5000 sq. ft. concrete bed on the interior of the building will allow them to contain any oil leaks that may occur from equipment, but no maintenance activities will take place there.

Mr. Manuel thanked Mr. Miller and said that's very helpful.

Ms. Shimabukuro-Geiser said she had a question for Mr. Roe. Was the attachment with the high-level plan from Corteva given to the board as an idea of the footprint and the layout of the equipment storage facility?

Mr. Roe said that was the first document received from Corteva and he thought it was important for the board to see the change. The second schematic reflects what the redesign would look like.

Ms. Shimabukuro-Geiser suggested that if there was deviation from the board submittal a presentation should be done and brought up to the board before discussion. A lot of the questions could have been avoided if it was stated that the attachment now excluded this information.

Mr. Manuel said the rent shown was for tillable and untillable so he's curious when adding commercial improvements or structural improvements was that considered within the aggregated tillable or untillable fee or was rent readjusted. He's trying to understand how the base fee of a license was factored in when adding value to the license. He asked if there was standard language in our licenses that post-license period the State basically owns the property or the improvements that were built on it. He just wanted to confirm that it's a standard condition in our license documents.

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Mr. Roe said to look at page 20, the second page of the submittal under “Improvements”, where it’s noted, “The ownership thereof shall be in the LICENSEE until the expiration or sooner termination of this License, at which time the ownership thereof shall, at the option of LICENSOR, vest in LICENSOR or shall be removed by LICENSEE at LICENSEE’s sole cost and expense.”

Mr. Manuel asked then the appraised value of our licenses, were we factoring that in or was that just considered a part of diversified agriculture?

Mr. Roe said that it would still be considered diversified ag, he does not think that we would change that just because they want to build a building on this. He doesn’t think this was on land that’s currently characterized as untillable.

Chair asked if Ms. Prescott-Tate could look into our lease agreements referring to hazardous waste and if ADC is protected.

Ms. Prescott-Tate said that our license agreements do contain a provision about the introduction of hazardous waste onto the property, making the tenant liable. We run into the problem of not knowing how long the hazardous materials have been on the property, but if they can, to a reasonable degree of certainty determine that it was the licensee that placed the hazardous waste onto the property, they would be responsible for the cleanup.

Chair asked if there was any other discussion. Hearing none, the Chair called for the vote. There were no objections. Motion approved. Vote: 10/0

4. Request for Approval to Renew Revocable Permit No. S-7299 Issued to Senter Petroleum for 0.5 Acres, More or Less, in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por)

Motion to Approve: Ms. Evans, Second: Mr. Tabata.

Mr. Roe had no presentation.

Chair asked if there was anyone from the public who wished to give testimony.

Mr. Dalton said there were none.

Chair asked if there was any discussion.

Mr. Manuel said he thinks he mentioned it last time this revocable permit was requested last year. He asked if this petroleum facility supports agricultural uses and was in alignment with our mission to license and support agriculture in this region?

Mr. Roe responded he believes it does. The Executive Order specifies for agriculture and related purposes. This is the only gas station nearby. The other gas station is four miles away. All of the tenants utilize this station if they’re not bringing in their own.

Mr. Manuel said he just wanted to put this on the record, that this was consistent with ADC authority. He knows it mentions we’ve considered long-term disposition of this tenant, but can we move to do that or was there a reason why we’re still doing revocable permits for this facility?

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Mr. Roe said he's waiting on the request from Senter Petroleum. But the other issue, if you notice in the submittal there were a couple things that the Best Management Practices (BMP) inspection turned up. He would like these issues cleared up before a long-term license was issued.

Mr. Manuel stated he totally understands that, but could we make those conditions of a long-term license? He has a year to year incentivizing him to clean it up versus saying they need to clean it up, or we're going to cancel this and we need you to move to a long-term lease. Either way, but he's just concerned about the long-term disposition potential.

Chair asked if they have regular inspections of the fuel storage tanks and the facility because he noticed some of their BMPs were deficient.

Mr. Roe responded that they do. BMP inspections were conducted by Cardno one of our contractors, and they are the ones that turned up the deficiencies. Cardno will be going out to conduct this year's inspections starting next week, for all of our tenants for BMPs and conservation planning.

Chair asked if this was done yearly for our tenants?

Mr. Roe said as of last year, yes.

Ms. Seddon asked if there was any conversation with the tenant on renegotiation on the rent?

Mr. Roe responded none yet but that will be part of the conversation when discussing a new RP.

Chair asked if there was any other discussion. Hearing none, the Chair called for the vote. There were no objections. Motion approved. Vote: 10/0

5. Request for Approval to Renew Revocable Permit No. S-7004 Issued to Gary Smith for 2,780 Square Feet, More or Less, in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por)

Motion to Approve: Mr. Gomes, Second Mr. Tabata.

Mr. Roe had no presentation but was available to answer questions.

Chair asked if there was anyone from the public who wished to give testimony.

Mr. Dalton said there were none.

Chair asked if there was any discussion.

Mr. Gomes asked for the 2,780 square feet, it seems he's had this property since 1996, about 26 years. Why doesn't this qualify for a long-term lease? He's had it for 26-years and it's only 2,700 square feet.

Chair said he remembered this last year.

Mr. Roe responded that he believed Mr. Nakatani said this parcel was not eligible for a long-term lease, but he does not recall why.

Mr. Haraguchi said wasn't this part of the easement?

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Mr. Roe said no, this was part of the property that's along the ditch that abuts their back yard right up against the ditch.

Mr. Haraguchi said he thought Mr. Nakatani said it was because of an easement that we shouldn't go into a long-term lease.

Mr. Roe said he doesn't recall that.

Mr. Gomes asked if Mr. Roe could find out the answer for him.

Mr. Manuel said he thinks he asked about this last year and asked as "remnant" parcels of the state if this could be fee-simple for the \$156 we collect and staff's time to bring this every year to us for approval. Is it worth the effort or is it better for the state to look at these remnant parcels and give them to the lease holder? Was it worth the amount of collective effort for this square footage to continue to work through this issue? He knows these are ceded lands, but there was a process to dispose of remnant parcels and this may be something to consider so we don't have to manage these small pieces of land.

Mr. Roe said he recalls Mr. Manuel making a recommendation on a different point to find an easier way to dispose of these RP renewals. What they originally wanted to do was to put them in a matrix and deal with them on January 1<sup>st</sup>, but that was discussed with our then Deputy Attorney General who spoke with the DLNR's AG and DHHL's AG and they strongly advised against doing that. All of them tend to be different types of disposition and the thinking was that it needs to be dealt with on an individual basis. He can chat with Mr. Nakatani on how we can more efficiently deal with these renewals.

Chair stated we have to be careful. There's a similar situation around Whitmore Village. People were encroaching and they were using the land and some of them were big encroachments.

Mr. Roe said to his knowledge Whitmore Village was not ceded lands and they don't have permission to use it. In this case, the requester had permission and he took good care of the parcel.

Mr. Manuel said he appreciated the follow-up. This may be something for Deputy AG and Ms. Kaichi. DLNR does annual renewals in batches, so he doesn't understand the pushback for ADC. Perhaps Mr. Nakatani can assist, so the revocable permits were looked at island by island for efficiency purposes.

Mr. Gomes said exactly, island by island. There were too many for DLNR to go on a case-by-case basis.

Mr. Manuel asked if DLNR did renewals case-by-case?

Mr. Gomes said sometimes. If they brought the whole island, then they'd look at the whole island and they would question accordingly. When they throw four or five hundred RP's in front of you, it's too much.

Ms. Evans asked if the DHHL 30% for former sugar lands was sketchy. Do we pay \$52 a year to DHHL or was that only upon sale of the property does 30% of the sale proceeds go to DHHL? Mr. Manuel might know the answer.

Mr. Manuel responded that he hopes they were paying the 30% annually to DHHL because it's required per statute.

Ms. Shimabukuro-Geiser concurred that it should be annual.

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Mr. Manuel said there was one JV from ADC and DOA and any other state tenant on former sugar lands.

Ms. Evans asked if it was batched?

Mr. Manuel said it usually was batched annually based on all the dispositions. He asked staff what the process for that was?

Mr. Roe stated he doesn't deal with that and would have to check with management.

Mr. Hong asked why they can't, as a board, delegate the authority for the RP like in this case, give the Executive Director (ED) the authority to renew it for five years and then bring it back to the board in five years, instead of every year. It can be on a case-by-case basis. So, like in this case, the board can approve the recommendation and then give the ED the authority to continue for five years.

Mr. Gomes stated he agreed with Mr. Hong.

Chair asked Mr. Roe to make note of this.

Mr. Manuel said that Ms. Evans was the mover of the motion. He asked if she would entertain the amendments.

Ms. Prescott-Tate interjected that it should be an agenda item and also to delegate authority to the Executive Director.

Ms. Evans said good point since that was one of the audit concerns to document delegations from the board to the director.

Ms. Shimabukuro-Geiser said she had a question for Mr. Roe. Mr. Roe mentioned that Mr. Nakatani had stated this lot was being used as an easement and that's why no long-term lease could be issued. If we need access was that why it stays an annual RP? Does ADC use our right to access behind that property?

Ms. Kaichi asked the board to look at the picture in the submittal. You can see that with any irrigation ditch you need so many feet on either side so that the operator can take care of the ditch. A drainage canal, same issue. KAA is ADC's ditch and infrastructure operator, they need to have access. This is not a remnant. We need to have the right to enter, and we have that right now. In addition, ADC does not actually own that, DLNR has that as a set-aside. This was something that would have to be brought before DLNR and we could make that recommendation to DLNR. At this point we don't have the fee. This will be brought up by LUC. As for why we have kept it as RP's, we could do a license, but in this case, Mr. Smith doesn't farm, he gardens and so if we give him a long-term license that recognizes that he does gardening and that his gardening not only benefits him but it benefits ADC. As opposed to a commercial producer who has a license that really benefits their operations. If we can make that distinction, then it's a possibility. Mr. Smith keeps the growth away from the ditch; he made it easier for KAA to maintain the property. Maybe for the next request by Mr. Smith these questions can be answered and presented to the board so that every year these same questions don't have to come up.

Mr. Manuel asked if Ms. Kaichi could address Ms. Evans inquiry on the DHHL 30%. He does not want to speak on how ADC handles the payments.

Ms. Kaichi said Mr. Tashima our fiscal officer was available, and they have been working on this. She said ADC withheld payments for a while because they didn't know what funds go where. What they have been

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trying to do is work with the DOA and could use Ms. Shimabukuro-Geiser's help. ACD hoped to get separate appropriation accounts so that when ADC receives revenues, they can split it right then and there and not run into the problem of spending custodial money. Staff has told her, and the auditors have confirmed that custodial money has not been spent. But it makes her nervous to comingle custodial money with all the money. What they want to do, is to account for the custodial money and not touch it by having separate accounts for that. Mr. Tashima has been here for half-a-year and has not been able to get the accounts. If Ms. Shimabukuro-Geiser could meet separately on this issue.

Ms. Shimabukuro-Geiser said not to belabor the question but the reason why she brought the question up was the department of Ag has irrigation systems; ditches they maintain. But if you have intermittent private landowners along the ditch, they don't have any authority once it's private land. Mr. Hong might recall this. DOA was criticized by the public about the flow of the ditch they maintain. If you have intermittent private landowners along the ditch, they don't have authority once it's private land. They can only maintain, have access, and do work on the lands under their jurisdiction. That's just to add to what Ms. Kaichi said, we need access. Whether it's KAA, DOA, or Waiahole Ditch, they need to have access. If you have a mix of private with state lands, a private landowner that doesn't maintain it properly, it does impact the flow.

Ms. Kaichi said she distinctly recalls the Hamakua ditch where they did condemnation action for each of the little segments to make sure that no ditch owner could cut off water when it hit their property. It was important they made sure the government, or the ditch owner owned every piece of that ditch so that no one owner could cut off any user below them. On the Kekaha ditches and drainage canals, it's not an issue because it's all Kekaha sugar, all from DLNR and the fee was never in the hands of private owners.

Chair asked if there was any other discussion. Hearing none, the Chair called for the vote. There were no objections. Motion approved. Vote: 10/0

6. Request for Approval to Renew Revocable Permit No. RP16-02 Issued to Andros Engineering for 8,800 Square Feet (Building F) of Covered Warehouse Space in Whitmore, Oahu, Tax Map Key (1) 7-1-002:004 (por)

Motion to Approve: Mr. Gomes, Second: Mr. Watanabe

Mr. Roe had no presentation but was available to answer questions.

Chair asked if there was anyone from the public who wished to give testimony.

Mr. Dalton said there were none.

Chair asked if there was any discussion. Hearing none, the Chair called for the vote. There were no objections. Motion approved. Vote: 10/0

7. Request for Approval to Renew Revocable Permit No. RP-PU-2101 Issued to Loan Lovan for 60 Acres, More or Less, in Waialua, Oahu, Tax Map Key (1) 6-5-001:056 (por)

Motion to Approve: Mr. Haraguchi, Second: Mr. Gomes

Mr. Roe had no presentation but was available to answer questions.

Chair asked if there was anyone from the public who wished to give testimony.

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Mr. Dalton said there were none.

Chair asked if there was any discussion.

Mr. Manuel asked if the structures referenced in the submittal were housing?

Mr. Roe stated they were not housing.

Mr. Manuel asked if ADC had a copy of the private water agreement with Dole.

Mr. Roe said ADC had a generic agreement but doesn't have a signed copy of their agreement with Dole.

Mr. Manuel said in these private agreements, if we're supporting our tenants, we should make sure they actually have access to water, just to advocate for our tenants, ADC should make sure that no private contractual agreement limits their ability to access water. He requested that the agreement be attached the next time a request comes to the board.

Mr. Gomes stated this tenant seems to be a good steward of the land, why isn't he considered for a long-term agreement?

Mr. Roe responded Mr. Lovan would need to make the request. Mr. Roe had suggested that he should do so especially since our rates are cheaper than Dole's rates. However, Mr. Lovan does have to take care of some of the structures on the property.

Chair asked if the tenant had addressed the other concerns?

Mr. Roe said the fire pit was gone and the farm vehicles had been removed; there was progress.

Chair asked about the conservation plan and insurance.

Mr. Roe said there was no conservation plan yet because our RP's do not require it. It was required as part of a license. We do have his insurance on file.

Chair asked if there was any other discussion. Hearing none, the Chair called for the vote. There were no objections. Motion approved. Vote: 10/0

E. Old Business

1. Request for Approval to Terminate Revocable Permit No. RP 1802 Issued to William J. Sanchez for 419 Acres, More or Less, of Unit A, and Issue a New Revocable Permit for up to 208 Acres, More or Less, in Kalepa Kauai, Tax Map Key (4) 3-9-002-020 (por)

Motion to Approve: Mr. Gomes, Second: Mr. Hong

Mr. Roe rested on his submission but noted that the last sentence of paragraph 1, under discussion on page 50 should read, *the difference on rent revenue will be a maximum of \$20,145*. This reflects some of the land has a 30-degree slope, that would probably be untillable or maybe orchard, depending on how the conservation plan comes out. The second thing was that we sent the notice to Mr. Sanchez via certified mail last Wednesday. While we have not received the return receipt, the online tracking shows that the letter was

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undeliverable. Mr. Sanchez did receive an e-mail notification of this meeting with a link to the agenda, but Mr. Sanchez has not received the letter we sent.

Chair stated that when Mr. Sanchez testified before the board, he stated he did not want to give up the property.

Mr. Roe confirmed that Mr. Sanchez does not want to give up the property, but he does not want to pay the diversified Ag rate. There wasn't much diversified Ag property in Kalepa but this property was part of what was available.

Mr. Gomes asked if there was a difference in the rate, valuable land to grow crops rather than pastoral? What is the pastoral rate that we would charge him?

Mr. Roe said that under a license he believes it was \$30 per year, under an RP it's \$15.

Mr. Gomes said an RP would be better for a pastoral operation. \$30 was pretty stiff but understands where Mr. Roe was coming from.

Mr. Manuel asked if we could add some kind of annual reporting from all of the tenants on what they're producing on local food to meet the statewide goals. If we can start to build the metrics, it's really important. We should capture local food production and even exports, so we have a baseline. We should start now because the longer we wait the longer the data gap. He's continuing to advocate that it be a standard condition in all of our items and put the burden on the tenant to help us collect that information.

Chair stated that the Policy Committee was working on that too.

Ms. Evans said she's writing as fast she can!

Chair asked if there was any other discussion. Hearing none, the Chair called for the vote. There were no objections. Motion approved. Vote: 10/0

### **F. Executive Director's Update**

- Whitmore Food Hub – working with DAGS to release the \$28,000,000 that was allotted for this project by the legislature.
- REPI/Encroachment Partnering – Whitmore Annex Update: ADC in discussion with Navy to sell restrictive use easements on ADC lands surrounding Pearl Harbor-Hickam.
- Legislative Update - 2022 Bill Tracking:
  - SB 2480 – Relating to Wahiawa Irrigation System.
  - SB 3096 – Making an emergency appropriation to DOE for an agriculture innovation center.
  - SB 2473 – Relating to Economic Development, transfers ADC from DOA to DBEDT.
  - SB 2418 – Relating to Agriculture – amends the focus, scope and management of ADC and appropriates funds for a consultant for planning, an accountant, and security for ADC property.
- Financial Audit Report. The State Auditor completed the draft audit on February 2, 2022.

Mr. Hong asked when the final audit report will be out and if the draft was available to the staff and can be made available to the board?

Mr. Nakatani said Ms. Kaichi can answer that.

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Ms. Kaichi said they met with their accountants, KMH, to arrange a meeting with Accuity the legislative auditor's accountant, to discuss any issues, or any errors or questions they may have on the draft. The meeting was scheduled for today. They will ask if the draft can be shared with the board. It may come with a caveat that the board does not make it public. But she'll talk to them.

Chair asked if SB 2473 will come before the board to discuss or is it something that just happens.

Mr. Nakatani said the bill has a long way to go. It passed the first committee, economic development and agriculture in the Senate and goes to Ways and Means, then it crosses to the other house. It has a ways to go. We're waiting to see which bills cross over and will give an update on those.

Chair said he was concerned, he understands both sides, but he feels ADC was intermingled with DOA, so he has concerns.

Mr. Nakatani said the board members can email him if they have concerns.

Ms. Evans stated that Rep. Perruso was in the audience, and she asked for an update on the fire, whether it was on ADC lands.

Mr. Roe responded he was unaware of a fire on ADC lands.

Mr. Manuel said that Tiera Bartolotti asked if motions can be stated in the chat just to make sure the public has a chance to address the board.

Mr. Dalton said that the chat function was normally disabled so that was an error on his part.

Ms. Prescott-Tate said that if a member of the community wishes to have an item discussed at a board meeting, they should request that the item be placed on the agenda.

Mr. Manuel read from the chat that the audio was cutting out that's why she was asking the "motions" to be put in the chat. He thinks, moving forward it should be stated in the opening of their meetings that the chat function has been disabled.

Ms. Prescott-Tate suggested she call in rather than join virtually if the connection was intermittent.

Mr. Manuel requested that ADC provide an annual update, a comprehensive review or status update of ADC lands, the tenants, the stewardship, and who was in default. He's a visual person and would like to see a list from each island that shows all ADC lands, which ones are leased, which ones are vacant, an overview for the Board to update them annually. It will help them to track where things are at.

Mr. Nakatani said that we are waiting to purchase the Yardi computer program that will organize ADC property. But it can be put on the ADC's annual report.

Mr. Hong said he wanted to go back to SB 2473 because it was something that ultimately, the board decision should be reflected.

Mr. Manuel said he also feels that was something that should come before the board.

Chair said he agrees although it's still early on.

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Mr. Nakatani said he just wanted the board to know if they want to get involved with legislation, they should pick a point person because the legislature moves quickly.

**G. Adjourn**

Chair asked for a motion to adjourn.

Motion to Adjourn: Mr. Hong, Second, Mr. Manuel.

Hearing no objection, the meeting was adjourned at 10:29 a.m.

Respectfully Submitted,

Lynette H. Marushige  
Secretary

DRAFT

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*Considering the evolving COVID-19 situation, protecting the health and welfare of the community is of utmost concern. As such, the meeting was held remotely with Board members, Staff, Applicants, and the Public, participating via Zoom meeting venue.*

**Members Present, virtually:**

Frederick Lau, City & County of Honolulu, Chairperson (Chair)  
 Mary Alice Evans, Designated Representative, DBEDT, Ex-Officio Member (Ms. Evans)  
 Glenn Hong, Member-At-Large (Mr. Hong)  
 Karen Seddon, Member-At-Large (Ms. Seddon)  
 Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture, Ex-Officio Member (Ms. Shimabukuro-Geiser)  
 Lyle Tabata, Kauai County Member (Mr. Tabata)  
 Warren Watanabe, Member-At-Large (Mr. Watanabe)  
 Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)  
 Lloyd Haraguchi, Member-At-Large (Mr. Haraguchi)  
 James Gomes, Maui County Member (Mr. Gomes)

**Counsel Present, virtually:**

Delanie Prescott-Tate, Deputy Attorney General (Ms. Prescott-Tate)

**Staff Present, virtually:**

James Nakatani, Executive Director (Mr. Nakatani)  
 Myra Kaichi, Sr. Executive Assistant (Ms. Kaichi)  
 Ken Nakamoto, Project Manager (Mr. Nakamoto)  
 Lyle Roe, Property Manager (Mr. Roe)  
 Lance Tashima, Administrative Services Officer  
 Lynette Marushige, Executive Secretary (Ms. Marushige)  
 Mr. Stephen Dalton, IT Specialist (Mr. Dalton)

**Guests Present, virtually:**

Grant Kunishima, Sunrise Capital (Mr. Kunishima)  
 Mike Faye, Kekaha Agriculture Association (Mr. Faye)  
 Basil Gomez, Kekaha Agriculture Association (Mr. Gomez)  
 Joshua Uyehara, Kekaha Agriculture Association (Mr. Uyehara)  
 Doug Codiga, Kekaha Agriculture Association attorney (Mr. Codiga)

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Scott Enright  
 Sandi Kato-Klutke  
 Linda Lovan  
 Evan Mendenhall  
 J. Taniguchi  
 Earl Yamamoto

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### **A. Call to Order**

Chair called the virtual meeting to order at 9:03 a.m.

### **B. Roll Call**

Chair conducted a roll call of the Board. In accordance with the Governor's emergency proclamation dated January 26, 2022 related to COVID-19 Omicron Variant, Chair called the name of each board member and asked them to identify their presence with a "here" or "present" and to state who if anyone was present in the room with them. Chair stated that the roll call served as the roll call vote, and for each subsequent vote, the Chair would ask if there were any objections. If there were no objections the motion will be approved on the same basis as the initial roll call.

Roll call: Ms. Evans, Mr. Gomes, Mr. Haraguchi, Mr. Hong, Mr. Manuel, Ms. Seddon, Ms. Shimabukuro-Geiser, Mr. Tabata, and Mr. Watanabe acknowledged attendance with no guests present.

### **C. Approval of Minutes**

#### **1. Minutes for the Board of Directors Meeting, January 26, 2022**

Chair asked for a motion to approve: Mr. Gomes, Second: Mr. Watanabe

No staff comment. No public comment.

Mr. Hong stated that on pages 2 to 3 it indicated a series of questions asked by Mr. Gomes and answered by Mr. Gomez. Mr. Hong questioned whether it was Mr. Gomes asking the questions and Mr. Faye answering.

Ms. Marushige clarified that the discussion was between Mr. James Gomes and Mr. Basil Gomez.

Mr. Manuel said on the middle of page 18, "mike" should be microphone or mic versus mike. Also, on that same line, there's a "he" missing after "disrespects that".

Ms. Shimabukuro-Geiser noted the misspelling of a crop on page 12, second paragraph below item 7, end of the third line, it says cassava. It is casaba.

There were no other corrections.

Chair called for the vote.

Hearing no objection, the minutes were approved as corrected.

Vote: Approved 10/0.

### **D. New Business**

- 1. Request for Approval for Sunrise Capital, Inc. Under License Agreement No. LI-K1001 and Lease Agreement No. S-5367 to Construct Greenhouses and Settling Ponds in Kekaha, Kauai, Tax Map Keys (4) 1-2-002:001 (por) and (4) 1-2-002:022**

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Chair asked for a motion to approve: Mr. Tabata, Second: Mr. Haraguchi.

Mr. Roe stood on the submittal except to note that this request primarily involved Lease Agreement S-5367 and parcel 22.

Chair asked if anyone from the public wished to testify. There was none.

Chair asked if there was any discussion.

Mr. Gomes asked Mr. Roe if it was correct that the rent was \$3,180.00 per year, which equated to about \$265.00 per month, and they've had this lease for approximately twenty-seven years.

Mr. Roe responded yes.

Mr. Gomes asked if ADC received a percentage of the income. He stated that for Department of Land and Natural Resources (DLNR) land leases the State receives a percentage of the income. Is it the same for ADC? Mr. Gomes also asked if Mr. Roe had any idea what kind of income the applicant made, and if they were exporting shrimp.

Mr. Roe responded he does not know. The lease agreement came over from the Department of Agriculture (HDOA) on September 23, 2021. He was not familiar with HDOA leases. He does know that the rent was based on an appraisal, which was done every ten years or so, but he doesn't think they receive any sort of payment based on gross receipts.

Mr. Gomes asked Ms. Shimabukuro-Geiser if she knew since the lease was under HDOA, if they got some kind of income from them. The rent was cheap. If it's a big business, and they make a lot of money, ADC should get a part of it.

Ms. Shimabukuro-Geiser said it would be stated in the lease that was in effect between the tenant and HDOA. HDOA does collect percentage rent as Mr. Gomes refers to. Some leases were based on a formula and sometimes there's no percentage rent. Agriculture parks do have percentage rents, but if it was a non-agricultural park parcel she's not sure. Ms. Shimabukuro-Geiser noted that Ms. Evans hand was raised, she's also on the HDOA board, but without a copy of the lease she wouldn't know. HDOA transferred lands to ADC for a program on Kauai.

Ms. Evans said the board's policy and procedures Permitted Interaction Group (PIG) was working on a recommendation to the full board that will include the question of how to set rents. She would recommend that instead of making a decision on one particular license that the board go with the staff recommendation for now. When the PIG makes its report to the board, there'll be an opportunity for debate and discussion. They can establish a consistent approach instead of trying to make a decision on each license as it comes in for modification. That's her recommendation.

Chair stated the committee had put in a lot of hours and was very close to presenting a draft proposal at the next board meeting. It's been a difficult road to try and plug in all of these variables and trying to make them consistent but they're very close. Chair asked if there were any other discussions on this proposal. Shrimp production, and especially broodstock areas around the world grow in greenhouses as protection from the birds, the weather, and everything else. It's really important. He's surprised they haven't done it already. He strongly supports this.

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Mr. Manuel said he had some technical questions, if the applicants were not available then perhaps Mr. Roe can answer the question. There are two wells on the property, were they planning a third one?

Mr. Roe said, yes, it was approved in 2020 on adjacent field 408.

Mr. Manuel said he will check on the permitting process because they've had issues with the other wells. Could Mr. Roe, or the applicant, walk him through the before and after schematic in the submittal? Looking at the before and after and seeing changes, but on page 30 of the pdf, there are big gray squares. Are those the new settling ponds that were described in the narrative?

Mr. Roe said he believed the squares on the right were the settling ponds but the tenant was available to answer questions.

Mr. Dalton asked Mr. Kunishima to come forward and state his name.

Mr. Kunishima stated his name and said he was from Sunrise Capital, and the new general manager as of this year. He confirmed that the squares on the right side of the photo were on lot 408 and were going to be used for settling ponds for the greenhouses that were on the other lot.

Mr. Manuel asked if the settling ponds were unlined.

Mr. Kunishima said yes.

Mr. Manuel asked if there was a way to monitor the water. He stated they were basically pumping salt water, and settling salt water onto the land, which percolates into the basal. Does Mr. Kunishima have an indication of the water quality or basal lands in that space?

Mr. Kunishima said not right now and not without having to dig and sample the water.

Mr. Manuel said they were very close to the ocean so he assumed the lens was thin.

Mr. Kunishima said yes, when they dig down there was already salt, they hardly get any fresh.

Mr. Manuel asked if Mr. Kunishima knew how much of their broodstock was exported and if any stays for local consumption or use.

Mr. Kunishima said Kauai Shrimp was the by-product of their broodstock company. The farm next to the landfill was their pond production.

Mr. Manuel asked if Mr. Kunishima could guess, what percentage of their product was for local consumption versus export.

Mr. Kunishima guessed that about 90% of what they produce was for local consumption. They produced about 750,000 pounds of meat per year, but they export only 200,000 animals, which was not that many pounds.

Mr. Manuel asked if they would be open to reporting their annual amount of production to the board so it can be tracked for purposes of documenting the doubling of local food production. It would be great to understand how much they were contributing to the local economy versus export.

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Mr. Kunishima responded their meat production was about \$5 million a year gross.

Mr. Manuel said the intent of his comments to all the licensees was for better data collection so we can show our improvement or how much we're producing in the state for local consumption versus export.

Ms. Evans wanted Mr. Manuel to know that collecting data was one of the policies and procedures that the committee will be sending to the board so that it's consistent across all of the licensees rather than a request that was made only when the licensee came in for a change.

Chair asked if there was any other discussion.

Ms. Shimabukuro-Geiser said she will check with HDOA's market analysis branch to see if they have data on aquaculture for the shrimp industry and share that with the board. Ms. Shimabukuro-Geiser also shared, and Mr. Tabata could confirm, that the shrimp has also been part of the farm to school program on Kauai. It has made its way to Department of Education and the Hawaii Health Systems menus. To anyone who dines out, she's seen restaurants advertise Kauai shrimp in their menus. From her personal observation they were trying to make an effort to provide local food.

Mr. Tabata added they also have provided free services to feed the needy in the community. He asked if Mr. Kunishima could talk about their contributions to the community.

Mr. Kunishima stated they donate about 1,500 pounds every other month to the community. It goes to the needy, especially during COVID, they really tried to help the community.

Mr. Manuel said mahalo. These are examples he liked to see where it's creating local economy, local food production, and that's definitely something they should support.

Chair asked if there were any further questions, or discussion. Hearing none he called for the vote.

Vote: Approved 10/0.

**2. Request for Approval to Renew License Agreement No. LI-PU1809 Issued to K&L Produce, LLC for 136.6 Acres, More or Less, for Six Months in Waiialua, Oahu, Tax Map Key (1) 6-5-005:002 (por)**

Chair asked for a motion to approve: Mr. Gomes, Second: Mr. Watanabe

Mr. Roe stood on the written submittal but was available for questions.

Chair asked if anyone from the public wished to testify. There was none.

Chair asked if there was any discussion.

Mr. Manuel thanked staff for including the lease agreement and supporting attachments to the submittal. It was very helpful.

Mr. Roe said that was Ms. Prescott-Tate's doing.

Mr. Gomes said that some of the pictures in the submittals were black and he could not make them out but the pictures that were clear, showed the tenant was a very bad steward for the property. Hopefully

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moving forward in the next six months he can address all of this. It's totally uncalled for the way the tenant kept the property.

Chair asked Mr. Roe if the tenant will be able to move out in six months.

Mr. Roe responded that the tenant assured him they can. There may be some tenant farmers that need more than six months but time will tell. There were provisions in the license to enforce the move, and if they go past the deadline, there would incur additional rent.

Chair asked if they were actually subletting some of the property.

Mr. Roe said he can't prove that without looking at their books.

Mr. Haraguchi asked Mr. Roe if there were environmental issues, which it looks like there may be. Do the tenants have the financial means to remediate the property and if they don't was ADC responsible to clean up. It reminds him of Kahuku where subletting was hard to control. He asked that Mr. Roe inspect the property, get answers on the financial things, and if there were other sublessors.

Mr. Roe responded that Mr. Nakatani had asked him to keep a close eye on the property moving forward. He'll be looking for open pits and items pushed into the berm. Mr. Roe said that the license makes them responsible for the cleanup and if they had to go to court to enforce it, they probably would.

Mr. Haraguchi asked if anyone was aware of their financial situation because otherwise ADC will be responsible for the cleanup.

Mr. Roe said not without having access to their books.

Chair said they have not experienced these same problems with the Galbraith and Whitmore properties. Mr. Roe has been pretty much on it from what he has seen. The properties were required to have restrooms, dumpsters and for such a large area, they were getting a handle on things. He thought staff was doing a good job.

Mr. Haraguchi agreed and thanked staff.

Chair asked if there was any further discussion. Hearing none he called for the vote.

Vote: Approved 10/0.

**3. Request for Approval-in-Concept to Issue a License to Kekaha Agriculture Association for up to 400 Acres, More or Less, for an Open Floodable Space in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por)**

Chair asked for a motion to approve: Ms. Evans, Second: Mr. Gomes

Mr. Roe stood on his submittal but he and Mike Faye were available for questions.

Chair asked Mr. Dalton to admit Mr. Faye to the meeting.

Mr. Dalton called Mr. Faye forward and asked him to state his name and title.

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Mr. Faye introduced himself and said he had Mr. Gomez with him in his office.

Chair asked if Mr. Faye was going to do a presentation.

Mr. Faye responded they had presented at a prior meeting and were there to answer any questions.

Mr. Manuel stated that in the map with the submittal showed untillable lands where the flooding area would be located. There was no cultivation happening on those fields correct?

Mr. Faye responded that was correct. He believed the last cultivation was during the Robinson days, shortly after Amfac left. Maybe Mr. Tabata can fill them in when those fields were last cultivated. Currently they have reverted back to marsh conditions.

Mr. Tabata said that was in November 1999.

Mr. Manuel observed the lands haven't been used for approximately two decades. Looking at that same map, what was the total acreage of the KIUC solar fields? Was there a possibility of putting elevated solar panels on the untillable flood fields versus having them on agriculture fields? He was just thinking of a more comprehensive way of utilizing the ADC properties and having an energy and water management area. He wasn't sure how far away the solar panels could be from the reservoir but he wanted to share his thoughts although he wasn't sure how far along the project was. It's important these projects fit into our agricultural production goal, so making it explicit that these untillable lands were helping, would be helpful.

Mr. Hong said he liked that Mr. Manuel was thinking out of the box. Another alternative would be to ask does this actually start to create wetlands or was it a way to turn it into wetlands. There's value in wetlands because you can transfer wetland from one area to another, wildlife conservation, things like that. It may not be kept in open wetlands under the current plan but if it could be, there might be a tremendous amount of conservation and economic value to something like that. His comment was not necessarily tied to the present recommendation but it's a further step beyond what we could do here. There may be value in establishing conservation or other wetlands here.

Ms. Evans said she liked that concept because with climate change and sea level rise these lower floodable areas were going to continue to experience increased rising groundwater inundation. Over time Mr. Hong may get his wish. We're going to experience increased sea-level rise and that brings groundwater inundation. She liked what KAA was proposing because they were moving with what climate change scientists have projected, instead of trying to fight it. She'll support the proposal.

Chair agreed and stated they were doing it proactively. Chair asked Mr. Faye if he wanted to comment on Mr. Manuel's thoughts.

Mr. Faye said there were actually 5-ponds historically in Koloa closer to Polihale. The open floodable space was in the vicinity of the old Nohili pond. The solar area was the combined Limaloa and Kawaiele wetlands. What they're hoping to do was have a long-term commitment to seek federal funding to assist with the inevitable sea-level rise issue. They have been fortunate to have Mr. Gomez leading the way and pointing the issues out. Part of the open floodable space in that location was partly due to consultation with the Navy and the PMRF runway. There's an existing conservation wetland in the vicinity of Kawaiele dry ditch. It's within yards of the runway and was kind of a concern of the Navy. The Nohili area formerly had a pump, where they could pump out water. Since the clean water act mediated settlement was put in place they have not pumped there. This concept would allow them

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to reestablish the Nohili pump. If that doesn't work they could still develop a series of ponds to help clean and filter the water down to Kawaiele where it would get pumped. Part of the goal here was to trap sediment coming off the mountain that they have virtually no control of. There were really no conservation plans in the mauka lands and there's an over abundance of feral goats and they produce a lot of sediment. The issue with the clean water act was they had been pumping dirty water, sediment laden water into the ocean. This way they were hoping to capture that sediment and actually rebuild those fields so they become tillable and remain tillable for the future as we keep millimeters ahead of sea-level rise. If this is as successful as they hope they may want to propose another one of these open floodable spaces in the Kawaiele area because they have a lot of sediment coming from that area. Possibly even a couple of areas closer to Kekaha town. The main thing we wanted to do was control where the water was. Right now, it's uncontrolled. If they can control it they can manage it and then we can utilize the sediment to rebuild the fields. Mr. Faye asked Mr. Gomez if he wanted to add anything.

Mr. Gomez declined saying he believed Mr. Faye had adequately summed it up.

Mr. Manuel said thank you, it's exciting. He wondered if in their Readiness and Environmental Protection Integration (REPI) proposal they have a way to evaluate the efficacy of the floodable area. Were you going to monitor the turbidity in the long term to determine what was the net benefit or the reduction of sediment that was being discharged into the ocean? Do they have a way to measure that?

Mr. Faye said yes definitely. They were taking this in steps. The first step was requesting for site assessment evaluation and engineering and determine which of those protocols were going to be put in place, and how they were going to do that. Once they get that completed, then they will go for the actual construction costs to modify the drains. The drains have been in place since the 1920's and they have never been studied. They were put there for sugar. We're looking at how to modernize this and apply this in agriculture. One of the key things, part of the REPI, the mediated settlement was to eventually get to a National Pollutant Discharge Elimination System (NPDES) or an NPDES-like agreement with the Hawaii Department of Health. We can't get the NPDES permit to fit or get it to apply correctly, but we would like to get into an agreement that would be like an NPDES permit and that would definitely have the monitoring of the sediment. We see this as wasting a resource, a waste of the *lepo* (Hawaiian for dirt). We want to keep it on the property where it can turn into good agricultural fields.

Chair said that's a good point, and asked Mr. Tabata for his thoughts.

Mr. Tabata said this project goes back to when the issue of discharge into the ocean first arose. He was a county engineer at the time and he dialogued with Mr. Faye and Mr. Nakatani on a series of settling ponds as a natural type of filtering and settling system. He thinks that will work very well to protect the environment. Hopefully, it transfers the wetland because the birds are an issue so close to the airport. When it rains, it's really bad out there. The flooding is tremendous and a lot of sediment comes down from the mauka lands. This is an alternative worth trying versus acres and acres of settling ponds. In the plantation days they used settling ponds to settle out the mill wash water and if you go out to the Westside you will see a distinct color change in what comes off the hillside and the lower lands. This was an attempt to comply, but as Mr. Faye mentioned this does not fit the needs of an NPDES program because the NPDES program needs a point source. With the demise of the sugar industry and shutting down of the Sugar Mill there's no point source anymore. This is the best solution.

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Mr. Manuel asked if wetlands were one option, in the interim could wetland kalo cultivation work if you're flooding it or is this area not good for that. He's throwing it out there to get back to agriculture. Is kalo cultivation an option?

Mr. Tabata said, he thinks it can be done, if they have the farmers. A couple of weeks ago there was an article on the first kalo harvest from a section adjacent to the Mānā reservoir that KIUC will be using but Mr. Faye can fill you in on that. But yes, that was something they were looking at.

Mr. Faye concurred that it was something they were hoping to do. They will be getting water from the West Kauai Energy Project. They will be studying the viability of putting leaf taro as an agricultural component and the fields around the Mānā reservoir will become part of the system. They're looking at one hundred acres of wetland, agriculture in taro or watercress or some product like that. We're definitely looking at all those kinds of uses in those surrounding lands. The taro that Mr. Tabata mentioned was closer to Kekaha, in the Pokii area where taro was last cultivated around the 1900's. It's good heavy soil that works really well and the farmer was super happy. He said one hour of sunshine in Kekaha was worth a whole day in Hanalei.

Chair said the taro field was looking really good. Chair asked if there was any other discussion.

Mr. Roe asked if Chair had invited public testimony.

Mr. Dalton stated there was no one from the public.

Chair called for the vote.

Vote: Approved, 10/0.

- 4. Request for reconsideration of the January 31, 2018 Board authorization for the Kekaha Agriculture Association (KAA) to pursue a declaratory order to designate a portion of the Agribusiness Development Corporation's (ADC) Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, Hawaii Revised Statutes (HRS), and to certify ADC's authorization as the landowner of lands set aside for control and management of ADC via Executive Order No. 4007, rather than the Department of Land and Natural Resources**

Chair asked for a motion to approve: Mr. Gomes, Second: Mr. Tabata.

Ms. Kaichi presented the staff submittal. The crux of this issue was when it first came to the board in 2018 ADC took the position that DLNR owned the fee. After much analysis and discussion and having gone to the Land Use Commission (LUC) to discuss the KAA Important Agricultural Land (IAL) petition, ADC believed that they own and control the fee. It's kind of interesting because in January 2018 when this first came to the board, Exhibit C in the submittal, the board took the position that this had to go to DLNR. By November 2018, ADC came back to the board with a request to accept the transfer of HDOA Kekaha lands and also to authorize KAA to include those HDOA transferred lands in the IAL petition, and to give ADC authorization to certify, first to consent to the transfer, and then to certify as the fee owner for purposes of the IAL petition. So somewhere during 2018, ADC slowly moved themselves into this interpretation that the set aside to a state agency that's exempted from HRS chapter 171 gave ADC the right to control the fee. That's the evolution of that interpretation. So, if there's any questions, she or Ms. Prescott-Tate can try to address them.

Chair asked if anyone from the public wished to testify. There was none.

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Chair asked if there was any discussion.

Mr. Manuel asked staff to explain why the submittal stated ADC acquired 12,860 gross acres but the petition was for 12,123 acres. Why aren't all the lands being submitted for IAL? Where were the lands that were not being considered, these six hundred acres? There's no map so he cannot gauge what the application was for.

Ms. Kaichi thanked Mr. Manuel and stated that the question was addressed in the petition. She asked Chair if he could call Mr. Faye back.

Mr. Faye said certain portions of the property were excluded near the Kekaha Mill where the carpenter shop and base yard activities were going on. Field 201 was the area they were looking to develop workforce housing. It could be included but they thought they would leave that out. The other portions not included were the solar fields and the site of the Mānā powerhouse. KIUC expressed concern about that and being there was so much other land included, it was not necessary. That's the main reason the acres were different. Some other areas of the 12,800 acres were also excluded or withheld for other purposes like Kaumualii Hwy, and some other lands were excluded from the transfer to ADC. Maybe KAA's attorney Mr. Codiga or Mr. Uyehara who are the lead on this project could provide input.

Mr. Dalton said they were both present and asked Chair if it was ok to call Mr. Uyehara forward.

Chair responded, absolutely.

Mr. Dalton asked Mr. Uyehara to join the meeting and to state his name and organization.

Mr. Uyehara said he was with KAA and to answer the questions, there were some lands near buildings zoned light industrial and the adjacent lands in case they were to build workforce housing. One policy issue they looked into was that a lot of the IAL incentives related to infrastructure and housing. These incentives were available to projects located off the IAL designated area as long as they were primarily meant to serve the IAL designated area. Because of policy and regulatory uncertainties tied to executing those kinds of projects they thought it would be simpler to exclude it from the IAL area. If to the extent they could take advantage of any incentives that would still be available because anything they build would obviously be in service for the rest of the property, it would still be able to benefit from those things. A similar issue arose with the West Kauai energy project. There were still a lot of uncertainties related to the project regulatory requirements that may be created. In consultation with KIUC they were asked to carve out that area. If in the future everyone decides it's a good idea, they could go back and petition to include those later on. There's nothing prejudicial about their petition that prevents someone from going back and designating portions later on. That's the reason why they took the position that they did.

Mr. Manuel asked if the land Mr. Uyehara mentioned for workforce housing, field 201 was it currently in Agriculture. Did ADC issue a license to KAA for that or is that vacant?

Mr. Uyehara responded it was vacant right now. KAA's using it for a base yard for all of the materials they're going to use for installation of the pressurized pipe system. A couple of years ago they received approval in concept to plan for workforce housing in that area. In their conceptual plan, they thought the most suitable use would be housing because it's adjacent to residential housing, adjacent to Kekaha Road. The residents would probably not appreciate if they put it to full scale agriculture. The infrastructure for housing was already there so it seemed an appropriate use.

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Mr. Manuel asked if the property was already licensed to KAA by ADC.

Mr. Uyehara responded no, not yet.

Mr. Manuel stated so it's on ADC inventory and KAA would have to submit for workforce housing. That's a path to cross later, whether or not ADC has authority to do that. If workforce housing was within ADC's mission, should ADC focus on what agricultural workforce housing should look like and how it could be designed? It could create good policy for other agriculture lands throughout the state. He just wanted to check on that. He thanked Mr. Uyehara for the follow-up details and asked that a map and the petition would be helpful for future submittals.

Ms. Evans said the petition could be found on the LUC website.

Mr. Manuel reiterated that if the board was being asked to approve something it would be helpful to have all the materials attached to the submittal.

Ms. Evans said the board was not being asked to approve the petition, because they don't have the authority. What they were doing was approving the action to allow KAA to pursue the petition with the LUC. The workforce housing question was a great one. The Office of Planning and Sustainable Development had put in a bill that would have modified the IAL part of Chapter 205 to provide a stronger incentive than currently existed in the current language. While she doesn't know what the legislature will do, she feels that workforce housing in IAL were linked at the hip. It's important to have that possibility when you were doing IAL type agriculture.

Chair agreed and asked if there was any further discussion.

Ms. Shimabukuro-Geiser stated HDOA had a mild concern about the authority of ADC versus DLNR as the landowner. Because Mr. Manuel, as the DLNR Chair's designee, was not concerned about that issue, and ADC was willing to defend that position, the concern was not as big a concern for her as before. She made this comment because she knows previously there was some concern.

Mr. Watanabe supported the recommendation; he strongly supports the IAL initiative. He commented that he remembered spending monthly meetings for years to get the IAL Act passed and he thinks it's important, it's important for the state to strongly support it. For informational purposes, Mr. Watanabe noted that Maui County was starting their process of IAL designations. There have been issues like with Oahu but that was the process. Let KAA proceed, it's a great idea and he supports this petition.

Chair asked if there were any further discussions. Hearing none he called for the vote.

Vote: Approved, 10/0.

**E. Old Business**

None

**F. Executive Director's Update**

Mr. Nakatani had to leave to attend a legislative hearing so Ms. Kaichi provided an update on legislative bills related to ADC: SB2480, SB3096, SB2473, and SB2418.

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Mr. Nakamoto was asked to give an update on the impact gas prices had on ADC water delivery. The issue was pretty straight forward but if there were questions, Mr. Nakamoto would respond.

Mr. Nakamoto said the gas prices have gone up tremendously and he doesn't see an end in sight. Last week the price of gas was \$3.75 a gallon. It was \$1.60/\$1.70 per gallon back in 2020. He was currently doing a cost analysis and will likely come back to the board at the next meeting to request a price adjustment.

Chair asked on the May 29, 2021 increase from \$1.70 to \$2.44, was that prior to ADC increasing the water fees to the tenants?

Mr. Nakamoto responded around that time they did the last increase of about 40%.

Chair asked so we're looking at another 40% increase?

Mr. Nakamoto said correct. The State Procurement Office puts out a pricing for each week. Last week it was \$3.75. He suspects it went up again this week but he didn't check.

Mr. Manuel said he thinks there should be policies on what costs an agency that's supporting agriculture passes on to the tenants. Is this something ADC should subsidize as part of business? It's a hard conversation to have but we need to think seriously about it. We're isolated here and the gas prices continue to increase. The alternatives, like renewable energy that could bring the cost down, do we take the burden on creating alternatives that will reduce the pressure on our tenants? That's something we need to be more aggressive about based on our current trends, these rising gas trends.

Ms. Evans said that ADC has a number of different financial tools that can be used to offset the cost of doing agriculture in Hawaii. A banker she knew said agriculture was wonderful except for the cost of water, the cost of land, the cost of labor, and the cost of capital financing. All of our farmers face incredible challenges to stay in business. The policy committee was looking at all of those tools, not just the cost of water but how to set our license fees and other kinds of pricing mechanisms to find a balance between funding the corporation and ensuring that farming was still economically feasible.

Chair asked if there was any further discussion.

Ms. Shimabukuro-Geiser recalled back in 2020 or 2021 when ADC increased the water rate HDOA was getting complaints about the rate increase from the tenants. She suggested there be communication with the users to prepare them for the increase. She doesn't know if there was any policy under review regarding rental or water user rate increases but lessons learned from the pandemic, we do a better job as an agency if we inform our water users so they can better prepare. She knows we're not required to go to public hearing for rate increases on water but she just wanted to express that communication is important.

Chair agreed 100% and asked that Mr. Nakamoto or Mr. Roe prepare something to notify the tenants.

Mr. Nakamoto responded they are planning to send out a notification similar to what the Board of Water Supply sent out especially as we're entering dryer weather. The notice will remind the tenant to look at their operations and be as efficient as possible. Notification will be sent out as soon as possible.

## **G. Adjourn**

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Chair asked if there was any other discussion. Hearing none, the Chair asked for a motion to adjourn.  
Motion by Mr. Manuel, Seconded by Mr. Hong.

Before adjourning, Chair announced that this was Ms. Kaichi's last meeting; she will be retiring on April 1, 2022. He thanked her for all her help on everything. She will be greatly missed as they had depended upon her a lot throughout the years, and they wished her well.

Hearing no objection, the meeting was adjourned at 10:17 a.m.

Respectfully Submitted,

Lynette Marushige  
Secretary

DRAFT



STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT CORPORATION**

235 S. Beretania Street, Room 205  
Honolulu, HI 96813  
Phone: (808) 586-0186 Fax: (808) 586-0189

April 20, 2022

Subject: Request for Approval for Hartung Brothers Hawaii, LLC, Inc., Under General Lease No. S-4654, to Construct an Alfalfa Drying Facility in Kekaha, Kauai, Tax Map Key (4) 1-2-002:035

Lessee: Hartung Brothers Hawaii, LLC

Authority: Section 163D-4 (a)(5), Hawaii Revised Statutes

Area: 42.019 acres

Field No(s).: Parcel E

Tax Map Key: (4) 1-2-002:035

Land Status: Set aside by the Governor's Executive Order No. 4660 to the Agribusiness Development Corporation for Agricultural and Related Purposes

Trust Land Status: Section \_\_\_ lands of the Hawaii Admission Act  
Yes \_\_\_ No

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution? Yes \_\_\_ No

Character of Use: Office, Processing

Land Doc. Type: Lease

Term: Initial Lease 20 years (May 16, 1980 – May 15, 2000)  
Extension 23 years (May 16, 2020 – May 15, 2023)

Rental Rate: Annual Rent: \$22,280

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**BACKGROUND:**

Department of Land and Natural Resources General Lease No. S-4654 (the "Lease") for 42.019 acres in Kekaha, Kauai (see "Exhibit A") was first issued to Pride Company, Inc., a division of Northrup King Co., for the subject parcel on October 8, 1980 and later assigned directly to Northrup King Co. ("NKC") effective May 14, 1993. NKC then

requested to extend the Lease for an additional 23 years in order to qualify for a mortgage of \$1,900,000 which was used for leasehold improvement.

The parcel was later set-aside to the control and management of the Department of Agriculture (“DOA”), who consented to that certain “Assignment of General Lease No. S-4654” in favor of Syngenta Hawaii, LLC on October 27, 2009. DOA later amended the Lease to reflect DOA’s consent to the transfer of 100% of the limited liability company membership interest of Syngenta Hawaii, LLC to Hartung Brothers, Inc., a Wisconsin corporation, and to reflect the change of lessee’s name from Syngenta Hawaii, LLC to Hartung Brothers Hawaii, LLC (the “Lessee”).

Effective September 23, 2021, Governor’s Executive Order No. 4660 transferred the subject parcel to the control and management of the Agribusiness Development Corporation (“ADC”).

#### LAND REQUEST:

Pursuant to paragraph 9 of the Lease, Lessee requests Board approval to construct a facility over the former footprint of an experimental processing facility for the purpose of drying alfalfa (see “Exhibit C”) (the “Project”)

#### WATER NEEDS AND SOURCE OF WATER:

For the purposes of the Project, no additional water needs are anticipated.

#### DESCRIPTION & OPERATIONAL PLAN:

The new structure will approximately 68’ x 38’ (2,584 square feet) and 17’ at the highest point, with a concrete slab floor. The structure will be used for storage and processing/drying of the raw alfalfa harvest.

#### CHAPTER 343:

In accordance with the approved Comprehensive Exemption List for the Agribusiness Development Corporation State of Hawaii as concurred on by the Environmental Council on May 1, 2018, the Project is exempt from the preparation of an environmental assessment pursuant to Exemption Class 2 which identifies “*Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced.*”

#### DISCUSSION:

Alfalfa represents a new and emerging crop in the Kekaha area, and for the Lessee. It is anticipated that there will be high demand for the crop as livestock feed locally.

#### RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the Project described above, subject to the following terms and conditions:

1. Lessee shall obtain all necessary and appropriate county, state, and federal permits for the Project; and
2. Lessee shall submit to ADC a list of all appropriate expenses associated with the Project for purposes of valuation; and
3. Such other terms and conditions as may be prescribed by the Executive Director to serve the best interests of ADC and the State.

Respectfully Submitted,



James J. Nakatani  
Executive Director

EXHIBIT A



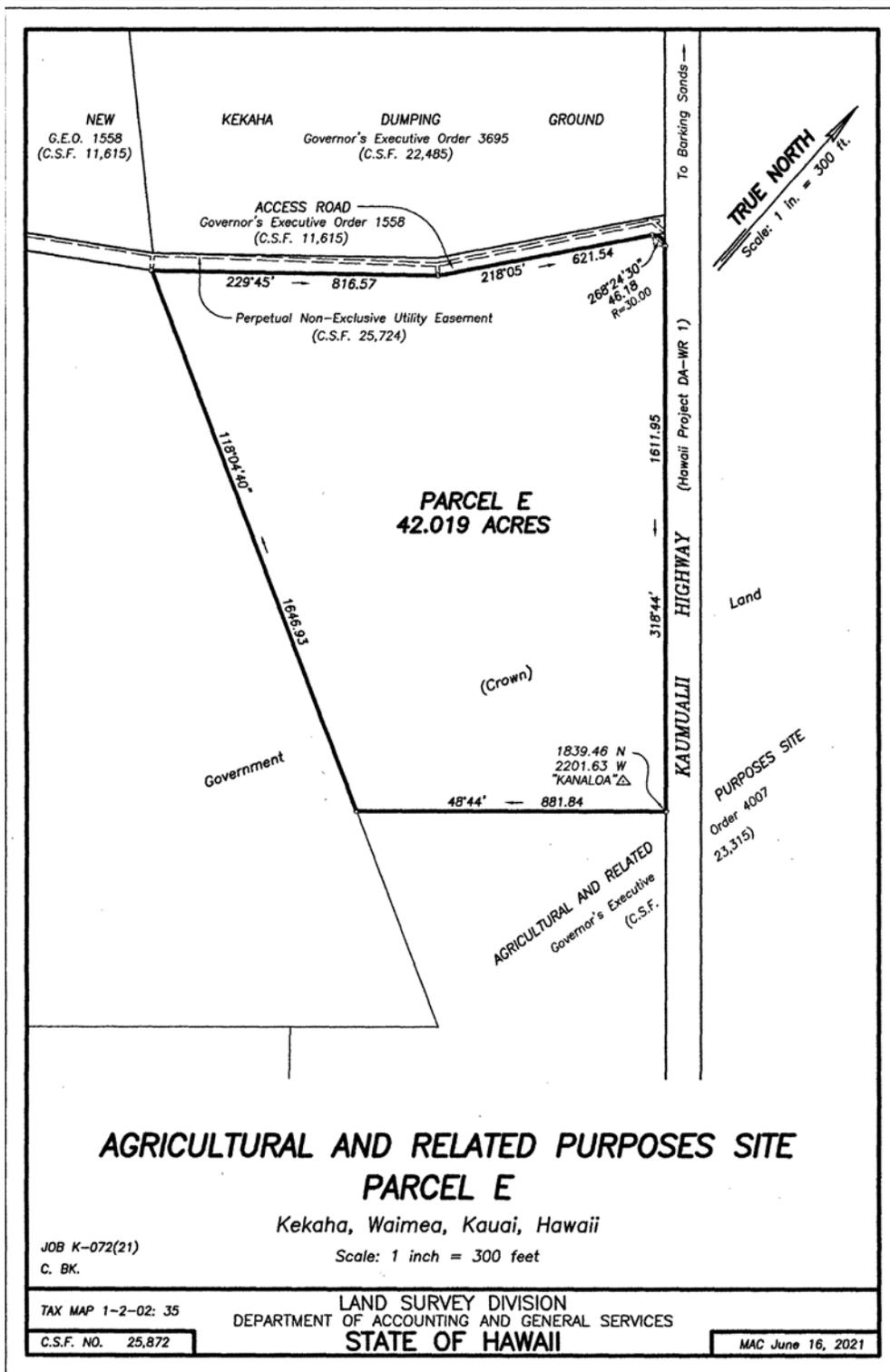


EXHIBIT B

General Lease No. S-4654

[see following pages]

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-4654

between

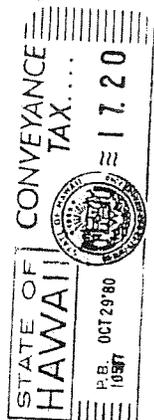
STATE OF HAWAII

and

PRIDE COMPANY, INC.,  
a division of Northrup King Co.

covering

Portion of the Government Land of Waimea  
Situated between the southwest side of  
Kaumualii Highway and Hawaii National Guard Site  
(Governor's Executive Order 1794)  
Kekaha, Waimea (Kona), Kauai, Hawaii.



CERTIFICATE FILED  
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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-4654

THIS INDENTURE OF LEASE, made this 8th day of  
October, 1980, by and between the STATE OF  
HAWAII, hereinafter referred to as the "Lessor", by its Board  
of Land and Natural Resources, called the "Board", and PRIDE  
COMPANY, INC., a division of Northrup King Co., a Delaware  
corporation, whose business and post office address is P.O. Box 959,  
Minneapolis, Minnesota 55440, and whose Hawaii post office address is  
P. O. Box 237, Waimea, Kauai, Hawaii 96796, hereinafter  
referred to as the "Lessee";

WITNESSETH:

THAT, the Lessor for and in consideration of the  
rent to be paid and of the terms, covenants and conditions  
herein contained, all on the part of the Lessee to be kept,  
observed and performed, does hereby demise and lease unto  
the Lessee, and the Lessee does hereby lease and hire from  
the Lessor the premises identified as Portion of Government  
Land of Waimea, situated between the southwest side of  
Kaunualii Highway and Hawaii National Guard Site (Governor's  
Executive Order 1794), Kekaha, Waimea (Kona), Kauai, Hawaii,  
containing an area of 42.019 acres, more or less, more par-  
ticularly described in Exhibit "A" and as shown on the map  
marked Exhibit "B", hereto attached and made parts hereof.

TO HAVE AND TO HOLD the demised premises unto the  
Lessee for the term of twenty (20) years, commencing on the  
16th day of May, 1980, up to and including the 15th day of  
May, 2000, unless sooner terminated as hereinafter provided,  
the Lessor reserving and the Lessee yielding and paying to

the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, a net annual rental as provided hereinbelow, payable in advance, without notice or demand, in semi-annual installments on May 16th and November 16th of each and every year during said term as follows:

A. For the first ten (10) years, the sum of THREE THOUSAND AND NO/100 DOLLARS (\$3,000.00) per annum.

B. The annual rental hereinabove reserved shall be reopened and redetermined at the expiration of the tenth (10th) year of said term.

C. Determination of rental upon reopening of the annual rental. The rental for any ensuing period shall be the rental for the immediately preceding period or the fair market rental at the time of reopening, whichever is higher. At the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the Lessor; provided, that should the Lessee fail to agree upon the fair market rental as determined by Lessor's appraiser, the Lessee may appoint his own appraiser who shall prepare an independent appraisal report and the two appraisers shall then exchange their reports for review. The two appraisers shall make every effort to resolve whatever differences they may have. However, should differences still exist 14 days after the exchange, the two appraisers shall then appoint a third appraiser who shall also prepare an independent appraisal report and furnish copies thereof to the first two appraisers. After review, all three shall meet to determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both Lessor and Lessee, subject to \_\_\_\_\_

vacation, modification or correction in accordance with the provisions of Sections 658-8 and 658-9, Hawaii Revised Statutes. The Lessee shall pay for his own appraiser and the cost of the services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor.

If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, the Lessee shall continue to pay the rent effective for the previous rental period, but the Lessee shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining. "Minerals", as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in general construction in

furtherance of the Lessee's permitted activities on the demised premises and not for sale to others. (b) All surface and ground waters appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Prehistoric and historic remains. All prehistoric and historic remains found on said demised premises.

3. Ownership of fixed improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land on the commencement date of this lease or constructed during the term of this lease unless provided otherwise.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR

AS FOLLOWS:

1. Payment of rent. That the Lessee shall pay said rent to the Lessor at the times, in the manner and form aforesaid and at the place specified above, or at such other place as the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. That the Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which said demised premises or any part thereof, or any improvements thereon, or the Lessor or Lessee in respect thereof, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during said term.

3. Utility services. That the Lessee shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which said demised premises, or any part thereof, or any improvements thereon or the Lessor or Lessee in respect thereof may during said term become liable, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. That the use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, national origin or physical handicap.

5. Sanitation, etc. That the Lessee shall keep the demised premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. That the Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the demised premises, or any part thereof, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on said premises.

7. Compliance with laws. That the Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws pertaining to the said premises, now in force or which may hereinafter be in force.

8. Inspection of premises. That the Lessee will permit the Lessor and its agents, at all reasonable times during the said term, to enter the demised premises and examine the state of repair and condition thereof.

9. Improvements. That the Lessee shall not at any time during said term construct, place, maintain and install on said premises any building, structure or improvement of any kind and description whatsoever except with the prior approval of the Board and upon such conditions as the Board may impose, including any adjustment of rent, unless otherwise provided herein.

10. Repairs to improvements. That the Lessee shall, at its own expense, keep, repair and maintain all buildings and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. That the Lessee will not commit or suffer any act or neglect whereby the demised premises or any improvement thereon or the estate of the Lessee in the same shall become subject to any attachment, lien, charge or encumbrance whatsoever, except as hereinafter provided, and shall indemnify and hold harmless the Lessor from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

12. Character of use. That the Lessee shall use or allow the premises hereby demised to be used solely for  
          Diversified Agricultural            
purpose(s).

13. Assignments, etc. That the Lessee shall not transfer, assign or permit any other person to occupy or use the said premises or any portion thereof, or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, except by way of devise, bequest or intestate succession, and any transfer or assignment so made shall be null and void; provided, that with the prior written approval of the Board the assignment and transfer of this lease or unit thereof may be made if  
(1) it contains the personal residence of the Lessee;  
(2) in the case of commercial, industrial, hotel, resort,

apartment and other business uses, the Lessee was required to put in substantial building improvements; (3) the Lessee becomes mentally or physically disabled; (4) extreme economic hardship is demonstrated to the satisfaction of the Lessor or (5) it is to the corporate successor of the Lessee.

14. Subletting. That the Lessee shall not rent or sublet the whole or any portion of the demised premises, without the prior written approval of the Board; provided, however, that prior to such approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the said sublessee; provided, further, that the rent may not be revised downward.

15. Indemnity. That the Lessee will indemnify, defend and hold the Lessor harmless from and against any claim or demand for loss, liability or damage, including claims for property damage, personal injury or death, arising out of any accident on the demised premises and sidewalks and roadways adjacent thereto or occasioned by any act or nuisance made or suffered on the premises, or by any fire thereon, or growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition, or by any act or omission of the Lessee, from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

16. Costs of litigation. That in case the Lessor shall, without any fault on its part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall and will pay all costs and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall and will pay all costs and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the demised premises or in the collection of delinquent rental, taxes and any and all other charges.

17. Liability insurance. That the Lessee shall procure, at its own cost and expense, and maintain during the entire period of this lease, a policy or policies of comprehensive public liability insurance, in an amount acceptable to the Chairman, insuring the Lessor and Lessee against all claims for personal injury, death and property damage; that said policy or policies shall cover the entire premises; including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the demised premises in the control or use of the Lessee. The Lessee shall furnish the Lessor with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, each such certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel any such policy prior to actual cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this lease as set forth herein or limit the amount of its liability under this lease. The notice to cancel shall be sent to the Lessor sixty (60) days prior to the date of cancellation.

18. Bond, performance. That the Lessee shall, at its own cost and expense, within thirty (30) days after the date of receipt of this lease document, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by said Lessee of all of the terms, conditions and covenants of this lease, in an amount equal to two times the annual rental then payable. Said bond shall provide that in case of a breach or default of any of the terms, covenants, conditions and agreements contained herein, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

19. Lessor's lien. That the Lessor shall have a lien on all the buildings and improvements placed on the said premises by the Lessee, on all property kept or used on the demised premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings situated on said premises for all such costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee and for the payment of all money as provided in this lease to be paid by the Lessee, and such lien shall continue until the amounts due are paid.

20. Mortgage. That, except as provided herein, the Lessee shall not mortgage, hypothecate or pledge the said premises or any portion thereof of this lease or any interest therein without the prior written approval of the Board and any such mortgage, hypothecation or pledge without such approval shall be null and void.

That upon due application and with the written consent of the Lessor, the Lessee may mortgage this lease or any interest therein or create a security interest in the leasehold of the public land hereby demised. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, such consent may extend to foreclosure and sale of Lessee's interest at such foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of such mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental

holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned Federal agencies.

21. Breach. That time is of the essence of this agreement and if the Lessee shall fail to yield to pay such rent or any part thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the said premises, or if this lease and said premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of the Lessee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and such failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of such breach or default by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or holder of record having a security interest in the demised premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter such premises or any part thereof, and upon or without such entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of the Lessor.

22. Right of holder of record of a security interest. In the event the Lessor seeks to forfeit the interest created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach within sixty (60) days from the date of receipt of the notice hereinabove set forth, or within such additional period as the Lessor may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any monies at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of said debt and mortgage from said holder or if ownership of such interest or estate shall have vested in such holder by way of foreclosure, or action in lieu thereof, the Lessor shall be entitled to the conveyance of said interest or estate upon payment to said holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with such foreclosure and preservation of its security interest, less appropriate credits, including income received from said interest or estate subsequent to such foreclosure; or (b) terminate the outstanding interest or estate subject to the lien of such mortgage, without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and thereupon use its best efforts to redispense of the land affected thereby to a qualified and responsible person who will assume the obligation of the mortgage and the debt thereby secured; provided, that a reasonable delay by the Lessor in instituting

or prosecuting any right or remedy it may have hereunder shall not operate as a waiver of such right or to deprive it of such remedy when it may still hope otherwise to resolve the problems created by the breach or default. The proceeds of any disposition effected hereunder shall be applied first, to reimburse the Lessor for costs and expenses in connection with such disposition; second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with such interest or estate terminated as aforesaid; and the balance, if any, shall be paid to the owner of such interest or estate.

23. Condemnation. That, if at any time, during the term of this lease, or any portion of the demised premises should be condemned, or required for public purposes by any county or city and county, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which he is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the lands occupied by the Lessee. The Lessee shall not by reason of such condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of said leasehold interest by reason of such condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee

shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the use or uses for which the land was demised, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability therefor; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by the Lessor.

24. Right to enter. The Lessor or the County and the agents or representatives thereof shall have the right to enter and cross any portion of said demised land for the purpose of performing any public or official duties; provided, however, in the exercise of such rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

25. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the demised premises at all reasonable times following a published notice for the proposed disposition of the same for purposes of informing and apprising such person or persons of the condition of said lands preparatory to such proposed disposition; provided, however, that any such entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no such authorization shall be given more than two years before the expiration of the term of this lease.

26. Acceptance of rent not a waiver. That the acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant or condition of this lease, nor of the Lessor's right to re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any such breach, and the failure of the Lessor to insist upon strict performance of any such term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition or option.

27. Extension of time. That notwithstanding any provision contained herein to the contrary, wherever applicable, the Board may for good cause shown, allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions and covenants contained herein.

28. Justification of sureties. Such bonds as may be required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as such in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates

of deposit (payable on demand or after such period as the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to said Lessor a deed or deeds of trust of real property, all of such character as shall be satisfactory to said Lessor and valued in the aggregate at not less than the principal amount of said bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by the Lessor under the foregoing proviso shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until such consent be granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation hereunder.

29. Waiver, modification, reimposition of bond provision. Upon substantial compliance by the Lessee of the terms, covenants, and conditions herein contained on its part to be observed or performed, the Lessor at its discretion may waive or suspend the performance bond and/or improvement bond requirements or modify the same by reducing the amount thereof; provided, however, that the Lessor reserves the right to reactivate or reimpose said bond and/or bonds in and to their original tenor and form at any time throughout the term of this lease.

30. Quiet enjoyment. The Lessor hereby covenants and agrees with the Lessee that upon payment of said rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms and conditions hereof on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess and enjoy the demised premises for the term hereby demised, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through or under it.

31. Surrender. That the Lessee shall, at the end of said term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the demised premises, together with all improvements existing or constructed thereon unless provided otherwise.

32. Non-warranty. The Lessor does not warrant the conditions of the leased premises, as the same is being leased as is.

33. Incorporation by reference. References to various parcels of land herein are in accordance with those designated in the Notice of Sale and the Conduct of Sale which, together with the Special Notice to Bidders are incorporated herein and made a part hereof. The terms of this lease shall govern where there is any inconsistency between the terms thereof and the terms contained in the Special Notice to Bidders.

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34. Full utilization of the land. That the Lessee shall, at its own cost and expense, within the first ---- (1st) year~~(s)~~ of the lease term, clear the demised premises of noxious weeds, tend the premises in such a manner as to reduce to a reasonable minimum the danger of erosion or other waste and utilize the land and the whole of it for the purposes for which this lease is sold, all in accordance with a plan of development and conservation which shall be submitted to the Chairman within three (3) months after the date of receipt of this document and approved by him.

35. Good husbandry and conservation practices. That the Lessee shall at all times practice good husbandry with regard to the use of the demised premises for the use herein permitted and shall carry out such practices of conservation and prevention of waste as are recommended by the appropriate Soil and Water Conservation District, with which district the Lessee shall apply for and attain cooperative status. The plan required in the foregoing paragraph shall be with respect to grading and clearing of land, and drainage and irrigation, and shall be developed in cooperation with said Soil and Water Conservation District. In the event the activities of the Lessee in this regard shall be found to be unsatisfactory to the Chairman, the Chairman will so notify the Lessee and the Lessee shall be required, within sixty (60) days of such notice, to cure such fault and submit proof thereof satisfactory to the Chairman.

36. Boundary fences. That the Lessee shall, install stockproof fence along the entire outside perimeter of the land encompassed under this lease where such fencing does not now exist, regardless of whether the Lessee has an interest or ownership in adjoining lands, and shall maintain in good order and condition throughout the term of this lease the fences so constructed and those now existing on the demised premises. The Lessee shall, wholly at its own cost and expense, stake out the boundaries wherever necessary in conformance with the legal descriptions provided herein. The cost of installing and maintaining such boundary fences shall be in accordance with Part II of Chapter 664, Hawaii Revised Statutes, which provides generally for the sharing of such costs by adjacent land owners or lessees for the purpose of confining animals of each adjacent owner or lessee unless the adjacent land is owned and not leased by the government.

37. Exclusion of animals from forest lands. That the Lessee shall at all times during the term hereof keep its cattle, horses and other grazing animals out of any forest reserve, if any, adjacent to the demised premises and shall take all reasonable precautions to prevent forest fires thereon, and in the event such fires shall occur, it shall use all reasonable means at its command or under its control to have such fires speedily extinguished.

38. Withdrawal. The Lessor shall have the right to withdraw the demised land, or any portion thereof, at any time during the term of this lease upon the giving of reasonable notice by the Board and without compensation, except as provided herein, for public uses or purposes, including residential, commercial, industrial or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the demised premises; provided, that upon such withdrawal, or upon such taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of such withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of the lease; provided, further, that no such withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the Board pays to the Lessee the value of such crops.

39. Water. That Lessee shall provide his own water to the lease premises.

Definitions.

As used herein, unless clearly repugnant to the context:

(a) "Chairman" shall mean the Chairman of the Board of Land and Natural Resources of the State of Hawaii or his successor;

(b) "Lessee" shall mean and include the Lessee herein, its heirs, executors, administrators, successors or permitted assigns, according to the context hereof;

(c) "Holder of a record of a security interest" is a person who is the owner or possessor of a security interest in the land demised and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of such interest;

(d) "Premises" shall be deemed to include the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon;

(e) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural;

(f) The paragraph headings throughout this lease are for the convenience of the Lessor and the Lessee and are not intended to construe the intent or meaning of any of the provisions thereof.

(g) "Waste" shall be deemed to include, but not limited to, (1) permitting the premises or any portion thereof to become unduly eroded and/or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds in uncultivated portions thereof and (3) failure to employ all of the usable portions of the demised premises.

(h) "Noxious weed" shall mean any plant species which is injurious, harmful or deleterious or which may be likely to become so to the agricultural, horticultural and livestock industries of the State, as determined and so designated by the Department of Agriculture of the State of Hawaii from time to time, by rules and regulations.

(i) "Pasture" shall mean the conduct of livestock operation consisting of the keeping primarily of cattle, and others, in a minor role, such as horses and sheep wherein the animals graze the land for feed produced thereon. Permitted use shall include such compatible uses as woodland management, wildlife management and the cultivation of feed crops to be used strictly within the premises. Excluded will be the operation of commercial activities such as feedlots (excepting a private feedlot designed to feed the Lessee's own cattle), dairy milking parlors, or boarding of horses.

(j) "Timber" shall mean any trees standing within designated areas of the demised land which are covered by a woodland management plan.

(k) "Diversified agriculture" shall mean the cultivation and harvesting of truck, orchard, flower, nursery, grasses or forage crops and shall not include the grazing or pasturing of animals.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 8th day of October, 1980.

STATE OF HAWAII

By S. Ono  
Chairman and Member  
Board of Land and  
Natural Resources

Approved by the Board  
at its meeting held on

October 13, 1978

By Mosimaka  
Member  
Board of Land and  
Natural Resources

LESSOR  
a division of Northrup  
King Co.  
PRIDE COMPANY, INC., a Delaware  
corporation

By Robert W. Ponce  
Its VICE PRESIDENT

By George C. Weatherill  
Its V.P. & ASST SEC'Y LESSEE

APPROVED AS TO FORM:

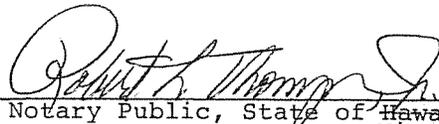
Dona L. Hanaike  
Deputy Attorney General

Dated: July 10, 1980

MINNESOTA  
STATE OF ~~HAWAII~~ )  
HENNEPIN ) ss.  
COUNTY OF ~~KAUAI~~

On this 3<sup>RD</sup> day of SEPTEMBER, 1980,  
before me appeared ROBERT W. ROMIG and  
GEORGE C. WEATHERILL, to me personally  
known, who, being by me duly sworn, did say that they are  
the VICE PRESIDENT and VICE PRESIDENT & ASSISTANT SECRETARY,  
NORTHTRUP KING CO.  
respectively, of ~~PRIDE COMPANY, INC.~~, a Delaware corporation,  
and that the seal affixed to the foregoing instrument is the  
corporate seal of said corporation, and that said instrument  
was signed and sealed on behalf of said corporation by author-  
ity of its Board of Directors, and the said ROBERT W.  
ROMIG and GEORGE C. WEATHERILL acknowledged  
that they executed said instrument as the free act and deed  
of said corporation.

ROBERT L. THOMPSON, JR.  
NOTARY PUBLIC - MINNESOTA  
RAMSEY COUNTY  
My Commission Exp. Sep. 27, 1983

  
Notary Public, State of ~~Hawaii~~  
Minnesota  
My commission expires: 9/27/83



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

January 5, 1979

C.S.F. No. 18,510

PORTION OF THE GOVERNMENT LAND OF WAIMEA

Situated between the southwest side of Kaunualii Highway and Hawaii National Guard Site (Governor's Executive Order 1794)

Kekaha, Waimea (Kona), Kauai, Hawaii

Beginning at the east corner of this parcel of land and on the southwest side of Kaunualii Highway (Hawaii Project No. DA-WRI), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KANALOA" being 1839.46 feet North and 2201.63 feet West, thence running by azimuths measured clockwise from True South:-

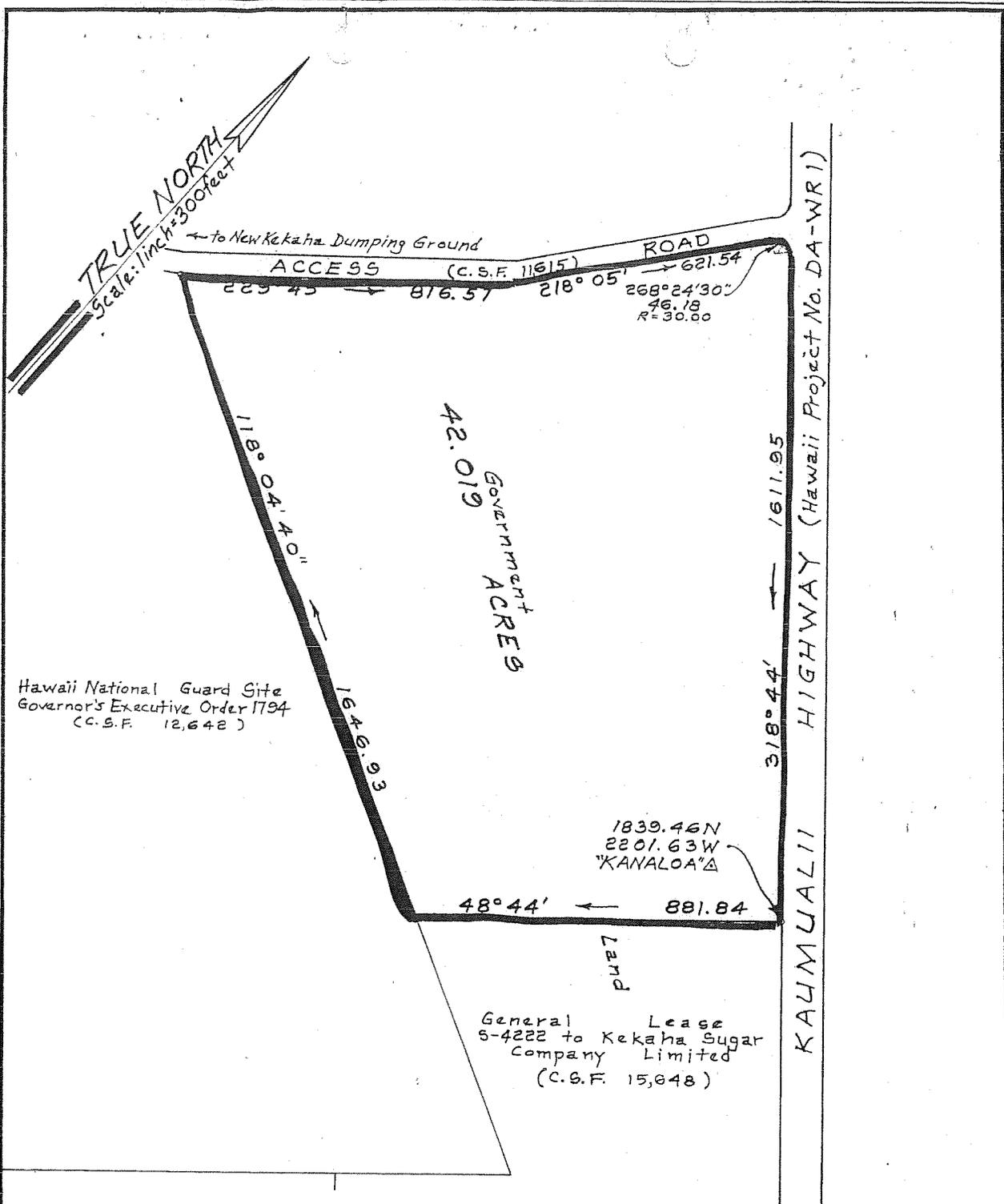
1. 48° 44' 881.84 feet along the remainder of the Government (Crown) Land of Waimea;
2. 118° 04' 40" 1646.93 feet along Hawaii National Guard Site (Governor's Executive Order 1794);
3. 229° 45' 816.57 feet along the southeast side of the Access Road to New Kekaha Dumping Ground (Governor's Executive Order 1558);
4. 218° 05' 621.54 feet along the southeast side of the Access Road to New Kekaha Dumping Ground (Governor's Executive Order 1558);
5. Thence along the southeast side of the Access Road to New Kekaha Dumping Ground (Governor's Executive Order 1558), on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being: 268° 24' 30" 46.18 feet;
6. 318° 44' 1611.95 feet along the southwest side of Kaunualii Highway (Hawaii Project No. DA-WRI) to the point of beginning and containing an AREA OF 42.019 ACRES.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: Paul T. Nuha  
Paul T. Nuha  
Land Surveyor

Compiled from Govt.  
Survey Records.

.gm



PORTION OF THE GOVERNMENT LAND OF WAIMEA  
 Situated between the southwest side of Kaumualii Highway and  
 Hawaii National Guard Site (Governor's Executive Order 1794)  
 Kekaha, Waimea (Kona), Kauai, Hawaii  
 Scale: 1 inch = 300 feet

JOB K8974  
 C. BK 18M Fid. 1A (Kauai)

EXHIBIT "B"

TAX MAP 1-2-02:35

SURVEY DIVISION  
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

C. S. F. No. 18,510

STATE OF HAWAII

L.C., Jan. 5, 1969

EXHIBIT C

Design Plans for Processing Facility

[see following pages]

412002001

**Parcel #412002035**  
**HBI, Kauai, HI**



412002999

412002001

412002035

1,680,226.81 Square Feet

412002040

412002001

412002009

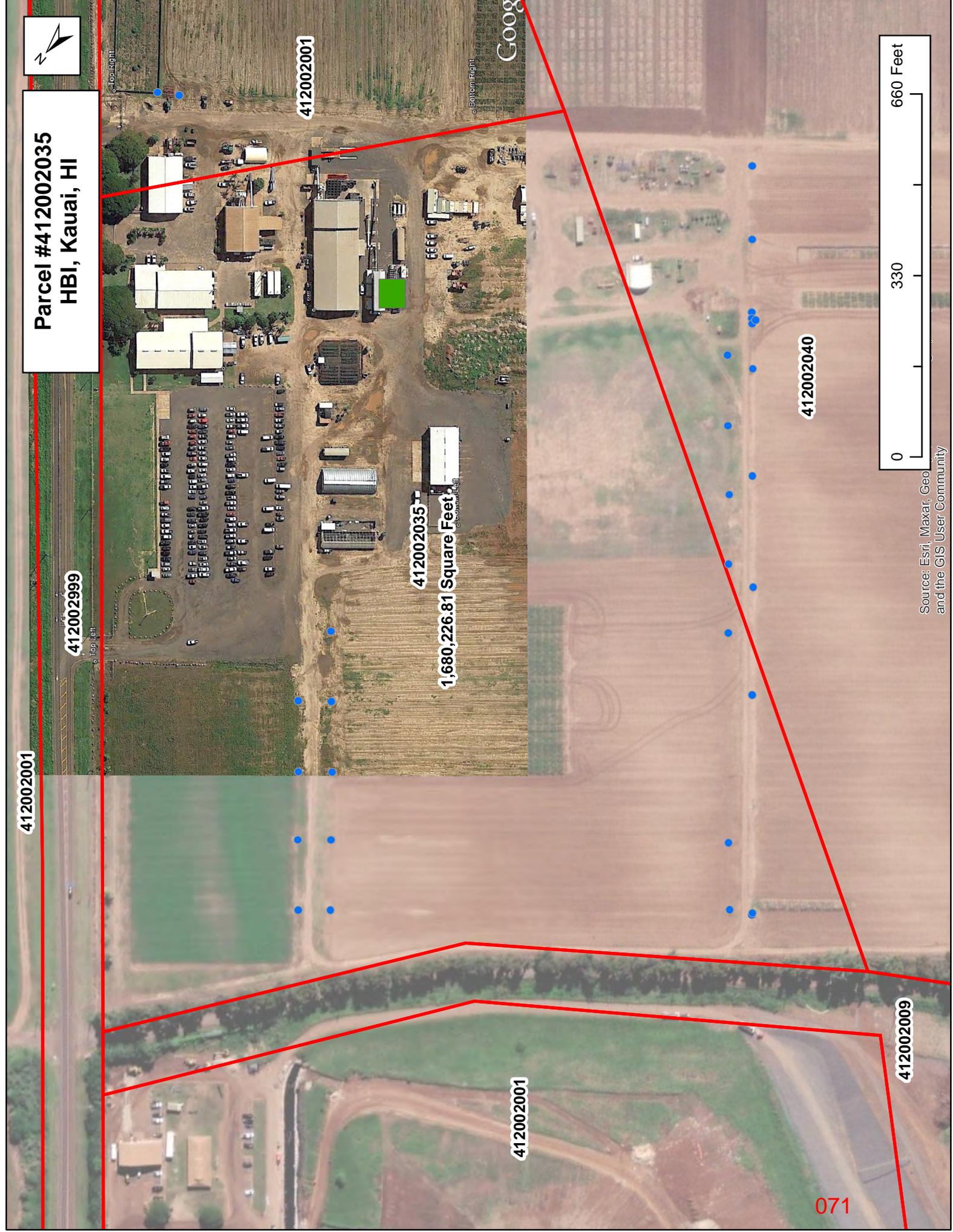
660 Feet

330

0

Source: Esri, Maxar, Geo  
and the GIS User Community

071











STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT CORPORATION**

235 S. Beretania Street, Room 205  
Honolulu, HI 96813  
Phone: (808) 586-0186 Fax: (808) 586-0189

April 20, 2022

Subject: Request to Consent to the Assignment of License Agreement Nos. LI-K1102 and LI-KA1501 from Green Energy Team, LLC to Mahipapa, LLC for Biomass Production Purposes in Kalepa, Kauai, Tax Map Key (4) 3-9-002:001 (por), (4) 3-9-001:004 (por), (4) 3-9-002:009 (por), (4) 3-9-002:020 (por), (4) 4-2-001:003 (por)

Requestors: Green Energy Team, LLC and Mahipapa, LLC

Authority: Section 163D-4 (a)(5), Hawaii Revised Statutes

Area: LI-K1102: 955 gross acres, more or less  
LI-KA1501: 168.38 gross acres, more or less

Field No(s).: LI-K1102: GEa, GEb, GEc, GEe, GEf, GEh, GEi, GEj, GEk, GEI, GEm  
LI-KA1501: GE(B1), GE(B2), N

Tax Map Key: (4) 3-9-002:001, (4) 3-9-001:004, (4) 3-9-002:009  
(4) 3-9-002:020, (4) 4-2-001:003

Land Status: Set aside by the Governor's Executive Order Nos. 4328 and 4401 to the Agribusiness Development Corporation for Agricultural and Related Purposes

Trust Land Status: Section 5(b) lands of the Hawaii Admission Act  
All Parcels Yes  No   
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution? Parcels 002, 001, 020  
Yes  No   
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution? Parcel 009  
Yes  No

Character of Use: Biomass Production, Storage Facility

Land Doc. Types: License

Term: LI-K1102: 22 years (currently in year 10, 10 year option)  
LI-KA1501 35 years (currently in year 7)

Request to Consent to the Assignment of License Agreement Nos. LI-K1102 and LI-KA1501 from Green Energy Team, LLC to Mahipapa, LLC for Biomass Production Purposes in Kalepa, Kauai, Tax Map Key (4) 3-9-002:001 (por), (4) 3-9-001:004 (por), (4) 3-9-002:009 (por), (4) 3-9-002:020 (por), (4) 4-2-001:003 (por)  
April 20, 2022  
Page 2 of 5

Rental Rate: Annual Rent: \$47,727.60

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#### BACKGROUND:

From 1974 to 1999, Lihue Plantation occupied approximately 6,540 acres of Kalepa lands under a lease with the Department of Land and Resources (DLNR). In 2001, the DLNR executed seventeen 17 revocable permits (RP) for agricultural use on these Kalepa lands. In 2008, the RP holders agreed to withdraw and transfer to Green Energy Team LLC a total of 1,000 acres, each RP holder transferring a small portion of their respective premises.

In August 2010, via Governor's Executive Order No. 4328 set aside nearly 6,000 acres of the Kalepa land to the control and management of the Agribusiness Development Corporation ("ADC"), including the tenants and their respective RPs. Following the set aside, ADC converted most of the RPs long-term licenses, including Green Energy Team, LLC ("Licensee").

The Licensee's RP was converted to a 22-year license in May of 2011, LI-K1102 (see "Exhibit A"). Since that time, and with ADC Board approval, Licensee has: 1) withdrawn 45 acres; 2) recharacterized 1.5 acres from biomass to building use for storage of equipment; and 3) added a separate 35-year license agreement, LI-KA1501 (see "Exhibit B"), for 168.38 acres of biomass in Kalepa (LI-K1102 and LI-KA1501 hereinafter referred to collectively as the "Licenses").

Mahipapa, LLC ("Mahipapa") is a Hawaii limited liability company, wholly owned by Pacific Current, LLC ("Pacific Current"). Pacific Current is a Hawaii limited liability company, wholly owned by Hawaiian Electric Industries, Inc. ("HEI").

#### REQUEST:

Pursuant to paragraph 21 of the Licenses, Licensee requests that ADC consent to the assignment and transfer of the Licenses from Green Energy Team, LLC to Mahipapa, LLC.

#### WATER NEEDS AND SOURCE OF WATER:

Green Energy Team propagates cutting in greenhouses off-property. However, there is no irrigation or access to water for the hardened plants once planted, other than rainfall.

#### OPERATIONAL PLAN:

Mahipapa's operational plan is substantially similar to Green Energy Team's operational plan; that is to grow biomass for energy production. In addition to the Licenses, GET has

Request to Consent to the Assignment of License Agreement Nos. LI-K1102 and LI-KA1501 from Green Energy Team, LLC to Mahipapa, LLC for Biomass Production Purposes in Kalepa, Kauai, Tax Map Key (4) 3-9-002:001 (por), (4) 3-9-001:004 (por), (4) 3-9-002:009 (por), (4) 3-9-002:020 (por), (4) 4-2-001:003 (por)  
April 20, 2022  
Page 3 of 5

approved contract farming agreements with two other ADC licensees, Leslie P. Milnes and Kapaa Banana Company.

Green Energy Team has largely built-out the entirety of their license premises. However, going forward, there will be very few new plantings after harvest as new growth will be grown from the stumps with subsequent harvests approximately every five years, as staggered across the respective fields.

DISCUSSION:

Mahipapa is a special purpose entity created by Pacific Current for the acquisition of Green Energy Team's assets and operations. Mahipapa is committed to retaining the current management and staff of Green Energy Team, LLC as part of the transfer.

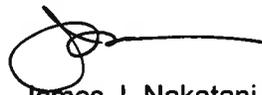
Green Energy Team notes that it has always been their goal to bring their knowledge regarding biomass power generation to Hawaii and to ultimately turn the project over to a local business so that it could benefit the community and the environment for decades to come. The effect of the proposed assignment and transfer would be income neutral for ADC.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board consent to the proposed assignment and transfer of the Licenses from Green Energy Team, LLC to Mahipapa, LLC for biomass production and storage purposes, and to authorize the executive director to execute a written consent to the same, subject to the following conditions:

1. Mahipapa shall assume responsibility to manage the lands in accordance with the existing conservation plans as approved to Green Energy Team; and
2. Mahipapa shall join or become a member or shareholder of the Kalepa Coalition or execute a written agreement with the Kalepa Coalition relating to their responsibilities on common infrastructure maintenance; and
3. Mahipapa shall be bound by the Co-Existence Agreement signed by Kalepa Coalition.

Respectfully Submitted,



James J. Nakatani  
Executive Director

Request to Consent to the Assignment of License Agreement Nos. LI-K1102 and LI-KA1501 from Green Energy Team, LLC to Mahipapa, LLC for Biomass Production Purposes in Kalepa, Kauai, Tax Map Key (4) 3-9-002:001 (por), (4) 3-9-001:004 (por), (4) 3-9-002:009 (por), (4) 3-9-002:020 (por), (4) 4-2-001:003 (por)  
April 20, 2022  
Page 4 of 5

EXHIBIT A

License Agreement No. LI-K1102

[see following pages]

LICENSE AGREEMENT NO. LI-K1102

between

STATE OF HAWAII  
AGRIBUSINESS DEVELOPMENT CORPORATION  
as LICENSOR

and

GREEN ENERGY TEAM LLC  
as LICENSEE

STATE OF HAWAII  
AGRIBUSINESS DEVELOPMENT CORPORATION

LICENSE AGREEMENT NO. LI-K1102

THIS LICENSE made and issued this 3<sup>rd</sup> day of May, 2011, by and between the State of Hawaii by its AGRIBUSINESS DEVELOPMENT CORPORATION, the place of business and mailing address of which is 235 S. Beretania Street, Room 205, Honolulu, Hawaii 96813, hereinafter called "LICENSOR," and GREEN ENERGY TEAM LLC, a Hawaii limited liability company, of which the business and post office address in the State of Hawaii for purposes of this License Agreement is PO Box 340, Anahola, Hawaii 96703, hereinafter called "LICENSEE."

W I T N E S S E T H:

WHEREAS, LICENSOR is obligated to manage and operate that certain parcel of land situated at Wailua (Kalepa), Lihue, Kauai, identified as, "Wailua Agricultural and Related Purpose Site, situated makai of Lihue-Koloa Forest Reserve and between Hanamaulu and the North Fork of the Wailua River," and further identified by Tax Map Key numbers (4)3-9-001:portion 002, (4) 3-9-002: Portion 001, 009, and 020, and (4) 4-2-001:portion 003, containing a gross area of 5963.972 acres, more or less, and a net area of 5870.515 acres, more or less, under Governor's Executive Order No. 4328 dated August 24, 2010, hereinafter referred to as the "Property"; and LICENSOR is authorized to grant licenses for the use of this land for public purposes;

WHEREAS, LICENSEE has requested a license to use a portion of said Property at Kekaha, Kauai for agriculture and biomass clearing, cultivation and production purposes;

WHEREAS, the Kalepa Koalition is, at the time of the execution of this License, an informal organization comprised of the existing revocable permittees of the Property described hereinabove, all of whom have worked collectively and cooperatively with the State of Hawaii to equitably parcel the lands amongst themselves, and who have also successfully designed and installed a security gate system throughout the Property thereby allowing necessary ingress into and egress from the Property by all revocable permittees ("Kalepa Koalition"); and

WHEREAS, LICENSEE has entered into that certain Co-Existence Agreement, evidenced by that certain letter agreement dated May 14, 2008 ("Co-Existence Agreement"), a copy of which is attached hereto as Exhibit "C".

NOW, THEREFORE, in consideration of the terms and conditions herein contained to be observed and performed by LICENSEE, LICENSOR, pursuant to and as set forth in this License, hereby grants to LICENSEE an exclusive license to use that portion of land outlined on the map attached hereto and incorporated herein as Exhibit "A", and more particularly described in Exhibit "B" attached hereto and incorporated herein, containing a land area of one thousand (1,000) acres (portions of Units A, B, and D to M inclusive, and designated as unites GEa, GEb, GEd, GEE, GEf, GEh, GEi, GEj, GEk, GEl, and GEm on Exhibit "B"), more or less, hereinafter referred to as the "Premises." The "Premises" shall not include any areas containing or consisting of any common infrastructure improvements serving the demised Premises that are under the control, operation, or management of the Kalepa Koalition or any other entity, including Licensor.

The license of the Premises hereby granted by LICENSOR to LICENSEE shall be together with the right to use, in common with other licensees or revocable permittees of other lands included with the Property, the roadways providing ingress into and egress from the Premises and the right to use utility easements serving the Premises (excluding such easements for common infrastructure improvements that are under the exclusive control, operation, and management of the Kalepa Koalition or any other entity, including Licensor).

THE TERMS AND CONDITIONS upon which LICENSOR grants the aforesaid license, right, and privilege are as follows:

1. Term. The term of this License is for twenty two (22) years, or until such time as LICENSEE ceases to operate the agribusiness or other permitted use, unless this License is sooner terminated as hereinafter provided.

LICENSEE shall have the option to extend the term of this License for one ten (10) year, provided that:

- (a) At the time of the exercise of the option to extend the license term and at the commencement of the applicable option period, (i) LICENSEE is not then in

default in the performance of any of LICENSEE's obligations contained in this License, and (ii) this License is then in full force and effect,

- (b) The extended term shall be upon the same terms, covenants and conditions as provided in this License, except as to the option being exercised, unless otherwise agreed to by LICENSOR and LICENSEE, and
- (c) LICENSEE shall exercise its option to extend the term of this License by giving written notice thereof to LICENSOR at least one hundred eighty (180) days prior to the expiration of the preceding term.

The base license fee for the option period shall be computed as set forth in Paragraph 2, below.

- 2. License Fee. The base license fee for this License shall be as outlined in the following table, payable in monthly installments, on or before the first of each month.

When	Rent
Upon execution - December 2012	\$15/acre/year
January 2013 - December 2015	\$20/acre/year
January 2016 - December 2016	\$35/acre/year
January 2017 - December, 2033	2.5% annual increase of base rent

The \$15/acre/year shall be the base rent for the period commencing at execution of this License through December, 2012. The \$20/acre/year shall be the base rent for the period January, 2013 through December, 2015. The \$35/acre/year shall be the base rent for the period January, 2016 through December, 2016. The additional two and one-half percent (2.50%) added to each calendar year for January, 2017 through December, 2033 shall be the base rent for each subsequent year. Thus, the base rent shall be \$35.88/acre/year for January, 2017 through December, 2017, \$36.77/acre/year for January, 2018 through December, 2018, \$37.69/acre/year for January, 2019 through December, 2019, and so forth.

LICENSOR and LICENSEE agree that the Premises consist of 1,000 acres, more or less.

- 3. Common Infrastructure Improvement Costs. In addition to the base annual license fee provided in Paragraph 2, above, LICENSEE shall also pay twenty-five percent (25%) of the

costs of operating and maintaining the common infrastructure improvements, the details of such costs and liability therefore to be agreed upon between LICENSEE and the Kalepa Koalition.

4. [Reserved]
5. Interest on Delinquent License Fees. The interest rate on the principal amount of any and all unpaid or delinquent license fee payments shall be one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each delinquent payment.
6. [Reserved.]
7. Taxes, Assessments, and Utilities. LICENSEE shall pay, if and when due, all taxes and similar rates, assessments, charges, and outgoings of every nature and kind whatsoever, which shall during the term of this License be lawfully charged, assessed, imposed, or become due and payable upon the Premises and the improvements now on or hereafter erected by LICENSEE thereon.
8. Character of Use. LICENSEE shall not do or commit, or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the Premises, any nuisance in and upon the Premises, or any unlawful or improper use of the Premises.
  - (a) LICENSEE shall use the Premises hereby demised solely for agriculture and biomass clearing, cultivation and production purposes, as more specifically set forth in LICENSEE's land utilization plan attached hereto as Exhibit "D". LICENSEE's use of the Premises shall be subject to any recorded covenants, conditions, and restrictions of any and all recorded encumbrances on the Premises existing as of the date of this License.
  - (b) No livestock production operations shall be conducted on the Premises without the prior approval of the State Department of Health.
  - (c) All livestock production operations shall be operated and maintained so as not to create any public health problems as determined by the State Department of Health.

- (d) No cesspools shall be constructed on the Premises. However, upon approval from the State Department of Health, LICENSEE may use alternative wastewater treatment and disposal systems which do not pose a threat to the groundwater.
  - (e) No solid or liquid animal waste shall be disposed of at the Premises. Disposal of all solid and liquid animal waste must be by a means acceptable to the State Department of Health.
  - (f) LICENSEE shall take appropriate steps to reduce the risk of any excessive soil erosion by reason of LICENSEE's use of the Premises and to address any material increase in weeds or litter on the Premises.
9. Utilization and Development of the Land. In addition to the ten (10) year harvesting plan set forth in Paragraph 65, below, LICENSEE shall utilize and develop the Premises in accordance with LICENSEE's plan for utilization and development which has been approved by LICENSOR before execution of this License and which is incorporated in LICENSEE's land utilization plan attached as Exhibit "D" hereto. Any modification or deviation from LICENSEE's utilization and development plan without the prior written approval of LICENSOR may constitute a breach of this License and a cause for the termination thereof.
10. Sublicensing. LICENSEE may sublicense or rent the whole or any portion of the Premises provided LICENSEE first obtains the prior written consent of LICENSOR, which consent shall not be unreasonably withheld. Any sublicensing request shall be submitted in writing to LICENSOR, together with a copy of the sublicensee's land utilization plan and rental payment schedule for LICENSOR's consideration. Profit on any sublicense charges are neither allowed, nor shall be sought by LICENSEE.
11. Good Husbandry and Conservation Practices. Insofar as LICENSEE's use of the Premises (as set forth in LICENSEE's land utilization plan, Exhibit "D", hereto) includes the breeding, feeding, and keeping of livestock or other animals, LICENSEE shall at all times practice good husbandry with regard to the use of the Premises for the use permitted. LICENSEE shall carry out a program of conservation based upon a conservation plan developed by LICENSEE in cooperation with the appropriate Soil and Water Conservation District. The

conservation program shall be in accordance with a conservation plan which shall be submitted to LICENSOR for acceptance within one (1) year following the date of this License. The conservation plan shall include, but not be limited to, those practices such as land clearing, cropping system, irrigation system, drainage, noxious weed control, and other measures needed to protect the land against deterioration and to prevent environmental degradation; provided, however, that this requirement may be waived for licenses, premises, or uses with little or no apparent conservation problems when verified by the appropriate Soil and Water Conservation District. In the event the activities of LICENSEE in this regard shall be found to be contradictory to the aforesaid conservation plan or unsatisfactory to LICENSOR, LICENSOR shall notify LICENSEE and LICENSEE shall be required, within sixty (60) days of the notice, to cure or correct the contradictory or unsatisfactory condition and submit proof of such cure or correction that is satisfactory to LICENSOR.

12. Sanitation. LICENSEE shall keep the Premises and improvements in a strictly clean, sanitary, and orderly condition and shall use reasonable and prudent measures to cut, remove, or otherwise control weeds and grass, in complete conformance with applicable laws, rules, and statutes and consistent with the terms and conditions of this License.

13. Improvements. During the term of this License, LICENSEE shall not construct, place, maintain, or install on the Premises any building, structure, signs, or improvement, except with the prior written approval of LICENSOR and upon such conditions as LICENSOR may impose. The preceding sentence shall not apply to any building, structure, signs, or improvement constructed, placed, maintained, or installed on the Premises with the consent and approval of LICENSOR under any prior permit or agreement pursuant to which LICENSEE or any of LICENSEE's permitted assigns, sub-licensees, or permittees occupied the Premises before the effective date of this License. All buildings, structures, signs, or improvements constructed, placed, maintained, or installed pursuant to this paragraph shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in LICENSEE until the expiration or sooner termination of this License, at which time the ownership thereof shall, at the

option of LICENSOR, vest in LICENSOR or shall be removed by LICENSEE at LICENSEE's sole cost and expense.

14. Repairs to Improvements. LICENSEE shall, at its expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the Premises in good order, condition, and repair, reasonable wear and tear excepted. Except for the payment of Common Infrastructure Improvement Costs as provided in Paragraph 3, above, LICENSEE shall have no obligation under this License to keep, repair, or maintain any common infrastructure improvements.
15. Involuntary Liens. LICENSEE shall not commit or suffer any act or neglect which results in the Premises or any improvement thereon becoming subject to any involuntary attachment, lien, charge, or encumbrance, and shall indemnify, defend, and hold LICENSOR harmless from and against all attachments, liens, charges, encumbrances, and all resulting expenses affecting the Premises and caused by LICENSEE.
16. Dwelling Restrictions. The construction or placement of any structure on the Premises for residential purposes is strictly prohibited. LICENSEE, its agents, employees, and invitees shall not use the Premises as a temporary or permanent residence.
17. Non-Discrimination. LICENSEE shall not use the Premises, nor permit the Premises to be used in support of, any policy that unlawfully discriminates against anyone based upon creed, color, national origin, sex, or a physical handicap. LICENSEE shall not practice any unlawful discrimination based upon creed, color, national origin, sex, or a physical handicap.
18. Breach or Default. It is expressly agreed that this License is contingent upon the continuing condition that, if LICENSEE fails to observe or perform substantially the provisions contained herein, and if LICENSEE does not commence to cure, and diligently continue to attempt to cure, such default within sixty (60) days, or thirty (30) days where the default involves a failure to make timely license fee payments, including payment of any Common Infrastructure Improvement Costs (or any substitute assessment or charges specified in Paragraph 3, above) payable directly to LICENSOR, after delivery by LICENSOR of a written notice of such failure by personal service or by registered or certified mail to

LICENSEE; or, if LICENSEE becomes bankrupt or insolvent or files any debtor proceedings or takes or has taken against it for good cause any proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Code seeking readjustment, rearrangement, postponement, composition, or reduction of LICENSEE's debts, liabilities or obligations; then, in any such event, LICENSOR may, at its option, to the extent permitted by law, cancel this License and thereupon take immediate possession of the Premises, after a reasonable time or pursuant to any right of action which LICENSOR may have.

19. Acceptance of Rent Not a Waiver. The acceptance of rent by LICENSOR shall not be deemed a waiver of any breach by LICENSEE of any term, covenant, or condition of this License, of LICENSOR's right to re-entry for breach of covenant, or of LICENSOR's right to declare and enforce a forfeiture for any breach; and the failure of LICENSOR to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred herein, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option.
20. Security Deposit. Upon execution of this License, LICENSEE shall deposit with LICENSOR an amount equal to two (2) times the monthly license fee as security for the faithful performance of all of these terms and conditions. The deposit will be returned to LICENSEE upon termination of this License, but only after all of the terms and conditions of this License have been observed and performed.
21. Assignment. Except as expressly provided in this License, this License is not transferable. At no time during the term of this License shall LICENSEE assign, mortgage, or pledge its interest in this License, or its interest in the improvements now or hereafter erected on the Premises, without the prior written consent of LICENSOR, which consent may be withheld in LICENSOR'S sole discretion.
22. Liability Insurance. LICENSEE shall procure and maintain during the entire period of this License a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire Premises, including all buildings, structures, improvements, and grounds and all

roadways or sidewalks on or adjacent to the Premises in the control or use of LICENSEE. The minimum limit of said policy or policies shall not be less than \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii. Except for the payment of Common Infrastructure Improvement Costs as provided in Paragraph 3, above, LICENSEE shall have no obligation under this License to procure or maintain any commercial general liability insurance with regard to any activities of the Kalepa Coalition or any other entity (including LICENSOR) which has control from time to time over any of the common infrastructure improvements.

LICENSEE, prior to entry and use of the Premises or within fifteen (15) days from the effective date of this License, whichever is sooner, shall furnish LICENSOR with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of this License, and furnish like certificate(s) upon each renewal of the policy(ies). The certificate(s) for such insurance shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(ies) until after thirty (30) days written notice has been given to LICENSEE, except that, in the event this License is terminated, said insurance may be terminated on the same date as this License. The policy shall name LICENSOR as an additional insured.

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

The procuring of the required policy(ies) of insurance shall not be construed to limit LICENSEE's liability under this License. Notwithstanding the policy(ies) of insurance, LICENSEE shall be obligated for the full and total amount of any damage, injury, or loss caused by LICENSEE's negligence or neglect connected with this License.

23. Property Insurance. At all times during the term of this License, LICENSEE shall at its own cost and expense keep any state-owned improvements, which are located on the Premises and which are identified by LICENSOR prior to the commencement date of this License, insured against loss or damage by fire and other hazards, casualties, and contingencies for the full insurable value of those improvements. The policy shall name LICENSOR as an additional insured.

LICENSEE shall furnish to LICENSOR on or before the commencement date of this License a certificate showing such policy(ies) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(ies). Each certificate shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(ies) until after thirty (30) days written notice has been given to LICENSEE, except that, in the event this License is terminated, said insurance may be terminated on the same date as this License. The policy(ies) shall also provide that all rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

24. Right to Enter. LICENSOR reserves the right for its agents or representatives, at all reasonable times during the term, to enter and cross any portion of the Premises at any time for the purpose of performing any public or official duties.
25. Inspection of Premises. LICENSEE shall permit LICENSOR and its agents or representatives, at all reasonable times during the term, to enter the Premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of LICENSEE in connection with the administration of this License.
26. Surrender. At the end of the term or other sooner termination of this License, LICENSEE shall peaceably deliver unto LICENSOR possession of the Premises, together with all

improvements existing or constructed thereon, unless provided otherwise in this License. Furthermore, upon the expiration, termination, or revocation of this License, should LICENSEE fail to remove any and all of LICENSEE's personal property from the Premises, LICENSOR may remove or dispose of any and all personal property from the Premises and either deem the personal property abandoned and dispose of the personal property or place such personal property in storage at the cost and expense of LICENSEE. LICENSEE shall pay all costs and expenses for removal, disposal, transporting, and storage of LICENSEE's personal property. The provisions of this paragraph shall survive the expiration or earlier termination of this License.

27. Withdrawal for Public Purpose. Subject to the restrictions set forth in Paragraph 76, below, LICENSOR shall have the right to withdraw the Premises, or any portion thereof, at any time during the term of this License with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and the Premises shall be subject to the right of LICENSOR to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the Premises; provided that, upon any withdrawal or taking which causes any portion of the Premises originally demised to become unusable for the specific use or uses for which it was demised, the license fee set forth in Paragraph 2, above, shall be reduced in proportion to the value of the Premises withdrawn or made unusable. If any permanent improvement constructed upon the land by LICENSEE is destroyed or made unusable in the process of any withdrawal or taking, the proportionate value thereof shall be paid by LICENSOR to LICENSEE based upon the unexpired term of this License; provided that no withdrawal or taking shall be had as to those portions of the Premises which are then under cultivation with any trees or crops until such trees or crops are harvested, unless LICENSOR pays to LICENSEE the value of the trees and crops; and provided further that, upon any withdrawal or taking, LICENSEE shall be compensated for the present value of all permanent improvements in place at the time of withdrawal or taking that were legally constructed upon the Premises by LICENSEE being withdrawn or taken or that are made unusable because of such withdrawal or taking. In the case of tree crops, LICENSOR shall pay to LICENSEE the residual value of the trees taken and, if there are un-

harvested crops, the value of the crops also. If any withdrawal or taking in LICENSEE's reasonable determination makes the Premises unusable by LICENSEE for the purposes and uses for which LICENSEE is then using the Premises, LICENSEE shall have the right to terminate this License, without waiving any other rights of LICENSEE by reason of such withdrawal or taking.

28. Inspection by Prospective Bidders. For purposes of informing and apprising that person or persons of the condition of the Premises preparatory to the proposed disposition thereof at the expiration of the term or earlier termination of this License, LICENSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following an announcement at any of LICENSOR's public meetings of any proposed disposition of the Premises; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LICENSEE, and shall, if LICENSEE so requires, be made in the company of LICENSEE or designated agents of LICENSEE.
29. Extension of Time. Notwithstanding any provision to the contrary, wherever applicable, LICENSOR, for good cause shown, may allow additional time beyond the time or times specified herein in which LICENSEE may comply, observe, and perform any of the terms, conditions, and covenants contained in this License.
30. Quiet Enjoyment. LICENSOR covenants and agrees with LICENSEE that, upon payment of rent at the times and in the manner specified and upon the observance and performance of the covenants, terms, and conditions hereof on the part of LICENSEE to be observed and performed, LICENSEE shall have, hold, possess, and enjoy the Premises for the term demised, without hindrance or interruption by LICENSOR or any other person or persons lawfully claiming by, through, or under LICENSOR.
31. Abandonment and Termination. If, after putting the Premises into service, LICENSEE abandons or ceases to use the Premises for a period of four (4) or more consecutive months, LICENSOR shall have the right to terminate this License. Any abandonment, termination, or cessation shall not affect or release any liability of LICENSEE at such time existing by reason of a breach of any of the terms hereof.

32. Non-warranty. LICENSOR does not warrant the condition of the Premises, as the same is being licensed "as is." LICENSEE assumes all risks incident to its use. Notwithstanding the foregoing or any other provision of this License, LICENSEE does not assume liability or responsibility for any hazardous material claims resulting from, arising out of, or relating to any hazardous materials on the Premises or hazardous discharge occurring prior to the date of this License, and LICENSOR (and/or LICENSOR's predecessors in interest) shall be solely responsible for and in respect of any such hazardous materials claims.
33. LICENSEE's Risk. Any and all goods, wares, farm supplies, produce, equipment, and personal property of any kind or description that may be on the Premises at any time during the term of this License, regardless of ownership of such property, shall be at the sole risk and hazard of LICENSEE, and LICENSOR shall not be liable or responsible for any loss thereof or damage thereto caused by theft, vandalism, weather, water, defective electric wiring, fire, or by any other cause whatsoever.
34. Applicable Law; Severability. This License shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this License is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.
35. Costs of Litigation. If LICENSOR shall be made a party to any litigation commenced by or against LICENSEE (other than condemnation proceedings), without any fault on LICENSOR's part, LICENSEE shall pay all costs and expenses incurred by or imposed on LICENSOR, including, but not limited to, attorney's fees; furthermore, LICENSEE shall pay all costs and expenses which may be incurred by or paid by LICENSOR in enforcing the covenants and agreements of this License, in recovering possession of the Premises, or in the collection of delinquent license fees, taxes, and any and all other charges.

If LICENSEE shall be made a party to any litigation commenced by or against LICENSOR (other than condemnation proceedings), without any fault on LICENSEE's part, LICENSOR shall pay all costs and expenses incurred by or imposed on LICENSEE, including, but not limited to, attorney's fees; furthermore, LICENSOR shall pay all costs and expenses which may be incurred by or paid by LICENSEE in enforcing the covenants

and agreements of this License; PROVIDED THAT any such litigation arises out of any damage or personal injury resulting from wrongful or negligent acts or omissions of LICENSOR or LICENSOR's employees or agents while acting within the scope of their employment, and LICENSOR's liability for such damage or injury has been determined by a court or otherwise agreed to by LICENSOR. Unless otherwise determined by a court, LICENSOR shall pay for such costs and expenses to the extent that funds therefor have been authorized and appropriated by the Legislature of the State of Hawaii for such purpose and such funds have been allocated therefor by the executive budget process of the State of Hawaii.

36. Indemnity. LICENSEE shall indemnify, defend, and hold harmless the State of Hawaii, LICENSOR, and their officers, employees, and agents from and against any claim or demand for loss, liability, damage, cost, expense, and attorneys' fees, including claims for property damage, personal injury, or wrongful death, arising out of any occurrence on the Premises and roadways adjacent thereto, or occasioned by any act or nuisance made or suffered on the Premises, or by any accident or fire thereon, or growing out of or caused by any failure on the part of LICENSEE to maintain the Premises in a safe condition, or by any act or omission of LICENSEE, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments. The provisions of this paragraph shall survive the expiration or earlier termination of this License.
37. Hunting. Except as otherwise provided in Paragraph 77, below, no hunting shall be allowed on the Premises during the term of this License.
38. Boundary Stakeout. LICENSOR shall not be responsible or liable for the surveying or boundary stakeout of the Premises. LICENSEE shall be solely responsible for any survey and boundary stakeout of the Premises.
39. Fences. LICENSEE shall, wholly at its own cost and expense, fence the whole or portion of the outside perimeter of the Premises if such fencing shall be required by LICENSOR or shall be so required by any law now in force or that may hereafter be enacted and LICENSEE shall and will maintain in

good order and condition throughout the period of this License the fences so constructed and those now existing on the Premises.

40. Drainage Easements. The Premises shall be subject to drainage and flowage easements now of record or otherwise existing under law as and to the extent that the same are applicable to the Premises as of the commencement date of this License. The easement area(s) shall not be altered or used for any purposes which may obstruct flow or reduce the effectiveness of the drainage way, except with LICENSOR's prior written consent which may be conditioned upon appropriate measures undertaken by LICENSEE to divert, re-direct, retain, or detain any storm waters in a manner approved by LICENSOR. LICENSEE shall accept the storm runoff draining into and through the easement area(s), respectively, and shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.
41. Roadway and Utility Easements. The Premises shall be subject to all existing roadway and utility easements, which easements shall be in favor of property owners served by such easements, and to any and all access and other easements over and across the Premises in favor of the Kalepa Coalition or any successor or substitute entity (including LICENSOR) necessary and appropriate for the operation and maintenance of the common infrastructure serving the Property, including the Premises; provided that LICENSEE may cross and may have access over and upon all such easements located on the Premises at any point.
42. Compliance with Laws. LICENSEE shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the Premises which are now in force or later may be in force.
43. Environmental Regulations. LICENSEE shall comply with all applicable federal, state, and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and rules governing historic preservation. LICENSEE shall be responsible for obtaining all necessary federal, state, or county clearances.
44. Hazardous Materials. LICENSOR remains responsible for any environmental issues occurring on the demised Premises prior

to the commencement date of this License. Any environmental issue occurring on Premises after the date of this License shall be the responsibility of LICENSEE.

- (a) During the term of this License, LICENSEE shall not cause or permit the escape, disposal, or release of any hazardous materials, except as permitted by law. LICENSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of LICENSEE's business, and then only after written notice is given to LICENSOR of the identity of such materials and upon LICENSOR's consent, which consent may be withheld at LICENSOR's sole and absolute discretion. LICENSOR may, upon reasonable request and for reasonable cause, require testing of the Premises to ascertain whether or not there has been any release of hazardous materials by LICENSEE. In the event that the results of such testing establish that there has been a release of hazardous materials on the Premises by LICENSEE, LICENSEE shall, in addition to LICENSEE's other obligations hereunder, be responsible for the cost of such testing.

LICENSEE shall execute affidavits, representations, and the like from time to time at LICENSOR's request concerning LICENSEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by LICENSEE. If LICENSEE at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the Premises which could subject LICENSOR, LICENSEE, or the Premises to any liability or restrictions on ownership, occupancy, transferability, or use of the Premises under any hazardous materials laws, LICENSEE shall immediately advise LICENSOR thereof in writing and provide to LICENSOR such detailed reports thereof as may be reasonably requested by LICENSOR. LICENSOR shall have the right in its sole discretion to join and participate in any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

(b) LICENSEE shall be responsible for and shall indemnify, defend, and hold harmless LICENSOR and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials occurring on, under, or about the Premises during the term of this License, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the Premises and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of LICENSOR's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of LICENSOR's enforcement of this covenant, whether or not a lawsuit is brought therefore; and (5) all reasonable costs and expenses incurred by LICENSOR in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees.

(c) The provisions of this paragraph shall survive the expiration or earlier termination of this License.

45. Level One (1) Hazardous Waste Evaluation. At any time during the term or upon termination of this License, LICENSOR, for good cause, may require LICENSEE to conduct at LICENSEE's own expense, a Level One (1) Hazardous Waste Evaluation and a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health, the State Department of Agriculture, and the State Department of Land and Natural Resources, of any hazardous materials and hazardous materials claims attributable to the discharge of any hazardous materials on the Premise during the term of this License. The termination of this License will not be approved by LICENSOR unless this evaluation and abatement provision have been executed where required. This provision shall survive and continue in effect after termination of this License.

46. Soil Erosion. LICENSEE shall not engage in any activity that may result in soil erosion from water or wind. LICENSEE shall control soil erosion as completely as practicable by strip cropping and contouring, by filling in or otherwise controlling small washes or ditches that may form, and by adopting practices recommended by the Natural Resource Conservation Service ("NRCS"). Prior to the termination of this License, LICENSEE shall provide to LICENSOR a NRCS approved erosion control plan. The termination of this License will not be approved by LICENSOR unless LICENSEE is in full compliance with such plan to the satisfaction of NRCS and LICENSOR.
47. Encumbrances. This License is subject to all existing recorded and unrecorded encumbrances. At any time during the term of this License, LICENSOR may create easements and encumbrances upon the Premises in addition to any easements and encumbrances which currently affect the Premises, provided that any such new easements or encumbrances do not unreasonably restrict or interfere with LICENSEE's use of the Premises.
48. Interpretation. The use of any gender shall include all genders. If there is more than one LICENSEE, all words used in the singular shall extend to all LICENSEES.
49. Paragraph Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this License.
50. [Reserved.]
51. [Reserved.]
52. Exhibits - Incorporation in License. All Exhibits referred to in this License are attached to this License and are hereby deemed incorporated by reference.

SPECIAL CONDITIONS:

53. Exclusion of Animals from Forest Lands. LICENSEE shall at all times during the term of this License keep its cattle, horses, and other grazing animals out of any forest reserve, if any, adjacent to the Premises and shall take all reasonable precautions to prevent forest fires, and, in the event fires occur, it shall use all reasonable means at its command or under its control to have the fires speedily extinguished.
54. Commercial Operations. LICENSEE, its employees, customers, guests, agents, and/or invitees shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the Premises without the prior written approval of LICENSOR and upon such terms and conditions established by LICENSOR. No commercial activities whatsoever, including activities such as feedlots (excepting a private feedlot designed to feed LICENSEE's own cattle), dairy milking parlors, or boarding of horses, are permitted without the prior written approval of LICENSOR.
55. Abandoned Vehicles. LICENSEE shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the Premises. Any and all abandoned vehicles within the Premises shall be removed by LICENSEE at LICENSEE's cost and expense.
56. Removal of Trash. LICENSEE shall be responsible for the removal of all illegally dumped trash within the Premises at LICENSEE's cost and expense.
57. Prehistoric and Historic Remains. In the event any unanticipated historic, prehistoric, or archaeological sites or remains, such as shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the Premises, LICENSEE and LICENSEE's agents, employees, and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes, and shall notify LICENSOR of these events.
58. Land Clearing. The Premises have not had a completed archaeological inventory survey. If land clearing or land alteration should need to occur in gulches or wastelands (gullies, valleys, ridges, and mountains), the Historic Preservation Division ("SHPD") shall be contacted prior to

any work. A field check will be required and shall be performed by the SHPD staff archaeologist prior to any work. Clearing by hand is the preferred method of work. If the alteration activity is on a large or significant scale or historic sites are found, then LICENSEE shall have an archaeologist inventory survey performed by a qualified archaeologist prior to any work. A report documenting the archaeological work shall be submitted to the SHPD for review and approval. The report shall include:

1. detailed drawings of burials and deposits to scale,
2. sketches and photographs of all artifacts,
3. analyses of all perishable and datable remains,
4. stratigraphic profiles that are drawn and made to scale,
5. an overall map of the project area, which includes the location of all historic sites,
6. initial significance evaluations for each historic site found, and
7. documentation on the nature and age of historic sites.

If significant historic sites are found, then proposed mitigation or preservation plans must be submitted for review and approval.

If burials are discovered, a burial treatment plan shall be prepared for burial discoveries encountered during work, all in accordance with Hawaii Revised Statutes Section 6E-43.

59. Audits. LICENSOR reserves the right, for purposes of conducting an audit, to examine, and to make copies of all books, accounts, records, and receipts of LICENSEE concerning its operations under this License.
60. Passage and Access. LICENSEE shall not impede or restrict passage or access by other licensees or the Kalepa Coalition and its agent to other areas of the Property or to any common infrastructure serving the Property or any part thereof (including the Premises) that may be located on the Premises.
61. Holding Over. Any holding over by LICENSEE after the expiration of the term of this License with the consent of

LICENSOR shall be construed to be a tenancy from month-to-month at the rent herein provided for the last year of the term of this License and shall otherwise be on the terms and conditions herein specified, so far as applicable.

62. Crop Changes. LICENSEE shall consult with and obtain prior approval from LICENSOR before adding or making changes to the type of crops to be grown as specified in its original business plan submitted with the license application.
63. Recordation. LICENSOR and LICENSEE agree that this License or a short form or memorandum hereof may be recorded in the Bureau of Conveyances of the State of Hawaii or with the Assistant Registrar of the Land Court of the State of Hawaii, as applicable, to give notice of this License to third parties and of the license of the Premises granted hereunder by LICENSOR to LICENSEE for the term specified herein.
64. Agreements with other Tenants. Due to the recent realignment of the parcels, LICENSEE shall use its best efforts to: (a) reasonably settle any and all issues that may arise with other tenants on the Property, and (b) memorialize all such agreements in writing no later than December, 2013, including: (1) ingress and egress issues; (2) disputed survey results relating to parcel boundaries; and (3) any other issues which may arise between LICENSEE and the other tenants.
65. Ten year Harvesting Plan. LICENSEE shall submit to LICENSOR a copy of the ten (10) year plan to harvest Albizia trees using best practices in the industry on the Premises as required by the State of Hawaii, Department of Land and Natural Resources ("DLNR") including if applicable and where economically viable the removal of Albizia trees from the other tenants' parcels. The ten (10) year plan is to be submitted prior to harvesting the Albizia trees on LICENSOR property. The species of trees selected for new plantings must be pre-approved in writing by DLNR, Division of Forestry and Wildlife and LICENSOR. Notwithstanding Paragraph 58, above, LICENSEE shall not be required to implement manual clearing of the Premises.
66. Adequate Funding and Financing. LICENSEE shall submit to LICENSOR evidence of adequate funding or financing for LICENSEE's proposed project within one (1) year of the date of the execution of this License, such as lending

commitments, investment commitments, bonding commitments or the equivalent.

67. Use of Land. LICENSEE must be conducting agricultural activities, including initial clearing activities, on fifty percent (50%) or more of the Premises and justify that one hundred percent (100%) of the Premises will be needed for the project within three (3) years of the date of the execution of this License.
68. Soil and Water Conservation Plan. LICENSEE shall submit to LICENSOR a copy of its approved soil and water conservation plan, which plan must include the removal of Albizia trees from the Property, if applicable, within two (2) years of the date of the execution of this License. LICENSEE shall submit a revised soil and water conservation plan to LICENSOR if LICENSEE makes changes to its initial planting or harvesting practices which require terrain alteration.
69. Power Purchase Agreement. LICENSEE shall submit to LICENSOR a copy of the approval document from the State of Hawaii, Public Utilities Commission relating to the applicable Power Purchase Agreement with the Kauai Island Utility Cooperative, within three (3) years of the date of the execution of this License.
70. East Kauai Water Users Cooperative. In the event LICENSEE determines that irrigation water is needed for the Premises, LICENSEE shall work with the East Kauai Water Users Cooperative ("EKWUC") and properly compensate the EKWUC for use of the water.
71. Kalepa Koalition. In addition to the Co-Existence Agreement signed by LICENSEE and the Kalepa Koalition, LICENSEE shall join or become a member or shareholder of the Kalepa Koalition or execute a written agreement with the Kalepa Koalition relating to LICENSEE's responsibilities on common infrastructure maintenance.
72. Surety Bond. Unless otherwise instructed by LICENSOR, LICENSEE shall remove all trees and vegetation, including stumps, restoring the Premises to arable, pasture lands condition before vacating the property. LICENSEE shall procure a surety bond in an amount no less than the amount reflected in the letter of commitment, attached hereto as Exhibit "E", to ensure LICENSEE's financial ability to restore the Premises, said bond to cover the removal of trees

for four hundred (400) acres as of the date of the execution of this License, and the entire 1000 acres after year 5 of this License. The bond shall be for no less than \$1350/acre plus two percent (2%) annual adjustment for inflation minus the biomass sales.

73. Vegetative Buffer Zone. LICENSEE shall maintain the existing vegetative buffer zones along the plateau and valley rims. Any clearing or trimming activities shall be upon approval of LICENSOR.
74. Land Clearing. Prior to any land clearing or land alteration in the gulches or wastelands within the Premises, LICENSEE shall first obtain the written approval of the Historic Preservation Division of the Department of Land and Natural Resources.
75. Irrigation System Maintenance. LICENSEE shall be required to maintain that part of the irrigation system that is within the Premises in its current condition, by keeping the ditches free and clear of vegetative overgrowth and debris. Except for routine maintenance, alteration of these irrigation ditches shall not be allowed without prior written approval from LICENSOR.
76. Restrictions on Withdrawal for Public Purpose. LICENSOR's right to withdraw the Premises, or any portion thereof, shall be limited to those public purposes related to infrastructure needs, such as transportation systems such as agricultural and emergency roadways, irrigation systems and accessories thereto, electrical and other energy systems and accessories thereto. For purposes of this License, public purpose infrastructure does not include communication infrastructure or potable water systems.
77. Hunting. Notwithstanding the restriction on hunting on the Premises, LICENSEE shall be allowed to eradicate animals and other pest animals that threaten or harm LICENSEE's operations or activities on the Premises. LICENSEE or its agents shall first secure all appropriate licenses or permits authorizing any eradication method(s) used on the Premises. Where practicable, LICENSEE shall ensure that humane methods of eradication be practiced in all eradication activities.
78. FENCES. Notwithstanding Paragraph 39, above, LICENSOR acknowledges that LICENSEE has fulfilled its obligation under

the Co-Existence Agreement, Exhibit "C" hereto, to install new boundary fencing around the perimeter of the Premises.

#### DEFINITIONS

As used in this License, unless the context otherwise requires:

"Property" means the approximately 6,000 acres of land set aside to LICENSOR under Governor's Executive Order No. 4328 dated August 24, 2010, including buildings and improvements.

"Premises" or "demised Premises," includes the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon except for any buildings or improvements specifically excluded from the description of the Premises in the License.

"Sub-licensing," includes any long-term or short-term rental of the property to a third party.

"Drainage easements" and "flowage easements" mean natural or improved drainage courses that serve to convey stream flows from one point to another.

"Hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, including any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their

products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the Premises.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of LICENSEE's knowledge, contemplated or threatened, with respect to the Premises pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of LICENSEE's knowledge, contemplated or threatened by any third party against LICENSEE or the Premises seeking damages, contribution, cost recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the Premises.

"Hazardous materials laws" means and includes all federal, state, and local laws, ordinances, and regulations now or hereafter in effect relating to environmental conditions, industrial hygiene and/or hazardous materials on, within, under, or about the Premises, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act 49 U.S.C. §1801, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. §§300f through 300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar state or local laws, ordinances, and the regulations now or hereafter adopted, published, and/or promulgated pursuant thereto.

"LICENSEE" includes LICENSEE, its heirs, personal representatives, executors, administrators, successors, and permitted assigns.

"Waste" includes (1) permitting the Premises or any portion thereof to become unduly eroded or failure to take proper

precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds or alien plant species in or on the demised Premises or any portions thereof, other than alien plant species introduced pursuant to the land use plan described in Exhibit "D" attached hereto; (3) abandonment of the demised Premises.

"Days" shall mean calendar days, unless otherwise specified.

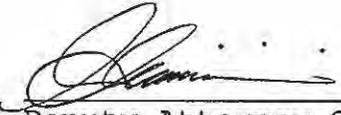
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 3<sup>rd</sup> day of May, 2011.

LICENSOR

STATE OF HAWAII,  
AGRIBUSINESS DEVELOPMENT  
CORPORATION

APPROVED AS TO FORM:

By   
Its Executive Director

  
Deputy Attorney General

LICENSEE

GREEN ENERGY TEAM LLC

By   
Its Authorized Representative

By \_\_\_\_\_  
Its \_\_\_\_\_

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

On this 3rd day of May, 2011, before me personally appeared Eric Knutzen and \_\_\_\_\_, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Doc. Date: 5/3/11 # Pages: 37  
Iris Rementer First Circuit  
Doc. Description: License Agreement  
btwn. ADC and Green  
Energy (No. LI-K1102)  
Iris Rementer 5/3/11  
Notary Signature Date

Iris Rementer

**Iris Rementer**  
Notary Public, State of Hawaii

My commission expires: 03/20/2012

**NOTARY CERTIFICATION**



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

On this 3rd day of May, 2011, before me personally appeared Alfredo A. Lee and \_\_\_\_\_, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

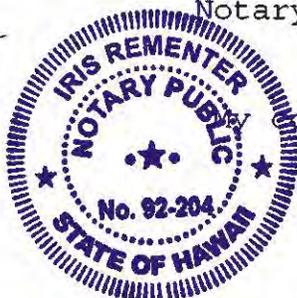
Iris Rementer

**Iris Rementer**  
Notary Public, State of Hawaii

My commission expires: 03/20/2012

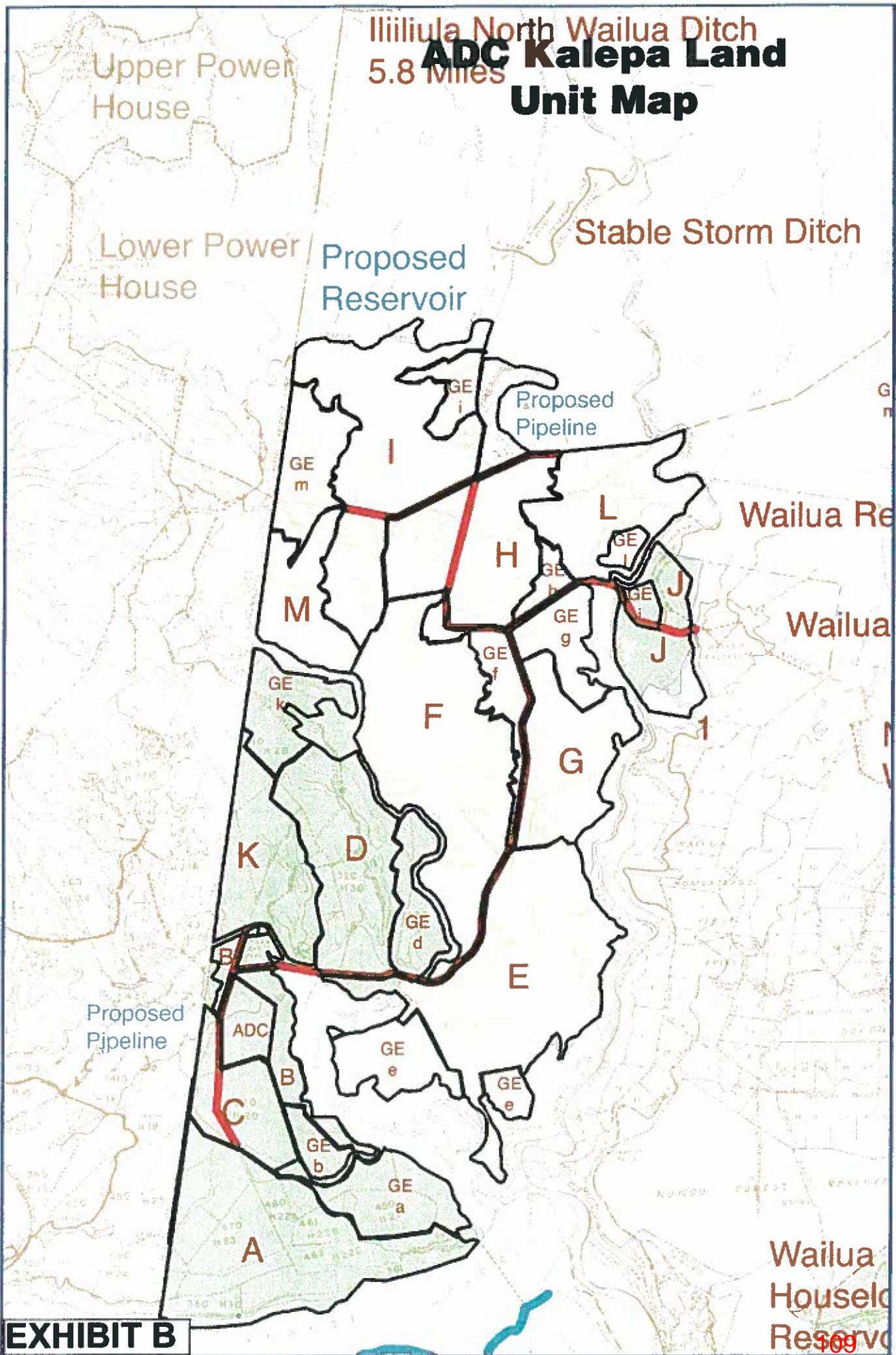
Doc. Date: 5/3/11 # Pages: 37  
Iris Rementer First Circuit  
Doc. Description: License Agreement  
btwn. ADC and Green  
Energy (No. LI-K1102)  
Iris Rementer 5/3/11  
Notary Signature Date

**NOTARY CERTIFICATION**





Ililiula North Wailua Ditch  
**ADC Kalepa Land**  
5.8 Miles  
**Unit Map**



**EXHIBIT B**

Wailua  
Household  
Reserve

**Kalepa Koalition**

6277 Puuopai Place  
Kapaa, Hawaii 96746  
Phone/Fax: 808-822-3392

TO: Ron Agor  
BLNR  
Fax: 246-1091

May 14, 2008

RE: Summary of Conditions for Transference of Portions of Kalepa Lands to Green Energy Team LLC (Green Energy), Mutually Agreed to between Green Energy and Kalepa Koalition, May 5, 2008

Aloha,

Kalepa Koalition members voluntarily identified approximately 1050 acres for transfer to Green Energy, as noted on the attached spreadsheet and map of February 8, 2008 (as since amended by Ron Agor in interaction with the unit holders) subject to the following conditions:

1. The transfer of all 6,700 to ADC from DLNR to be completed and long-term licenses be issued to existing parcel holders who desire to continue with their parcels under ADC's terms and rent.
2. There are no additional plantings of Albizia. Albizia may be harvested for a period of up to ten years on areas retained by the parcel holders, at the discretion of the parcel holder, and as worked out between the parcel holder and GE. GE's parcels to be managed using reasonable care to avoid infestation with Albizia in areas that are presently clear.
3. Biomass species to be planted by GE to be approved by DLNR Division of Forestry and Wildlife (DOFAW).
4. Should GE's business fail, first right of refusal to reoccupy forfeited areas offered to original parcel holder.
5. A general maintenance agreement shall be established through ADC and all parcel holders to address roads, bridges and all common element areas including security gates.
6. GE to become a member of the Koalition and share 25% of the common maintenance expenses.
7. GE will pay existing RP holders for fencing, security and irrigation improvement as

outlined in the buy-back clause specified in the existing RPs for the areas which GE takes over. These payments to current RP holders will be paid by GE upon the earlier event of the physical removal of the fence by GE or upon the current tenant vacating the respective parcels, in all cases no earlier than 90 days after the Land Board Decision. This is presently estimated at about \$97,000, final figure has to be based on actual measurement subject to field survey by GE.

8. GE is responsible to install new boundary fencing where required to separate grazing areas from their plantings. This is estimated at about 5,000 feet of fence.

9. GE to pay to the Kalepa Koalition bank account \$1,725 30 days after invoice received, which is 25% of the cost of the security gate system - which has been established and maintained by the Kalepa Koalition. GE to follow Koalition practices with regard to keeping gates locked. GE may acquire non-duplicable keys to the gate system at a cost of \$20 each from the Koalition key master, which is Saiva Siddhanta Church.

10. Disagreements to be settled by binding arbitration conducted by the landlord.

These conditions are mutually agreed to by both Green Energy Team LLC and the Kalepa Koalition represented by the Kalepa interim chair who provided all members with a copy of this document on May 10. Koalition members were asked to contact Ron Agor directly should they have any objections.

Respectfully submitted,

**Kalepa Koalition**



\_\_\_\_\_  
Leslie P. Milnes, Interim Chair

May 15, 2008

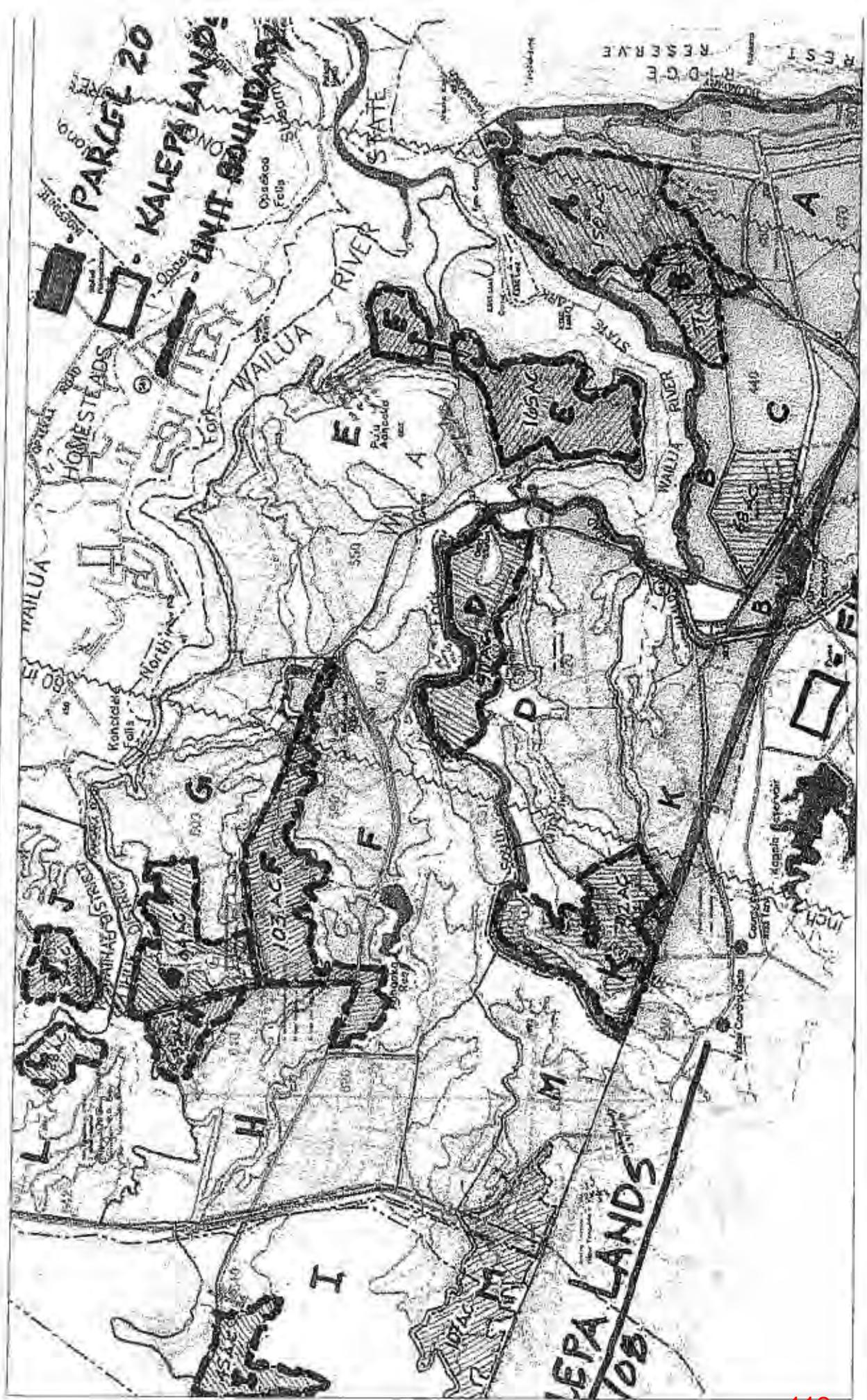
\_\_\_\_\_  
Date:

**Green Energy Team LLC**



\_\_\_\_\_  
Eric Knutzen

\_\_\_\_\_  
Date:





Kalepa Lands, FINAL Surveying Results  
December 28, 2010

Renewable energy from biomass: agricultural jobs, economics such as cost savings and multiplier effect of every dollar kept on Kaua'i - and no importation of 3,000,000 gallons of fossil fuel per year - good for the people of Kaua'i

RP Holder, Unit	Esaki, Existing Fencing	Check Value/sq ft \$ 2.50	GE, New Fencing
Mervin Rapozo, H	2,723	6,807.50	2,906
Bray, L	0	0.00	1,175
Jerry Sanchez, J	1,522	3,805.00	0
Godwin Esaki, F	0	0.00	0
Bunao, C	7,801	19,502.50	1,559
Malina, Lester Calipjo, K	8,384	20,960.00	934
Tony Reis, D	1,047	2,617.50	782
Les Milnes	0	0.00	0
Derrick Rapozo	0	0.00	0
Saiva Treeline buyback	1,650	1,650.00	0
Willy Sanchez, A	15,986	39,965.00	0
Willy Sanchez, M	2,719	6,797.50	946
Saiva, G	0	0.00	0

EXHIBIT "D"

Licensee's Land Utilization Plan

Licensee shall use the Premises for the cultivation, harvesting and chipping/mulching of trees, grasses and/or other biomass crops, to be used as fuel for Licensee's off-Premises power generation facility. Such activities shall include, without limitation, the use of heavy equipment such as trucks and cranes, and the use of ash and other fertilizers.

END OF EXHIBIT "D"



EXHIBIT "E"

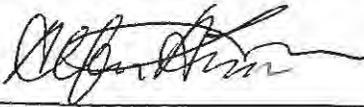
[Surety Letter of Commitment]

END OF EXHIBIT "E"

The maximum net value of the bond to be posted is \$212,120.00 escalated at 2.0 percent per year starting in year 2013. A commitment letter will follow as an additional exhibit no later than June 1, 2011.

STATE OF HAWAII  
AGRIBUSINESS DEVELOPMENT CORPORATION

GREEN ENERGY TEAM LLC



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Request to Consent to the Assignment of License Agreement Nos. LI-K1102 and LI-KA1501 from Green Energy Team, LLC to Mahipapa, LLC for Biomass Production Purposes in Kalepa, Kauai, Tax Map Key (4) 3-9-002:001 (por), (4) 3-9-001:004 (por), (4) 3-9-002:009 (por), (4) 3-9-002:020 (por), (4) 4-2-001:003 (por)  
April 20, 2022  
Page 5 of 5

EXHIBIT B

License Agreement No. LI-KA1501

[see following pages]

LICENSE AGREEMENT NO. LI-KA1501

between

STATE OF HAWAII  
AGRIBUSINESS DEVELOPMENT CORPORATION  
as LICENSOR

and

GREEN ENERGY TEAM LLC  
as LICENSEE

STATE OF HAWAII  
AGRIBUSINESS DEVELOPMENT CORPORATION

LICENSE AGREEMENT NO. LI-KA1501

THIS LICENSE made and issued this 1st day of October, 2014, by and between the State of Hawaii by its AGRIBUSINESS DEVELOPMENT CORPORATION, the place of business and mailing address of which is 235 S. Beretania Street, Room 205, Honolulu, Hawaii 96813, hereinafter called "LICENSOR," and GREEN ENERGY TEAM LLC, a Hawaii limited liability company, of which the business and post office address in the State of Hawaii for purposes of this License Agreement is 3-2600 Kaumualii Highway, Suite 1300#300, Lihue, Hawaii 96766, hereinafter called "LICENSEE."

W I T N E S S E T H:

WHEREAS, LICENSOR is obligated to manage and operate that certain parcel of land situated at Wailua (Kalepa), Lihue, Kauai, identified as, "Wailua Agricultural and Related Purpose Site, situated makai of Lihue-Koloa Forest Reserve and between Hanamaulu and the North Fork of the Wailua River," and further identified by Tax Map Key numbers (4)3-9-001:002 (por.), (4) 3-9-002:001, 009, and 020, and (4) 4-2-001:003, containing a gross area of 6,178.752 acres, more or less, and a net area of 6,084.395 acres, more or less, under Governor's Executive Order No. 4328 dated August 24, 2010, and Governor's Executive Order No. 4401, dated February 20, 2012, hereinafter referred to as the "Property"; and LICENSOR is authorized to grant licenses for the use of this land for agricultural and related purposes;

WHEREAS, LICENSOR and LICENSEE had previously entered into that certain License Agreement No. LI-K1102, dated May 3, 2011 (the "License Agreement No. LI-K1102"), whereby LICENSOR had granted to LICENSEE an exclusive license to use that portion of the Property more fully described in License Agreement No. LI-K1102;

WHEREAS, LICENSEE has requested a license to use another portion of said Property at Kalepa, Kauai for agriculture and biomass clearing, cultivation and production purposes, which portion is more fully described hereinbelow;

WHEREAS, the Kalepa Koalition, a Hawaii agriculture/fish co-op (the Kalepa Koalition) is, at the time of the execution of

this License, an organization comprised of the existing licensees and revocable permittees of the Property described hereinabove, all of whom have worked collectively and cooperatively with the State of Hawaii to equitably parcel the lands amongst themselves, and who have also successfully designed and installed a security gate system throughout the Property thereby allowing necessary ingress into and egress from the Property by all licensees and revocable permittees ("Kalepa Koalition"); and

WHEREAS, LICENSEE has entered into that certain Co-Existence Agreement, evidenced by that certain letter agreement dated May 14, 2008 ("Co-Existence Agreement"), a copy of which is attached hereto as Exhibit "C".

WHEREAS, LICENSOR has agreed to allow the Kalepa Koalition to manage the maintenance of the common roads and security gates at the Property in exchange for mutual consideration and other agreed upon terms, as set forth in that certain Memorandum of Understanding dated January 10, 2013, between the LICENSOR and the Kalepa Koalition, as amended from time to time ("MOU");

NOW, THEREFORE, in consideration of the terms and conditions herein contained to be observed and performed by LICENSEE, LICENSOR, pursuant to and as set forth in this License, hereby grants to LICENSEE an exclusive license to use that portion of land outlined on the map attached hereto and incorporated herein as Exhibit "A", and more particularly described in Exhibit "B" attached hereto and incorporated herein, containing a land area of 25.00 acres in Unit GE(B1), 78.38 acres in Unit GE(B2), and 65 acres in Unit N, for a total area of land consisting of 168.38 acres, more or less, hereinafter referred to as the "Premises." The "Premises" shall not include any areas containing or consisting of any common infrastructure improvements serving the demised Premises that are under the control, operation, or management of the Kalepa Koalition or any other entity, including LICENSOR.

The license of the Premises hereby granted by LICENSOR to LICENSEE shall be together with the right to use, in common with other licensees or revocable permittees of other lands included with the Property, the roadways providing ingress into and egress from the Premises and the right to use utility easements serving the Premises (excluding such easements for common infrastructure improvements that are under the exclusive control, operation, and management of the Kalepa Koalition or any other entity, including Licensor).

THE TERMS AND CONDITIONS upon which LICENSOR grants the aforesaid license, right, and privilege are as follows:

1. Term. The term of this License is for thirty five (35) years, or until such time as LICENSEE ceases to operate the agribusiness or other permitted use, unless this License is sooner terminated as hereinafter provided in Special Conditions.

The base annual license fee for the option period shall be computed as set forth in Paragraph 2, below.

2. License Fee. The base annual license fee for this License shall be as outlined in the following table, payable in monthly installments, on or before the first of each month.

<b>EFFECTIVE</b>	<b>CLASSIFICATION</b>	<b>BASE RENT PER ACRE PER YEAR</b>	<b>ACRES</b>	<b>ANNUAL RENT PER CLASSI- FICATION</b>
Upon execution until last day of 5th year	Biomass farming	\$35	25.00	\$875.00
	Biomass farming	\$100	78.38	\$7,838.00
	Biomass farming	\$30	65.00	\$1,950.00

The \$35/acre/year shall be the base rent for the 35-year term for biomass on only the 25-acre portion of Unit B1 that is projected to be the site of a future slaughterhouse. Upon no less than 1 year's written notice from LICENSOR, LICENSEE shall vacate that portion of Unit B1 that LICENSOR, in its sole discretion, deems reasonable and necessary for the construction of a United States Department of Agriculture-approved slaughterhouse facility. The \$100/acre/year shall be the base rent for the 78.38 acres of Unit B2 that will be utilized for biomass. The \$30/acre/year shall be the base rent for the 65.00 acres of Unit N that will be utilized for biomass. An additional two and one-half percent (2.50%) shall be added to the base rent for each subsequent five (5)-year period during the term of this License.

LICENSOR and LICENSEE agree that the Premises consist of 168.38 acres, more or less.

The total acres stated in the preceding sentence is subject to further review and upon clarification of more accurate acreage, LICENSEE agrees to pay any additional applicable license fees that may have accrued.

3. Common Infrastructure Improvement Costs. LICENSOR and LICENSEE acknowledge and agree that the arrangements that LICENSEE had made with the Kalepa Koalition under the License Agreement No. LI-K1102 concerning the costs of operating and maintaining the common infrastructure improvements, apply to and cover the Premises under this License.
4. [Reserved]
5. Interest on Delinquent License Fees. The interest rate on the principal amount of any and all unpaid or delinquent license fee payments shall be one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each delinquent payment.
6. [Reserved.]
7. Taxes, Assessments, and Utilities. LICENSEE shall pay, if and when due, all taxes and similar rates, assessments, charges, and outgoings of every nature and kind whatsoever, which shall during the term of this License be lawfully charged, assessed, imposed, or become due and payable upon the Premises and the improvements now on or hereafter erected by LICENSEE thereon.
8. Character of Use. LICENSEE shall not do or commit, or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the Premises, any nuisance in and upon the Premises, or any unlawful or improper use of the Premises.
  - (a) LICENSEE shall use the Premises hereby demised solely for agriculture and biomass clearing, cultivation and production purposes, as more specifically set forth in LICENSEE's land utilization plan attached hereto as Exhibit "D". LICENSEE's use of the Premises shall be subject to any recorded covenants, conditions, and restrictions of any and all recorded encumbrances on the Premises existing as of the date of this License.
  - (b) No livestock production operations shall be conducted on the Premises without the prior approval of the State Department of Health.
  - (c) All livestock production operations shall be operated and maintained so as not to create any public health

problems as determined by the State Department of Health.

(d) No cesspools shall be constructed on the Premises. However, upon approval from the State Department of Health, LICENSEE may use alternative wastewater treatment and disposal systems which do not pose a threat to the groundwater.

(e) No solid or liquid animal waste shall be disposed of at the Premises. Disposal of all solid and liquid animal waste must be by a means acceptable to the State Department of Health.

(f) LICENSEE shall take appropriate steps to reduce the risk of any excessive soil erosion by reason of LICENSEE's use of the Premises and to address any material increase in weeds or litter on the Premises.

9. Utilization and Development of the Land. In addition to the ten (10) year harvesting plan set forth in Paragraph 65, below, LICENSEE shall utilize and develop the Premises in accordance with LICENSEE's plan for utilization and development which has been approved by LICENSOR before execution of this License and which is incorporated in LICENSEE's land utilization plan attached as Exhibit "D" hereto. Any modification or deviation from LICENSEE's utilization and development plan without the prior written approval of LICENSOR may constitute a breach of this License and a cause for the termination thereof.

10. Sublicensing. LICENSEE shall not sublicense or rent the whole or any portion of the Premises without the prior written consent of LICENSOR, which consent may be withheld in LICENSOR's sole discretion. Any sublicensing request shall be submitted in writing to LICENSOR, together with a copy of the sublicensee's land utilization plan and rental payment schedule for LICENSOR's consideration. Profit on any sublicense charges are neither allowed, nor shall be sought by LICENSEE.

11. Good Husbandry and Conservation Practices. Insofar as LICENSEE's use of the Premises (as set forth in LICENSEE's land utilization plan, Exhibit "D", hereto) includes the breeding, feeding, and keeping of livestock or other animals, LICENSEE shall at all times practice good husbandry with regard to the use of the Premises for the use permitted.

LICENSEE shall carry out a program of conservation based upon a conservation plan developed by LICENSEE in cooperation with the appropriate Soil and Water Conservation District. The conservation program shall be in accordance with a conservation plan which shall be submitted to LICENSOR for acceptance within one (1) year following the date of this License. The conservation plan shall include, but not be limited to, those practices such as land clearing, cropping system, irrigation system, drainage, noxious weed control, and other measures needed to protect the land against deterioration and to prevent environmental degradation; provided, however, that this requirement may be waived for licenses, premises, or uses with little or no apparent conservation problems when verified by the appropriate Soil and Water Conservation District. In the event the activities of LICENSEE in this regard shall be found to be contradictory to the aforesaid conservation plan or unsatisfactory to LICENSOR, LICENSOR shall notify LICENSEE and LICENSEE shall be required, within sixty (60) days of the notice, to cure or correct the contradictory or unsatisfactory condition and submit proof of such cure or correction that is satisfactory to LICENSOR.

12. Sanitation. LICENSEE shall keep the Premises and improvements in a strictly clean, sanitary, and orderly condition and shall use reasonable and prudent measures to cut, remove, or otherwise control weeds and grass, in complete conformance with applicable laws, rules, and statutes and consistent with the terms and conditions of this License.
  
13. Improvements. During the term of this License, LICENSEE shall not construct, place, maintain, or install on the Premises any building, structure, signs, or improvement, except with the prior written approval of LICENSOR and upon such conditions as LICENSOR may impose. The preceding sentence shall not apply to any building, structure, signs, or improvement constructed, placed, maintained, or installed on the Premises with the consent and approval of LICENSOR under any prior permit or agreement pursuant to which LICENSEE or any of LICENSEE's permitted assigns, sub-licensees, or permittees occupied the Premises before the effective date of this License. All buildings, structures, signs, or improvements constructed, placed, maintained, or installed pursuant to this paragraph shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in

LICENSEE until the expiration or sooner termination of this License, at which time the ownership thereof shall, at the option of LICENSOR, vest in LICENSOR or shall be removed by LICENSEE at LICENSEE's sole cost and expense.

14. Repairs to Improvements. LICENSEE shall, at its expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the Premises in good order, condition, and repair, reasonable wear and tear excepted. Except for the payment of Common Infrastructure Improvement Costs and other related assessments to the Kalepa Koalition, pursuant to the MOU and to the Charter, Bylaws, Rules and/or duly adopted Resolutions of the Kalepa Koalition ("Kalepa Koalition Documents"), LICENSEE shall have no obligation under this License to keep, repair, or maintain any common road or security gate improvements.
15. Involuntary Liens. LICENSEE shall not commit or suffer any act or neglect which results in the Premises or any improvement thereon becoming subject to any involuntary attachment, lien, charge, or encumbrance, and shall indemnify, defend, and hold LICENSOR harmless from and against all attachments, liens, charges, encumbrances, and all resulting expenses affecting the Premises and caused by LICENSEE.
16. Dwelling Restrictions. The construction or placement of any structure on the Premises for residential purposes is strictly prohibited. LICENSEE, its agents, employees, and invitees shall not use the Premises as a temporary or permanent residence.
17. Non-Discrimination. LICENSEE shall not use the Premises, nor permit the Premises to be used in support of, any policy that unlawfully discriminates against anyone based upon creed, color, national origin, sex, or a physical handicap. LICENSEE shall not practice any unlawful discrimination based upon creed, color, national origin, sex, or a physical handicap.
18. Breach or Default. It is expressly agreed that this License is contingent upon the continuing condition that, if LICENSEE fails to observe or perform substantially the provisions contained herein, and if LICENSEE does not commence to cure, and diligently continue to attempt to cure, such default within sixty (60) days, or thirty (30) days where the default involves a failure to make timely license fee payments,

including payment of any Common Infrastructure Improvement Costs (or any substitute assessment or charges specified in Paragraph 3, above) payable directly to LICENSOR, after delivery by LICENSOR of a written notice of such failure by personal service or by registered or certified mail to LICENSEE; or, if LICENSEE becomes bankrupt or insolvent or files any debtor proceedings or takes or has taken against it for good cause any proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Code seeking readjustment, rearrangement, postponement, composition, or reduction of LICENSEE's debts, liabilities or obligations; then, in any such event, LICENSOR may, at its option, to the extent permitted by law, cancel this License and thereupon take immediate possession of the Premises, after a reasonable time or pursuant to any right of action which LICENSOR may have.

19. Acceptance of Rent Not a Waiver. The acceptance of rent by LICENSOR shall not be deemed a waiver of any breach by LICENSEE of any term, covenant, or condition of this License, of LICENSOR's right to re-entry for breach of covenant, or of LICENSOR's right to declare and enforce a forfeiture for any breach; and the failure of LICENSOR to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred herein, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option.
20. Security Deposit. Upon execution of this License, LICENSEE shall deposit with LICENSOR an amount equal to two (2) times the monthly license fee as security for the faithful performance of all of these terms and conditions. The deposit will be returned to LICENSEE upon termination of this License, but only after all of the terms and conditions of this License have been observed and performed.
21. Assignment. Except as expressly provided in this License, this License is not transferable. At no time during the term of this License shall LICENSEE assign, mortgage, or pledge its interest in this License, or its interest in the improvements now or hereafter erected on the Premises, without the prior written consent of LICENSOR, which consent may be withheld in LICENSOR'S sole discretion.
22. Liability Insurance. LICENSEE shall procure and maintain during the entire period of this License a policy or policies of commercial general liability insurance sufficient to

protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire Premises, including all buildings, structures, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the control or use of LICENSEE. The minimum limit of said policy or policies shall not be less than \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii. Except for the payment of Common Infrastructure Improvement Costs as provided in Paragraph 3, above, LICENSEE shall have no obligation under this License to procure or maintain any commercial general liability insurance with regard to any activities of the Kalepa Coalition or any other entity (including LICENSOR) which has control from time to time over any of the common infrastructure improvements.

LICENSEE, prior to entry and use of the Premises or within fifteen (15) days from the effective date of this License, whichever is sooner, shall furnish LICENSOR with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of this License, and furnish like certificate(s) upon each renewal of the policy(ies). The certificate(s) for such insurance shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(ies) until after thirty (30) days written notice has been given to LICENSEE, except that, in the event this License is terminated, said insurance may be terminated on the same date as this License. The policy shall name LICENSOR as an additional insured.

LICENSOR shall retain the right at any time to review the coverage, form, and amount of the insurance required by this License. If, in the opinion of LICENSOR, the insurance provisions in this License do not provide adequate protection for LICENSOR, LICENSOR may require LICENSEE and any permitted sublicensee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. LICENSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LICENSOR shall notify LICENSEE in writing of changes in the insurance requirements and LICENSEE shall deposit copies of acceptable insurance

policy(ies) or certificate(s) thereof with LICENSOR incorporating the required changes within thirty (30) days of LICENSEE's receipt of the notice from LICENSOR requiring the same.

The procuring of the required policy(ies) of insurance shall not be construed to limit LICENSEE's liability under this License. Notwithstanding the policy(ies) of insurance, LICENSEE shall be obligated for the full and total amount of any damage, injury, or loss caused by LICENSEE's negligence or neglect connected with this License.

23. Property Insurance. At all times during the term of this License, LICENSEE shall at its own cost and expense keep any state-owned improvements, which are located on the Premises and which are identified by LICENSOR prior to the commencement date of this License, insured against loss or damage by fire and other hazards, casualties, and contingencies for the full insurable value of those improvements. The policy shall name LICENSOR as an additional insured.

LICENSEE shall furnish to LICENSOR on or before the commencement date of this License a certificate showing such policy(ies) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(ies). Each certificate shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(ies) until after thirty (30) days written notice has been given to LICENSEE, except that, in the event this License is terminated, said insurance may be terminated on the same date as this License. The policy(ies) shall also provide that all rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

24. Right to Enter. LICENSOR reserves the right for its agents or representatives, at all reasonable times during the term, to enter and cross any portion of the Premises at any time for the purpose of performing any public or official duties.
25. Inspection of Premises. LICENSEE shall permit LICENSOR and its agents or representatives, at all reasonable times during the term, to enter the Premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of LICENSEE in connection with the administration of this License.

26. Surrender. At the end of the term or other sooner termination of this License, LICENSEE shall peaceably deliver unto LICENSOR possession of the Premises, together with all improvements existing or constructed thereon, unless provided otherwise in this License. Furthermore, upon the expiration, termination, or revocation of this License, should LICENSEE fail to remove any and all of LICENSEE's personal property from the Premises, LICENSOR may remove or dispose of any and all personal property from the Premises and either deem the personal property abandoned and dispose of the personal property or place such personal property in storage at the cost and expense of LICENSEE. LICENSEE shall pay all costs and expenses for removal, disposal, transporting, and storage of LICENSEE's personal property. The provisions of this paragraph shall survive the expiration or earlier termination of this License.

27. Withdrawal for Public Purpose; Condemnation.

A. Withdrawal for a Public Purpose. Subject to the restrictions set forth in Paragraph 76 below, LICENSOR shall have the right to withdraw the Premises, or any portion thereof, at any time during the term of this License with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and the Premises shall be subject to the right of LICENSOR to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the Premises; provided that, upon any withdrawal or taking which causes any portion of the Premises to become unusable for the specific use or uses for which it was licensed, the base annual rent shall be reduced in proportion to the value of the Premises withdrawn or made unusable. If any permanent improvement constructed upon the land by LICENSEE is destroyed or made unusable in the process of any withdrawal or taking, the proportionate value thereof shall be paid by LICENSOR to LICENSEE based upon the unexpired term of this License; provided that no withdrawal or taking shall be had as to those portions of the Premises which are then under cultivation with any trees or crops until such trees or crops are harvested, unless LICENSOR pays to LICENSEE the value of the trees and crops; and provided further that, upon any withdrawal or taking, LICENSEE shall be compensated for the present value of all permanent improvements in place at the time of withdrawal

or taking that were legally constructed upon the Premises by LICENSEE being withdrawn or taken or that are made unusable because of such withdrawal or taking. In the case of tree crops, LICENSOR shall pay to LICENSEE the Allocated Value of the trees taken and, if there are un-harvested crops, the value of the crops also. The Allocated Value of the trees shall be computed by multiplying the fair market value of the trees at maturity ("FMV") by a fraction whose numerator is the age of the trees at the time of withdrawal or taking ("Age") and whose denominator is the age of the trees at maturity (where maturity is defined as the age when the trees would be scheduled for harvesting) ("Maturity") as expressed by the following formula:

$$\text{Allocated Value} = \text{FMV} \times \frac{\text{Age}}{\text{Maturity}}$$

If any withdrawal or taking in LICENSEE's reasonable determination makes the Premises unusable by LICENSEE for the purposes and uses for which LICENSEE is then using the Premises, LICENSEE shall have the right to terminate this License Agreement, without waiving any other rights of LICENSEE by reason of such withdrawal or taking.

B. Condemnation. If at any time, during the term of this License Agreement, any portion of the Premises shall be condemned or required for public purposes by the Federal government or any county or city and county, or any governmental agency of either, the base annual license fee and any other charges under this License Agreement, including LICENSEE's proportionate share of Common Road Improvement Costs, shall be reduced in proportion to the value of the portion of the Premises condemned. LICENSEE shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which LICENSEE is not permitted to harvest, and (b) the proportionate value of LICENSEE's permanent improvements so taken in the proportion that it bears to the unexpired term of the License Agreement; provided, that LICENSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LICENSEE. LICENSEE shall not by reason of the condemnation be entitled to any claim against the LICENSOR for compensation or indemnity for the license interest and all compensation payable or to be paid for or on account of the land comprising the Premises by reason of the condemnation shall be payable to and be the sole property of the LICENSOR. The foregoing rights of LICENSEE shall not be exclusive of any

other rights to which LICENSEE may be entitled by law, and LICENSEE shall have the right to claim and recover from the condemning authority, but not from LICENSOR, such compensation as may be separately awarded or recoverable in LICENSEE's own right on account of such condemnation of LICENSEE's interest under this License Agreement and any improvements constructed by LICENSEE on the Premises. Where the portion of the Premises taken renders the remainder of the Premises unsuitable for the use or uses for which the Premises were licensed, LICENSEE shall have the option to surrender this License and be discharged and relieved from any further liability; provided, that LICENSEE may remove the permanent improvements constructed, erected, and placed by it within any reasonable period allowed by the LICENSOR.

28. Inspection by Prospective Bidders. For purposes of informing and apprising that person or persons of the condition of the Premises preparatory to the proposed disposition thereof at the expiration of the term or earlier termination of this License, LICENSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following an announcement at any of LICENSOR's public meetings of any proposed disposition of the Premises; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LICENSEE, and shall, if LICENSEE so requires, be made in the company of LICENSEE or designated agents of LICENSEE.
29. Extension of Time. Notwithstanding any provision to the contrary, wherever applicable, LICENSOR, for good cause shown, may allow additional time beyond the time or times specified herein in which LICENSEE may comply, observe, and perform any of the terms, conditions, and covenants contained in this License.
30. Quiet Enjoyment. LICENSOR covenants and agrees with LICENSEE that, upon payment of rent at the times and in the manner specified and upon the observance and performance of the covenants, terms, and conditions hereof on the part of LICENSEE to be observed and performed, LICENSEE shall have, hold, possess, and enjoy the Premises for the term demised, without hindrance or interruption by LICENSOR or any other person or persons lawfully claiming by, through, or under LICENSOR.
31. Abandonment and Termination. If, after putting the Premises into service, LICENSEE abandons or ceases to use the Premises

for a period of four (4) or more consecutive months, LICENSOR shall have the right to terminate this License. Any abandonment, termination, or cessation shall not affect or release any liability of LICENSEE at such time existing by reason of a breach of any of the terms hereof.

32. Non-warranty. LICENSOR does not warrant the condition of the Premises, as the same is being licensed "as is." LICENSEE assumes all risks incident to its use. Notwithstanding the foregoing or any other provision of this License, LICENSEE does not assume liability or responsibility for any hazardous material claims resulting from, arising out of, or relating to any hazardous materials on the Premises or hazardous discharge occurring prior to the date of this License, and LICENSOR (and/or LICENSOR's predecessors in interest) shall be solely responsible for and in respect of any such hazardous materials claims.
33. LICENSEE's Risk. Any and all goods, wares, farm supplies, produce, equipment, and personal property of any kind or description that may be on the Premises at any time during the term of this License, regardless of ownership of such property, shall be at the sole risk and hazard of LICENSEE, and LICENSOR shall not be liable or responsible for any loss thereof or damage thereto caused by theft, vandalism, weather, water, defective electric wiring, fire, or by any other cause whatsoever.
34. Applicable Law; Severability. This License shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this License is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.
35. Costs of Litigation. If LICENSOR shall be made a party to any litigation commenced by or against LICENSEE (other than condemnation proceedings), without any fault on LICENSOR's part, LICENSEE shall pay all costs and expenses incurred by or imposed on LICENSOR, including, but not limited to, attorney's fees; furthermore, LICENSEE shall pay all costs and expenses which may be incurred by or paid by LICENSOR in enforcing the covenants and agreements of this License, in recovering possession of the Premises, or in the collection of delinquent license fees, taxes, and any and all other charges.

If LICENSEE shall be made a party to any litigation commenced by or against LICENSOR (other than condemnation proceedings),

without any fault on LICENSEE's part, LICENSOR shall pay all costs and expenses incurred by or imposed on LICENSEE, including, but not limited to, attorney's fees; furthermore, LICENSOR shall pay all costs and expenses which may be incurred by or paid by LICENSEE in enforcing the covenants and agreements of this License; PROVIDED THAT any such litigation arises out of any damage or personal injury resulting from wrongful or negligent acts or omissions of LICENSOR or LICENSOR's employees or agents while acting within the scope of their employment, and LICENSOR's liability for such damage or injury has been determined by a court or otherwise agreed to by LICENSOR. Unless otherwise determined by a court, LICENSOR shall pay for such costs and expenses to the extent that funds therefor have been authorized and appropriated by the Legislature of the State of Hawaii for such purpose and such funds have been allocated therefor by the executive budget process of the State of Hawaii.

36. Indemnity. LICENSEE shall indemnify, defend, and hold harmless the State of Hawaii, LICENSOR, and their officers, employees, and agents from and against any claim or demand for loss, liability, damage, cost, expense, and attorneys' fees, including claims for property damage, personal injury, or wrongful death, arising out of any occurrence on the Premises and roadways adjacent thereto, or occasioned by any act or nuisance made or suffered on the Premises, or by any accident or fire thereon, or growing out of or caused by any failure on the part of LICENSEE to maintain the Premises in a safe condition, or by any act or omission of LICENSEE, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments. The provisions of this paragraph shall survive the expiration or earlier termination of this License.
37. Hunting. Except as otherwise provided in Paragraph 77, below, no hunting shall be allowed on the Premises during the term of this License.
38. Boundary Stakeout. LICENSOR shall not be responsible or liable for the surveying or boundary stakeout of the Premises. LICENSEE shall be solely responsible for any survey and boundary stakeout of the Premises.

39. Fences. LICENSEE shall, wholly at its own cost and expense, fence the whole or portion of the outside perimeter of the Premises if such fencing shall be required by LICENSOR or shall be so required by any law now in force or that may hereafter be enacted and LICENSEE shall and will maintain in good order and condition throughout the period of this License the fences so constructed and those now existing on the Premises.
40. Drainage Easements. The Premises shall be subject to drainage and flowage easements now of record or otherwise existing under law as and to the extent that the same are applicable to the Premises as of the commencement date of this License. The easement area(s) shall not be altered or used for any purposes which may obstruct flow or reduce the effectiveness of the drainage way, except with LICENSOR's prior written consent which may be conditioned upon appropriate measures undertaken by LICENSEE to divert, re-direct, retain, or detain any storm waters in a manner approved by LICENSOR. LICENSEE shall accept the storm runoff draining into and through the easement area(s), respectively, and shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.
41. Roadway and Utility Easements. The Premises shall be subject to all existing roadway and utility easements, which easements shall be in favor of property owners served by such easements, and to any and all access and other easements over and across the Premises in favor of the Kalepa Coalition or any successor or substitute entity (including LICENSOR) necessary and appropriate for the operation and maintenance of the common infrastructure serving the Property, including the Premises; provided that LICENSEE may cross and may have access over and upon all such easements located on the Premises at any point.
42. Compliance with Laws. LICENSEE shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the Premises which are now in force or later may be in force.
43. Environmental Regulations. LICENSEE shall comply with all applicable federal, state, and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and rules governing historic

preservation. LICENSEE shall be responsible for obtaining all necessary federal, state, or county clearances.

44. Hazardous Materials. LICENSOR remains responsible for any environmental issues occurring on the demised Premises prior to the commencement date of this License. Any environmental issue occurring on Premises after the date of this License shall be the responsibility of LICENSEE.

(a) During the term of this License, LICENSEE shall not cause or permit the escape, disposal, or release of any hazardous materials, except as permitted by law. LICENSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of LICENSEE's business, and then only after written notice is given to LICENSOR of the identity of such materials and upon LICENSOR's consent, which consent may be withheld at LICENSOR's sole and absolute discretion. LICENSOR may, upon reasonable request and for reasonable cause, require testing of the Premises to ascertain whether or not there has been any release of hazardous materials by LICENSEE. In the event that the results of such testing establish that there has been a release of hazardous materials on the Premises by LICENSEE, LICENSEE shall, in addition to LICENSEE's other obligations hereunder, be responsible for the cost of such testing.

LICENSEE shall execute affidavits, representations, and the like from time to time at LICENSOR's request concerning LICENSEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by LICENSEE. If LICENSEE at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the Premises which could subject LICENSOR, LICENSEE, or the Premises to any liability or restrictions on ownership, occupancy, transferability, or use of the Premises under any hazardous materials laws, LICENSEE shall immediately advise LICENSOR thereof in writing and provide to LICENSOR such detailed reports thereof as may be reasonably requested by LICENSOR. LICENSOR shall have

the right in its sole discretion to join and participate in any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

(b) LICENSEE shall be responsible for and shall indemnify, defend, and hold harmless LICENSOR and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials occurring on, under, or about the Premises during the term of this License, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the Premises and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of LICENSOR's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of LICENSOR's enforcement of this covenant, whether or not a lawsuit is brought therefore; and (5) all reasonable costs and expenses incurred by LICENSOR in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees.

(c) The provisions of this paragraph shall survive the expiration or earlier termination of this License.

45. Level One (1) Hazardous Waste Evaluation. At any time during the term or upon termination of this License, LICENSOR, for good cause, may require LICENSEE to conduct at LICENSEE's own expense, a Level One (1) Hazardous Waste Evaluation and a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health, the State Department of Agriculture, and the State Department of Land and Natural Resources, of any hazardous materials and hazardous materials claims attributable to the discharge of any hazardous materials on the Premise during the term of this License. The termination of this License will not be approved by LICENSOR unless this evaluation and abatement

provision have been executed where required. This provision shall survive and continue in effect after termination of this License.

46. Soil Erosion. LICENSEE shall not engage in any activity that may result in soil erosion from water or wind. LICENSEE shall control soil erosion as completely as practicable by strip cropping and contouring, by filling in or otherwise controlling small washes or ditches that may form, and by adopting practices recommended by the Natural Resource Conservation Service ("NRCS"). Prior to the termination of this License, LICENSEE shall provide to LICENSOR a NRCS approved erosion control plan. The termination of this License will not be approved by LICENSOR unless LICENSEE is in full compliance with such plan to the satisfaction of NRCS and LICENSOR.
47. Encumbrances. This License is subject to all existing recorded and unrecorded encumbrances. At any time during the term of this License, LICENSOR may create easements and encumbrances upon the Premises in addition to any easements and encumbrances which currently affect the Premises, provided that any such new easements or encumbrances do not unreasonably restrict or interfere with LICENSEE's use of the Premises.
48. Interpretation. The use of any gender shall include all genders. If there is more than one LICENSEE, all words used in the singular shall extend to all LICENSEES.
49. Paragraph Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this License.
50. [Reserved.]
51. [Reserved.]
52. Exhibits - Incorporation in License. All Exhibits referred to in this License are attached to this License and are hereby deemed incorporated by reference.

SPECIAL CONDITIONS:

53. Exclusion of Animals from Forest Lands. LICENSEE shall at all times during the term of this License keep its cattle, horses, and other grazing animals out of any forest reserve, if any, adjacent to the Premises and shall take all reasonable precautions to prevent forest fires, and, in the event fires occur, it shall use all reasonable means at its command or under its control to have the fires speedily extinguished.
54. Commercial Operations. LICENSEE, its employees, customers, guests, agents, and/or invitees shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the Premises without the prior written approval of LICENSOR and upon such terms and conditions established by LICENSOR. No commercial activities whatsoever, including activities such as feedlots (excepting a private feedlot designed to feed LICENSEE's own cattle), dairy milking parlors, or boarding of horses, are permitted without the prior written approval of LICENSOR.
55. Abandoned Vehicles. LICENSEE shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the Premises. Any and all abandoned vehicles within the Premises shall be removed by LICENSEE at LICENSEE's cost and expense.
56. Removal of Trash. LICENSEE shall be responsible for the removal of all illegally dumped trash within the Premises at LICENSEE's cost and expense.
57. Prehistoric and Historic Remains. In the event any unanticipated historic, prehistoric, or archaeological sites or remains, such as shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the Premises, LICENSEE and LICENSEE's agents, employees, and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes, and shall notify LICENSOR of these events.
58. Land Clearing. The Premises have not had a completed archaeological inventory survey. If land clearing or land alteration should need to occur in gulches or wastelands (gullies, valleys, ridges, and mountains), the Historic Preservation Division ("SHPD") shall be contacted prior to any work. A field check will be required and shall be performed by the SHPD staff archaeologist prior to any work. Clearing by hand is the preferred method of work. If the

alteration activity is on a large or significant scale or historic sites are found, then LICENSEE shall have an archaeologist inventory survey performed by a qualified archaeologist prior to any work. A report documenting the archaeological work shall be submitted to the SHPD for review and approval. The report shall include:

1. detailed drawings of burials and deposits to scale,
2. sketches and photographs of all artifacts,
3. analyses of all perishable and datable remains,
4. stratigraphic profiles that are drawn and made to scale,
5. an overall map of the project area, which includes the location of all historic sites,
6. initial significance evaluations for each historic site found, and
7. documentation on the nature and age of historic sites.

If significant historic sites are found, then proposed mitigation or preservation plans must be submitted for review and approval.

If burials are discovered, a burial treatment plan shall be prepared for burial discoveries encountered during work, all in accordance with Hawaii Revised Statutes Section 6E-43.

59. Audits. LICENSOR reserves the right, for purposes of conducting an audit, to examine, and to make copies of all books, accounts, records, and receipts of LICENSEE concerning its operations under this License.
60. Passage and Access. LICENSEE shall not impede or restrict passage or access by other licensees or the Kalepa Koalition and its agent to other areas of the Property or to any common infrastructure serving the Property or any part thereof (including the Premises) that may be located on the Premises.
61. Holding Over. Any holding over by LICENSEE after the expiration of the term of this License with the consent of LICENSOR shall be construed to be a tenancy from month-to-month at the rent herein provided for the last year of the

term of this License and shall otherwise be on the terms and conditions herein specified, so far as applicable.

62. Crop Changes. LICENSEE shall consult with and obtain prior approval from LICENSOR before adding or making changes to the type of crops to be grown as specified in its original business plan submitted with the license application.
63. Recordation. LICENSOR and LICENSEE agree that this License or a short form or memorandum hereof may be recorded in the Bureau of Conveyances of the State of Hawaii or with the Assistant Registrar of the Land Court of the State of Hawaii, as applicable, to give notice of this License to third parties and of the license of the Premises granted hereunder by LICENSOR to LICENSEE for the term specified herein.
64. Agreements with other Tenants. Due to the recent realignment of the parcels, LICENSEE shall use its best efforts to reasonably settle any and all issues that may arise with other tenants on the Property, and memorialize all such agreements in writing including: (1) ingress and egress issues; (2) disputed survey results relating to parcel boundaries; and (3) any other issues which may arise between LICENSEE and the other tenants.
65. Ten year Harvesting Plan. LICENSEE shall submit to LICENSOR a copy of the ten (10) year plan to harvest Albizia trees using best practices in the industry on the Premises as required by the State of Hawaii, Department of Land and Natural Resources ("DLNR") including if applicable and where economically viable the removal of Albizia trees from the other tenants' parcels. The ten (10) year plan is to be submitted prior to harvesting the Albizia trees on LICENSOR property. The species of trees selected for new plantings must be pre-approved in writing by DLNR, Division of Forestry and Wildlife and LICENSOR. Notwithstanding Paragraph 58, above, LICENSEE shall not be required to implement manual clearing of the Premises. Notwithstanding anything to the contrary in this Paragraph 65 and in this License, LICENSOR and LICENSEE acknowledge and agree that LICENSEE has submitted such a plan to LICENSOR, which has approved such plan, under Paragraph 65 of the License Agreement No. LI-K1102, that such approved plan applies to the Premises under this License, and that LICENSEE's performance under Paragraph 65 of the License Agreement No. LI-K1102 shall be deemed to be performance under this Paragraph 65.

66. Adequate Funding and Financing. LICENSEE shall submit to LICENSOR evidence of adequate funding or financing for LICENSEE's proposed project within one (1) year of the date of the execution of this License, such as lending commitments, investment commitments, bonding commitments or the equivalent. Notwithstanding anything to the contrary in this Paragraph 66 and in this License, LICENSOR and LICENSEE acknowledge and agree that LICENSEE has submitted such evidence to LICENSOR, which has accepted such evidence, under Paragraph 66 of the License Agreement No. LI-K1102, that such evidence applies to the Premises under this License, and that LICENSEE's performance under Paragraph 66 of the License Agreement No. LI-K1102 shall be deemed to be performance under this Paragraph 66.
67. Use of Land. LICENSEE must be conducting agricultural activities, including initial clearing activities, on fifty percent (50%) or more of the Premises and justify that one hundred percent (100%) of the Premises will be needed for the project within three (3) years of the date of the execution of this License.
68. Soil and Water Conservation Plan. LICENSEE shall submit to LICENSOR a copy of its approved soil and water conservation plan, which plan must include the removal of Albizia trees from the Property, if applicable, within two (2) years of the date of the execution of this License. LICENSEE shall submit a revised soil and water conservation plan to LICENSOR if LICENSEE makes changes to its initial planting or harvesting practices which require terrain alteration.
69. Power Purchase Agreement. LICENSEE shall submit to LICENSOR a copy of the approval document from the State of Hawaii, Public Utilities Commission relating to the applicable Power Purchase Agreement with the Kauai Island Utility Cooperative, within three (3) years of the date of the execution of this License. Notwithstanding anything to the contrary in this Paragraph 69 and in this License, LICENSOR and LICENSEE acknowledge and agree that LICENSEE has submitted such document to LICENSOR, which has accepted such document, under Paragraph 69 of the License Agreement No. LI-K1102, and that LICENSEE's performance under Paragraph 69 of the License Agreement No. LI-K1102 shall be deemed to be performance under this Paragraph 69.
70. East Kauai Water Users Cooperative. In the event LICENSEE determines that irrigation water is needed for the Premises, LICENSEE shall work with the East Kauai Water Users

Cooperative ("EKWUC") and properly compensate the EKWUC for use of the water.

71. Kalepa Koalition. In addition to the Co-Existence Agreement signed by LICENSEE and the Kalepa Koalition, LICENSEE shall join or become a member or shareholder of the Kalepa Koalition or execute a written agreement with the Kalepa Koalition relating to LICENSEE's responsibilities on common infrastructure maintenance.
72. Surety Bond. Unless otherwise instructed by LICENSOR, LICENSEE shall remove all trees and vegetation, including stumps, restoring the Premises to arable, pasture lands condition before vacating the property. LICENSEE shall procure a surety bond in an amount no less than the amount reflected in the letter of commitment, attached hereto as Exhibit "E", to ensure LICENSEE's financial ability to restore the Premises, said bond to cover the removal of trees for **one hundred sixty eight and 38/100ths (168.38) acres, more or less, within five (5) years of the execution date of this License**. The bond shall be for no less than \$1350/acre plus two percent (2%) annual adjustment for inflation minus the biomass sales.
73. Vegetative Buffer Zone. LICENSEE shall maintain the existing vegetative buffer zones along the plateau and valley rims. Any clearing or trimming activities shall be upon approval of LICENSOR.
74. Land Clearing. Prior to any land clearing or land alteration in the gulches or wastelands within the Premises, LICENSEE shall first obtain the written approval of the Historic Preservation Division of the Department of Land and Natural Resources.
75. Irrigation System Maintenance. LICENSEE shall be required to maintain that part of the irrigation system that is within the Premises in its current condition, by keeping the ditches free and clear of vegetative overgrowth and debris. Except for routine maintenance, alteration of these irrigation ditches shall not be allowed without prior written approval from LICENSOR.
76. Restrictions on Withdrawal for Public Purpose. LICENSOR's right to withdraw the Premises, or any portion thereof, shall be limited to those public purposes related to infrastructure needs, such as transportation systems such as agricultural and emergency roadways, irrigation systems and accessories

thereto. For purposes of this License, public purpose infrastructure does not include communication infrastructure or potable water systems.

77. Hunting. Notwithstanding the restriction on hunting on the Premises, LICENSEE shall be allowed to eradicate animals and other pest animals that threaten or harm LICENSEE's operations or activities on the Premises. LICENSEE or its agents shall first secure all appropriate licenses or permits authorizing any eradication method(s) used on the Premises. Where practicable, LICENSEE shall ensure that humane methods of eradication be practiced in all eradication activities.
78. Fences. Notwithstanding Paragraph 39, above, LICENSOR acknowledges that LICENSEE has fulfilled its obligation under the Co-Existence Agreement, Exhibit "C" hereto, to install new boundary fencing around the perimeter of the Premises.

#### DEFINITIONS

As used in this License, unless the context otherwise requires:

"Property" means the approximately 6,000 acres of land set aside to LICENSOR under Governor's Executive Order No. 4328 dated August 24, 2010, including buildings and improvements.

"Premises" or "demised Premises," includes the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon except for any buildings or improvements specifically excluded from the description of the Premises in the License.

"Sub-licensing," includes any long-term or short-term rental of the property to a third party.

"Drainage easements" and "flowage easements" mean natural or improved drainage courses that serve to convey stream flows from one point to another.

"Hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, including any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the Premises.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of

LICENSEE's knowledge, contemplated or threatened, with respect to the Premises pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of LICENSEE's knowledge, contemplated or threatened by any third party against LICENSEE or the Premises seeking damages, contribution, cost recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the Premises.

"Hazardous materials laws" means and includes all federal, state, and local laws, ordinances, and regulations now or hereafter in effect relating to environmental conditions, industrial hygiene and/or hazardous materials on, within, under, or about the Premises, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act 49 U.S.C. §1801, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. §§300f through 300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar state or local laws, ordinances, and the regulations now or hereafter adopted, published, and/or promulgated pursuant thereto.

"LICENSEE" includes LICENSEE, its heirs, personal representatives, executors, administrators, successors, and permitted assigns.

"Waste" includes (1) permitting the Premises or any portion thereof to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds or alien plant species in or on the demised Premises or any portions thereof, other than alien plant species introduced pursuant to the land use plan described in Exhibit "D" attached hereto; (3) abandonment of the demised Premises.

"Days" shall mean calendar days, unless otherwise specified.

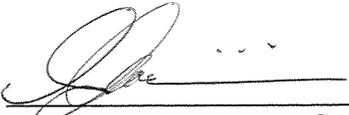
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 18th day of February, 2015.

LICENSOR

STATE OF HAWAII,  
AGRIBUSINESS DEVELOPMENT  
CORPORATION

APPROVED AS TO FORM:

By   
Its Executive Director

  
Deputy Attorney General

LICENSEE

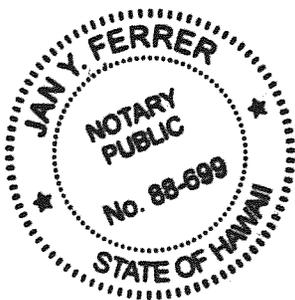
GREEN ENERGY TEAM LLC

By Mario Scharf / MARIO SCHARF  
Its MANAGER

By \_\_\_\_\_  
Its \_\_\_\_\_

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

On this 3<sup>rd</sup> day of March, 2015, before me personally appeared James J. Nakatani personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Jan Y. Ferrer  
 Name: \_\_\_\_\_

Notary Public, State of Hawaii

My commission expires: 11/29/16

(Notary Stamp or Seal)

<u>NOTARY CERTIFICATION STATEMENT</u>		
Document Identification or Description: <u>License Agreement No. LI-KA1501</u>		
Document Date: <u>February 18, 2015</u>		
No. of Pages: <u>38</u>		
Jurisdiction (in which notarial act is performed): <u>First Circuit</u>		
<u>Jan Y. Ferrer</u> Signature of Notary <b>Jan Y. Ferrer</b>	MAR 3 2015 Date of Notarization and Certification Statement	
Printed Name of Notary		

(Notary Stamp or Seal)

STATE OF HAWAII )  
 ) ss.  
 COUNTY OF KAUAI )

On this 18th day of February, 2015, before me personally appeared David Schaff, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



L. Kawamura  
 Name: L. Kawamura  
 Notary Public, State of Hawaii  
 My commission expires: 12.28.2015

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description:	License Agreement No. LI-KA1501
Document Date:	<u>February 18, 2015</u>
No. of Pages:	<u>31</u>
Jurisdiction (in which notarial act is performed): <u>Fifth Circuit</u>	
Signature of Notary	Date of Notarization and Certification Statement
<u>L. Kawamura</u>	<u>Feb. 18, 2015</u>
Printed Name of Notary	



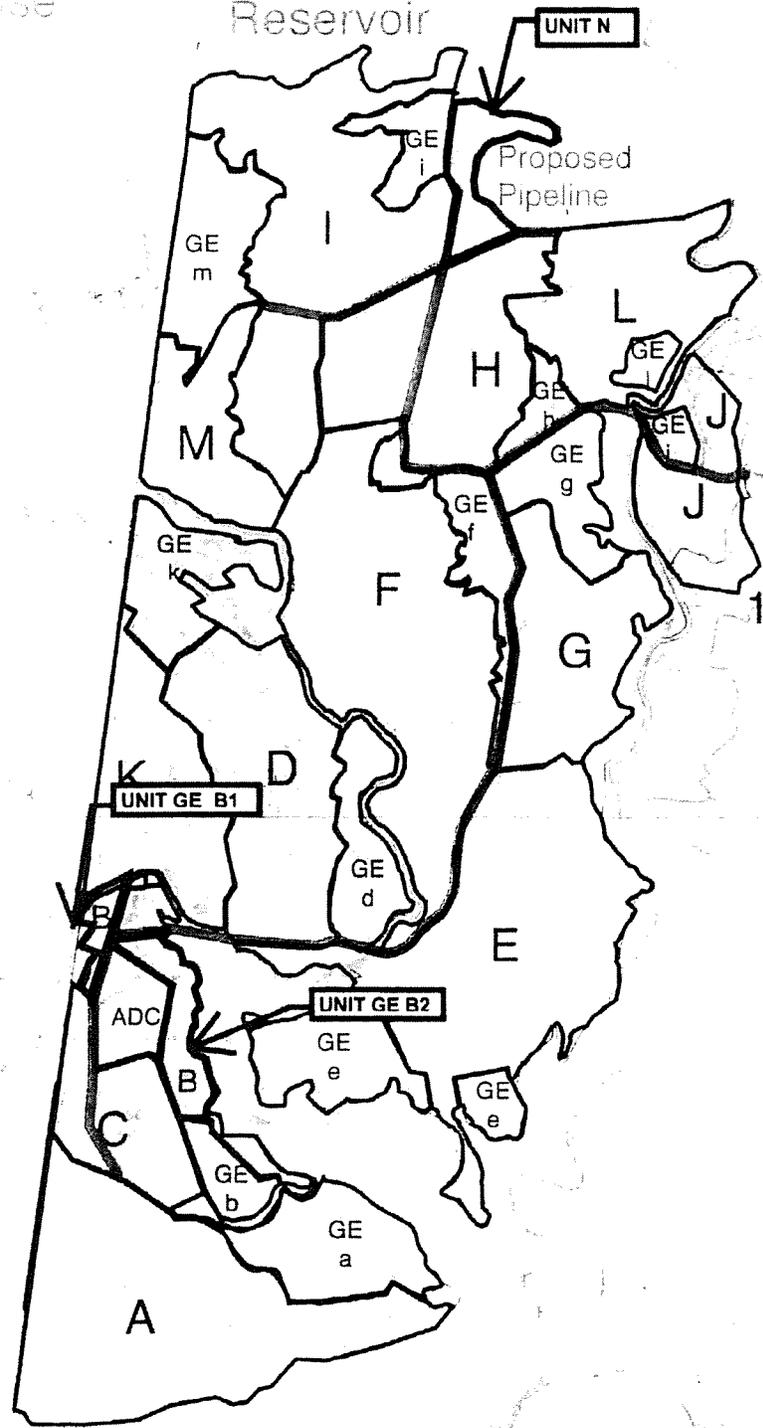
Ililiula North Wailua Ditch  
5.8 Miles  
**ADC Kalepa Land**  
**Unit Map**

**EXHIBIT A**

Upper Power

Lower Power  
Proposed  
Reservoir

Stable Storm Ditch



Wailua Re

Wailua

Wailua  
Household  
Reservo





**Kalepa Koalition**

6277 Puuopai Place  
Kapaa, Hawaii 96746  
Phone/Fax: 808-822-3392

TO: Ron Agor  
BLNR  
Fax: 246-1091

May 14, 2008

RE: Summary of Conditions for Transference of Portions of Kalepa Lands to Green Energy Team LLC (Green Energy), Mutually Agreed to between Green Energy and Kalepa Koalition, May 5, 2008

Aloha,

Kalepa Koalition members voluntarily identified approximately 1050 acres for transfer to Green Energy, as noted on the attached spreadsheet and map of February 8, 2008 (as since amended by Ron Agor in interaction with the unit holders) subject to the following conditions:

1. The transfer of all 8,700 to ADC from DLNR to be completed and long-term licenses be issued to existing parcel holders who desire to continue with their parcels under ADC's terms and rent.
2. There are no additional plantings of Albizia. Albizia may be harvested for a period of up to ten years on areas retained by the parcel holders, at the discretion of the parcel holder, and as worked out between the parcel holder and GE. GE's parcels to be managed using reasonable care to avoid infestation with Albizia in areas that are presently clear.
3. Biomass species to be planted by GE to be approved by DLNR Division of Forestry and Wildlife (DOFAW).
4. Should GE's business fail, first right of refusal to reoccupy forfeited areas offered to original parcel holder.
5. A general maintenance agreement shall be established through ADC and all parcel holders to address roads, bridges and all common element areas including security gates.
6. GE to become a member of the Koalition and share 25% of the common maintenance expenses.
7. GE will pay existing RP holders for fencing, security and irrigation improvement as

outlined in the buy-back clause specified in the existing RPs for the areas which GE takes over. These payments to current RP holders will be paid by GE upon the earlier event of the physical removal of the fence by GE or upon the current tenant vacating the respective parcels, in all cases no earlier than 90 days after the Land Board Decision. This is presently estimated at about \$97,000, final figure has to be based on actual measurement subject to field survey by GE.

8. GE is responsible to install new boundary fencing where required to separate grazing areas from their plantings. This is estimated at about 5,000 feet of fence.

9. GE to pay to the Kalepa Koalition bank account \$1,725 30 days after invoice received, which is 25% of the cost of the security gate system - which has been established and maintained by the Kalepa Koalition. GE to follow Koalition practices with regard to keeping gates locked. GE may acquire non-duplicable keys to the gate system at a cost of \$20 each from the Koalition key master, which is Saiva Siddhanta Church.

10. Disagreements to be settled by binding arbitration conducted by the landlord.

These conditions are mutually agreed to by both Green Energy Team LLC and the Kalepa Koalition represented by the Kalepa interim chair who provided all members with a copy of this document on May 10. Koalition members were asked to contact Ron Agor directly should they have any objections.

Respectfully submitted,

**Kalepa Koalition**

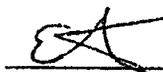


\_\_\_\_\_  
Leslie P. Milnes, Interim Chair

May 15, 2008

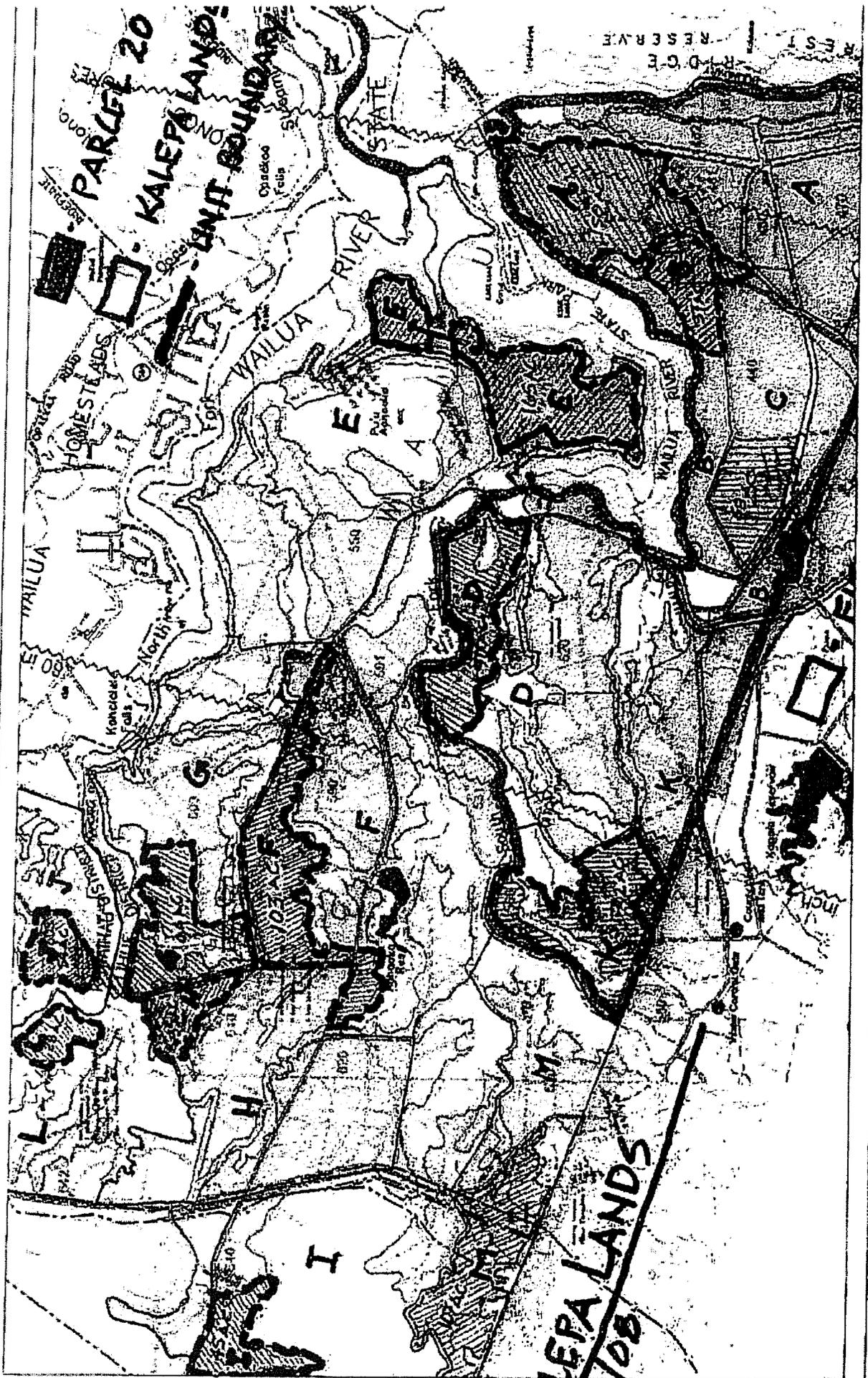
\_\_\_\_\_  
Date:

**Green Energy Team LLC**



\_\_\_\_\_  
Eric Knutzen

\_\_\_\_\_  
Date:





### Kalepa Lands, FINAL Surveying Results

December 28, 2010

Renewable energy from biomass: agricultural jobs, economics such as cost savings and multiplier effect of every dollar kept on Kauai - and no importation of 3,000,000 gallons of fossil fuel per year - good for the people of Kauai

RP Holder, Unit	Esaki, Existing Fencing	Check Value/sq ft	GE, New Fencing
Mervin Rapozo, H	2,723	\$ 6,807.50	2,906
Bray, L	0	0.00	1,175
Jerry Sanchez, J	1,522	3,805.00	0
Godwin Esaki, F	0	0.00	0
Bunao, C	7,801	19,502.50	1,559
Malina, Lester Calipjo, K	8,384	20,960.00	934
Tony Reis, D	1,047	2,617.50	782
Les Milnes	0	0.00	0
Derrick Rapozo	0	0.00	0
Saiva Treeline buyback	1,650	1,650.00	0
Willy Sanchez, A	15,986	39,965.00	0
Willy Sanchez, M	2,719	6,797.50	946
Saiva, G	0	0.00	0
<b>Total</b>			

EXHIBIT "D"

Licensee shall use the Premises for the cultivation, harvesting and shipping/mulching of trees, grasses and/or other biomass crops, to be used as fuel for Licensee's off-Premises power generation facility. Such activities shall include, without limitation, the use of heavy equipment such as trucks and cranes, and the use of ash and other fertilizers.

Unit GE	B1	25 acres	trees for biomass	2015-2049
Unit GE	B2	78.38 acres	trees for biomass	2015-2049
Unit GE	N	65 acres	trees for biomass	2015-2049



STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT CORPORATION**

235 S. Beretania Street, Room 205  
Honolulu, HI 96813  
Phone: (808) 586-0186 Fax: (808) 586-0189

April 20, 2022

Subject: Request to Terminate Right-of-Entry and License Agreement Issued to Pohaku O’Kauai Materials, LLC (POKM) for Rock and Sand Removal Purposes in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por); and Authorize ADC Staff to Negotiate a New License Agreement with POKM

Applicant: Pohaku O’Kauai Materials, LLC

Authority: Section 163D-4 (a)(5), Hawaii Revised Statutes

Area: Undetermined

Field No(s).: 101-103, 105-108, 110-113, 115-117, 119, 121, and 321

Tax Map Key: (4) 1-2-002:001

Land Status: Set aside by the Governor’s Executive Order No. 4007 to the Agribusiness Development Corporation for Agricultural and Related Purposes

Trust Land Status: Section 5(b) lands of the Hawaii Admission Act  
Yes  No

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution? Yes  No

Character of Use: Industrial

Land Doc. Type: Right-of-Entry, Sand Removal License

Term: 5 years

Rate: ADC Royalty: \$2.50/ton  
KAA Royalty: \$2.50/ton

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**BACKGROUND:**

On August 20, 2013, the ADC Board approved the issuance of a right-of-entry and land license for POKM. The term of the license agreement and right-of-entry approved by the Board was for five years and allowed the removal of rock and sand in Kekaha for a license

fee of \$200 per acre, per year for five acres. The license agreement purportedly approved by the Board included a requirement that POKM pay a royalty fee of \$5 per ton (to be split \$2.50 to ADC & \$2.50 to Kekaha Agriculture Association (KAA)); required POKM to assist KAA with road maintenance; and not to sublicense any portion of the premises without prior written approval of the ADC Board.

The “Right-of-Entry and License Agreement” (Agreement) was executed between ADC, KAA, BASF Plant Science LP, Pioneer HI-Bred Intl., Inc., Syngenta Seeds, Inc. and POKM, with the effective date of January 13, 2014. The Agreement gave POKM the right to remove rocks and sand from fields 101-103, 105-108, 110-113, 115-117, 119, 121, 221, and 321 (Premises) (see “Exhibit A”). Field numbers 101, 116, and 121 were licensed to BASF; field numbers 102-103, 105-108, 110-113 and 115 were licensed to Pioneer Hi-Bred Intl.; and field numbers 117, 119, 121 (por.), 221 & 321 were licensed to Syngenta. The Agreement required POKM to pay a royalty fee of \$2.50 per ton to ADC and \$2.50 per ton to KAA. The Agreement further required a negotiated modification to the Payment Rate beginning July 1, 2015, and every second year thereafter. The Agreement does not establish the length of the Agreement or assess a licensing fee.

In 2021, ADC obtained a copy of an appraisal commissioned by a Kaua’i purchaser of sand. The appraisal contains confidential business information and therefore is not available for further disclosure. However, without disclosing privileged information, the purpose of the appraisal was to determine if \$39.41 per cubic yard was an appropriate royalty rate for sand on Kaua’i. The appraisal was effective as of October 16, 2020. The appraisal noted that there were two sources of sand on Kaua’i, one was located on the Mānā Plain Kawai’ele Waterbird Sanctuary, which is under the jurisdiction of the Department of Land and Natural Resources (DLNR), and the second was located about 1.5 miles away from Kawai’ele at the POKM quarry. The sand was purchased for use in concrete and other construction purposes. The appraisal found the Kawai’ele sand was functionally comparable to the sand at POKM. The appraisal set the royalty fee at \$39.41 per cubic yard, which is equivalent to \$29.19 per ton. The appraisal notes that since 2009, DLNR has offered the Kawai’ele sand at the royalty rate of \$39.41 per cubic yard.

By way of letter dated June 30, 2021, KAA reminded POKM that the Agreement called for good faith negotiations with regard to the payment rate (as the term was defined in the Agreement) no later than July 15, 2015 and every second year thereafter. The letter invited POKM to negotiate a new payment rate as the current rate was no longer commercially reasonable. POKM did not respond to the invitation to negotiate a new payment rate.

By way of letter dated December 1, 2021, KAA notified POKM that having not received a response to the June 30, 2021 letter, the payment rate was being increased to \$37.00 per ton (payable \$18.50 per ton to ADC and \$18.50 per ton to KAA) effective January 1, 2022.

The January 2022 combined payment (to ADC & KAA) received from POKM reflected the prior gross payment rate of \$5.00 per ton. The February 2022 payment received from POKM reflected the prior payment rate of \$5.00 per ton. KAA made several attempts to contact POKM to discuss the insufficient payment with no success.

By way of letter dated March 24, 2022, ADC advised POKM that if the appropriate payment amount for January 2022, February 2022, and March 2022 was not received by April 7, 2022, the Agreement would be terminated immediately.

On March 29, 2022, POKM responded by way of email asking that the rate increase be postponed because the rate increase was substantial and POKM wanted to prepare a “sand report” for purposes of negotiating a lesser royalty rate increase. On March 31, 2022, ADC received a check from POKM that was purportedly the amount necessary to cover the arrearage that had accrued since January 1, 2022, and to bring the account current at the new payment rate through the end of February.

On April 3, 2022, ADC notified POKM that due to discrepancies recently discovered in the Agreement, the amount of the payment rate increase that should have been adjusted to reflect the difference between per ton (\$29.19) and per cubic yard (\$39.41), and the understanding that a right of entry was no longer necessary, ADC intended to terminate the current Agreement and negotiate a new License Agreement. POKM was informed that the matter would be brought to the Board at its April meeting.

REQUEST:

To terminate the “Right-of-Entry and License Agreement” issued to POKM, and to authorize staff, in conjunction with KAA, to enter into negotiations with POKM, to establish a new royalty rate, license fees, and term of license.

DISCUSSION:

The Agreement must be terminated due to the differences between the terms and conditions of the Right-of-Entry and License Agreement approved by the ADC Board on August 20, 2013, and the actual terms and conditions set forth in the “Right-of-Entry and License Agreement” commencing January 13, 2014. It appears that POKM no longer requires a right of entry onto fields that were at one time licensed to BASF Plant Science LP, Pioneer HI-Bred International, Inc. and Syngenta Seeds, Inc. If POKM does require a right of entry onto fields 101-103, 105-108, 110-113, 115-117, 119, 121, 221 and/or 321, a document separate and apart from any newly negotiated license agreement should be executed.

LAND REQUEST:

To terminate the “Right-of-Entry and License Agreement” issued to POKM, and to authorize staff, in conjunction with KAA, to enter into negotiations with POKM to establish a new royalty rate, license fees, and term of license.

WATER NEEDS AND SOURCE OF WATER:

N/A

CONSERVATION PLAN:

POKM will be required to develop updated Best Management Practices (BMP) as a condition of the new agreement.

DISCUSSION:

The Agreement must be terminated due to the differences between the terms and conditions of the Right-of-Entry and License Agreement approved by the ADC Board on August 20, 2013, and the actual terms and conditions set forth in the "Right-of-Entry and License Agreement" commencing January 13, 2014. It appears that POKM no longer requires a right of entry onto fields that were at one time licensed to BASF Plant Science LP, Pioneer HI-Bred International, Inc. and Syngenta Seeds, Inc. If POKM does require a right of entry onto fields 101-103, 105-108, 110-113, 115-117, 119, 121, 221 and/or 321, a document separate and apart from any newly negotiated license agreement should be executed.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board:

1. Terminate the current Right-of-Entry and License Agreement effective May 31, 2022, or upon the execution of an updated agreement, whichever the sooner shall occur.
2. Authorize staff, in consultation with KAA, to enter into negotiations for the purposes of issuing a new license agreement with POKM that establishes a new royalty rate, license fees, term of license, and, if required, a new right-of-entry, subject to the following conditions:
  - a. POKM shall be required to develop new BMP, pursuant to the requirement of the Clean Water Act Settlement Agreement;
  - b. POKM shall remedy any and all current BMP deficiencies as documented by recent inspections by Cardno;
  - c. POKM shall provide evidence of commercial general liability, commercial auto insurance, and worker's compensation insurance pursuant to updated terms of the license agreement;
  - d. Updated agreement shall be subject to Board approval;
  - e. Such other terms and conditions as may be prescribed by the Executive Director to best serve the interests of ADC and the State.

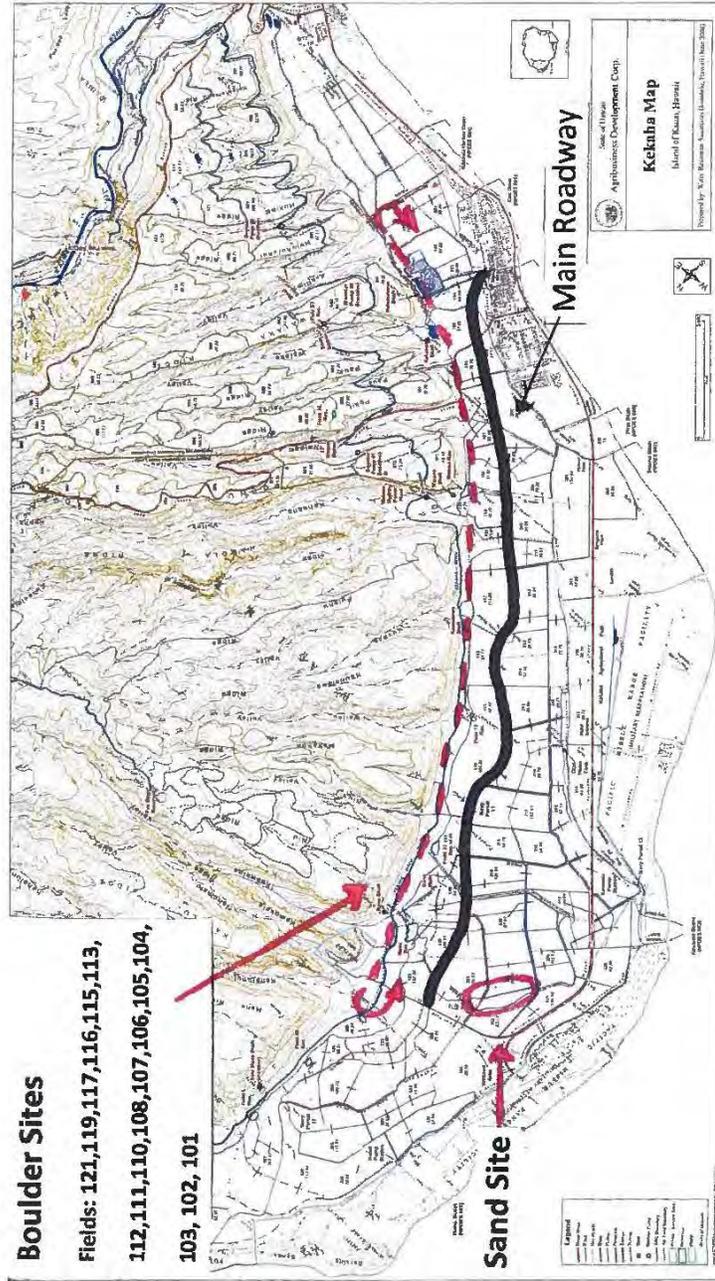
Respectfully Submitted,



James J. Nakatani  
Executive Director

**EXHIBIT A**

Exhibit A



Request to Terminate Right-of-Entry and License Agreement Issued to Pohaku O'Kauai Materials, LLC (POKM) for Rock and Sand Removal Purposes in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por); and Authorize ADC Staff to Negotiate a New License Agreement with POKM  
April 20, 2022  
Page 6 of 6

EXHIBIT B

Right-of-Entry and License Agreement

[see following pages]

**RIGHT-OF-ENTRY  
AND  
LICENSE AGREEMENT**

THIS AGREEMENT is hereby made and entered into by and between the STATE OF HAWAII through its AGRIBUSINESS DEVELOPMENT CORPORATION, KEKAHA AGRICULTURE ASSOCIATION, BASF PLANT SCIENCE LP, PIONEER HI-BRED INTERNATIONAL, INC., and SYNGENTA SEEDS, INC.(referred to herein collectively as "GRANTORS" and individually as "GRANTOR") and POHAKU O' KAUAI MATERIALS, LLC, a Hawaii limited liability company, ("GRANTEE").

**WITNESSETH:**

WHEREAS, pursuant to Governor's Executive Order No. 4007, as modified by Governor's Executive Order Nos. 4034 and 4165, the Agribusiness Development Corporation ("ADC") has been granted responsibility to control and manage those certain lands which were formerly under the jurisdiction of the Department of Land and Natural Resources, State of Hawai'i, containing a gross area of approximately 12,800 acres in Kekaha ("Kekaha Lands"), on the Island of Kaua'i, State of Hawai'i;

WHEREAS, Kekaha Agriculture Association ("KAA") is an association incorporated in the State of Hawaii for the purposes of engaging in cooperative activity for producers of agricultural products that has entered into a Memorandum of Agreement with ADC originally dated April 1, 2007, and revised and restated effective August 29, 2008 (the "MOA") whereby KAA has agreed to assume control over and responsibility for the management of the common infrastructure improvements, including irrigation, drainage, roadway, and electrical power generation systems located on or serving the Kekaha Lands as defined in the MOA, which responsibility includes the removal of sand, gravel, soil and fill products from the Kekaha Lands as may be necessary for the maintenance and operation of the common infrastructure improvements;

WHEREAS, ADC also issued an exclusive license to KAA for the common infrastructure improvements and a right of entry onto the Kekaha Lands for KAA to enjoy free and unfettered access to all such infrastructure improvements for the purposes of operating, managing, and maintaining the same in accordance with the MOA;

WHEREAS, ADC also issued an exclusive license to BASF Plant Science LP (f/k/a BASF Plant Science LLC) ("BASF") for field numbers 101, 116, and 121 (por.) of the Kekaha Lands (the "BASF Fields"), to Pioneer Hi-Bred International, Inc. ("Pioneer") for field numbers 102-103, 105-108, 110-113 and 115 of the Kekaha Lands (the "Pioneer Fields"), and to Syngenta Seeds, Inc. ("Syngenta") for field numbers 117, 119, 121 (por.), 221, and 321 of the Kekaha Lands (the "Syngenta Fields"), all as depicted on

the maps attached to this Agreement as Exhibits "A" and "B" (fields 101-103, 105-108, 110-113, 115-117, 119, 121, 221, and 321, collectively, "Premises");

WHEREAS, in furtherance of its obligations under the MOA, KAA has reached an agreement with GRANTEE whereby GRANTEE shall undertake the removal of rocks and sand from the Premises for KAA in furtherance of KAA's obligations under the MOA, subject to the consent and approval of ADC of such arrangement; and

WHEREAS, GRANTEE also requires a right of entry onto the Kekaha Lands and portions of the Premises, as well as a license to remove rock and sand, specifically (i) rocks from field numbers 101-103, 105-108, 110-113, 115-117, 119, and 121, as depicted on the map attached to this Agreement as Exhibit "A" (hereinafter referred to, collectively, as "Boulder Fields Sites") and made a part hereof, and (ii) sand from field numbers 221 and 321, as depicted on the map attached to this Agreement as Exhibit "B" (hereinafter referred to, collectively, as "Sand Sites").

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, and other good and valuable consideration given, GRANTORS hereby grant to GRANTEE, its members, officers, employees, and directors a non-exclusive right to enter upon the Premises, on the terms and conditions below, and for the use of the common roadway infrastructure on the Kekaha Lands further described below:

1. **Term and Duration.** The term of this Agreement granted hereby shall be applicable from 12:00 a.m. on January 13, 2014, ~~2013~~ ("Commencement Date") through the Termination Date as established and defined in this Agreement ("Termination Date"). The Termination Date shall be the earlier of either (i) substantial completion of the activities to be undertaken by GRANTEE on the Kekaha Lands, it being understood and acknowledged the completion of which may require approximately two or more years, or (ii) termination of this Agreement otherwise by GRANTORS as set forth in Paragraph 17 below. GRANTEE agrees to be bound by the terms and conditions of this Agreement and to any amendments of this Agreement.

2. **Notice of Entry.** GRANTEE shall provide GRANTORS with notice of its intent to enter upon the Premises and Kekaha Lands not less than two (2) weeks prior to its anticipated entry in accordance with the notice provision contained in paragraph 18, below. GRANTEE shall also notify KAA, BASF, Pioneer and/or Syngenta, as the case may be, and arrange entry no less than twenty-four (24) hours prior to entry pursuant to Paragraph 18 below.

3. **Permitted Uses; Terms and Conditions.** GRANTEE shall not be allowed to use the Premises or the Kekaha Lands for any purpose except the following:

a. GRANTEE shall remove rocks from the Boulder Fields Sites ("Removed Rocks") and sand from the Sand Sites ("Removed Sand") and transport the

Removed Rocks and Removed Sand off the Kekaha Lands for stockpiling. GRANTEE understands and acknowledges that no mining, excavating, stripping, drilling, blasting, stockpiling, scalping, crushing, rolling, surging, or any other aggregate processing of Removed Rocks and Removed Sand shall be allowed anywhere on the Kekaha Lands, except that minimal screening and grading of Removed Sand may be conducted on the Sand Sites. GRANTEE shall employ erosion control best management practices, including but not limited to the installation of temporary perimeter berms, screen fencing, and any other necessary measures, to minimize excessive runoff or discharge of sand or sediment caused by a storm-level event during the time and from the area in which GRANTEE conducts screening and grading of the Removed Sand.

b. GRANTEE shall utilize a certified truck scale to weigh and record the quantity of Removed Rocks and/or Removed Sand for each truckload removed, and shall regularly report directly to KAA the amount of Removed Rocks and Removed Sand removed by GRANTEE within thirty (30) calendar days following any calendar month during which GRANTEE has removed any quantity of the Removed Rocks and/or Removed Sand. GRANTEE shall have no independent obligation to report the amounts directly to all GRANTORS unless and until a separate GRANTOR makes a request to GRANTEE for any such report. Requests for reports by any separate GRANTOR shall be made in accordance with paragraph 18, below.

(i) GRANTEE shall make good faith efforts to sell the Removed Rocks and Removed Sand, except that GRANTEE need not sell such amounts as is reasonably necessary for use on the Roadway Maintenance Activities as described in this Agreement. Within thirty (30) calendar days following any calendar month during which GRANTEE has sold any quantity of the Removed Rocks and/or Removed Sand, GRANTEE shall (i) prepare and submit to KAA a report stating the total amount of Removed Rocks and/or Removed Sand sold by GRANTEE during the immediately preceding calendar month, as measured by means of a certified truck scale, and in full ton(s), and calculating the total payment owed to KAA based upon the royalty fee payment rate of \$2.50 per ton of Removed Rocks and Removed Sand, or any combination thereof, sold ("Payment Rate"), and (ii) make appropriate payment to KAA of the amount identified in the report. Based upon the foregoing terms and conditions, and in addition to and simultaneously with the payment by GRANTEE to KAA, GRANTEE shall also pay to ADC a separate royalty fee payment, for sale of the same Removed Rocks and/or Removed Sand, or any combination thereof, at the royalty fee payment rate of \$2.50 per ton.

(ii) ADC, KAA and GRANTEE agree to undertake good faith negotiations with regard to potential modifications to the Payment Rate, no later than July 1, 2015, and on every second year thereafter, based on commercially reasonable rates and other factors. All negotiations shall include any amended Payment Rate, and all terms and conditions of payments.

(iii) GRANTEE acknowledges that the process of screening the Removed Rock is likely to result in a quantity of high grade lime rock ("Lime Rock"),

which GRANTEE shall provide to KAA free of charge; provided that, if at such time that the Parties by mutual agreement determine a reasonable market exists for said Lime Rock, the Parties shall engage in good faith negotiations to establish a reasonable charge to be paid by KAA to GRANTEE for any Lime Rock that KAA may choose to purchase, KAA having no obligation to purchase said Lime Rock.

c. GRANTEE agrees to assist KAA or KAA's designated contractor(s), with annual roadway maintenance to (i) the main improved roadway leading from the Kekaha Fuel Station to the Mana Government Road, as shown on Exhibit "A," and (ii) any other roadway as deemed necessary by KAA in its discretion ("Annual Roadway Maintenance"). The Annual Roadway Maintenance shall be performed during the months of June through October, weather permitting.

(i) GRANTEE agrees that the Annual Roadway Maintenance shall include, but not necessarily be limited to, the hauling and delivery by GRANTEE of necessary amounts of asphalt cold patch or other roadway materials to the Kekaha Lands, and the placement or dumping of the asphalt cold patch or other materials onto the identified roadway sections. It is understood that KAA may opt to purchase from GRANTEE, at reasonable market rates, the necessary asphalt cold patch or other roadway materials required for purposes of the Annual Road Maintenance, provided that the Parties understand and agree that the quantity of purchased cold patch material shall not exceed 400 tons per year.

(ii) In addition to the foregoing, GRANTEE also agrees to perform necessary routine maintenance to the main improved roadway, as identified as Exhibit "A," and/or any other roadway, improved or unimproved, that GRANTEE deems necessary for its use of the Kekaha Lands or the Premises, at GRANTEE's sole expense. Such maintenance work may include, but not necessarily be limited to, roadway washing, patching (with asphalt or lime rock), compacting, and/or grading. GRANTEE further agrees to assist KAA, at no charge, in securing additional roadway repair materials, such as asphalt cold plane, gravel, and other such materials, that may become available from time to time.

d. GRANTEE shall grade the Boulder Field Sites and Sand Sites, particularly the Sand Sites waste portion of the area referred to as Mana Camp, to conform to and blend with the surrounding land elevations, for the purpose of agricultural use and as determined by KAA at its discretion. Upon establishment of the final grade, GRANTEE shall haul, spread, and level approximately six inches of topsoil on the Sand Sites, with KAA to supply the topsoil to GRANTEE at no charge. KAA understands and acknowledges that it shall make good faith efforts to make available to GRANTEE for transport topsoil from locations that are in relatively close proximity to the Sand Sites.

4. **Acknowledgement of Use by Other Persons.** GRANTEE acknowledges that other persons or entities have the right to enter and/or use the Kekaha Lands with the approval of ADC and KAA, the BASF Fields with the approval of

BASF, the Pioneer Fields with the approval of Pioneer, and the Syngenta Fields with the approval of Syngenta.

5. **Due Care and Diligence.** GRANTEE will exercise due care and diligence in entering upon the Kekaha Lands and the Premises and will not disrupt or disturb in any way or in any manner whatsoever the activities customary to the operations of KAA, KAA Members (as defined below), or its or their agents, or any existing land licensee of any portion of the Kekaha Lands, and GRANTEE shall exercise due care for public safety. At all times during the term of this Agreement and upon the termination of this Agreement, GRANTEE shall be responsible for: (a) removing any debris or trash deposited by GRANTEE on the Premises or the Kekaha Lands; (b) repairing any damage to the Premises or Kekaha Lands caused by GRANTEE; and (c) restoring the Premises or Kekaha Lands to its original or better than original condition, subject to GRANTEE's rights pursuant to Paragraph 3(a) above and its obligations pursuant to Paragraphs 3(c) and 3(d) above. This provision shall survive the termination of this Agreement.

6. **Historic Preservation.** In the event of any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered, GRANTEE, its consultants, contractors and/or persons acting for or on its behalf pursuant to this Agreement shall stop work and contact the Kauai Police Department and the State Historic Preservation Division in Kapolei at (808) 692-8015 immediately, and further notify GRANTORS as soon as practicable thereafter as governed by paragraph 18, below. In no event shall any rocks or sand be removed from any Hawaiian cultural sites on the Kekaha Lands or the Premises, whether known or discovered.

7. **Indemnity.** GRANTEE agrees to indemnify, defend, release and hold harmless ADC, KAA, BASF, Pioneer, Syngenta, and KAA Members (BASF, Pioneer, Syngenta, Sunrise Capital, Inc., and Wines of Kauai, L.L.C., collectively referred to herein as, "KAA Members") from and against any and all costs, claims, suits, fines, damages, or causes of action of any kind for injury of any kind to any person, or damage to any property of any kind occasioned, in whole or in part, by GRANTEE's actions or omissions arising out of its presence on the Kekaha Lands and/or the Premises or the exercise of any rights or performance of any obligations under this Agreement. Further, GRANTEE agrees that neither ADC nor KAA nor KAA Members shall be liable to GRANTEE or its agents or representatives, should GRANTEE or its agents or representatives suffer any injury to their persons or property as a result of work conducted on the Kekaha Lands and/or the Premises pursuant to this Agreement.

8. **Insurance.** GRANTEE shall obtain on an occurrence basis and maintain at all times at its own expense insurance coverage of the kinds and in amounts greater than or equal to those set forth below:

- (a) Insurance Coverage: Minimum Policy Limits

Commercial General Liability: \$1,000,000 General Aggregate Limit (other than Completed Operations)

\$1,000,000 Completed Operations Aggregate Limit  
\$1,000,000 Each Occurrence Limit  
\$1,000,000 Personal & Advertising Limit

Umbrella (Excess) Liability: \$2,000,000 Aggregate (or Equivalent Coverage under CGL)

Worker's Compensation: Coverage A: As required by Hawaii Laws

Coverage B: Employer's Liability  
\$1,000,000 Bodily Injury by Accident Each Accident  
\$1,000,000 Bodily Injury by Disease  
\$1,000,000 Policy Limit and \$1,000,000 Each Employee

Automobile: \$500,000 per occurrence and \$1,000,000 in aggregate; auto pollution liability coverage

(b) Prior to first entry onto the Kekaha Lands or the Premises, GRANTEE shall provide to ADC, KAA, BASF, Pioneer, Syngenta, and KAA Members an insurance binder to show compliance with subsection (a) above and subsection (c) below.

(c) GRANTEE shall name ADC, KAA, BASF, Pioneer, Syngenta, and each of the KAA Members and their respective officials, directors, officers, members, employees and agents as additional insureds.

(d) ADC, KAA, BASF, Pioneer, Syngenta, and KAA Members shall be notified at least fifteen (15) days prior to the termination, cancellation or material change in GRANTEE's insurance coverage.

(e) GRANTEE shall cover injuries, losses or damages arising from, growing out of or caused by any acts or omissions of GRANTEE in connection with GRANTEE's and/or the general public's use or occupancy of the Kekaha Lands or the Premises.

(f) The procuring of such required policy or policies of insurance shall not be construed to limit GRANTEE's liability under this Agreement or to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policy or policies of insurance, GRANTEE shall be obligated for the full and total amount of any damage, injury, or loss for which GRANTEE is obligated to provide indemnification pursuant to Paragraph 7 above.

(g) GRANTEE shall keep such insurance in effect and the certificate(s) on deposit with ADC, KAA, BASF, Pioneer, Syngenta, and KAA Members during the entire term of this Agreement. Upon request by ADC, KAA, BASF, Pioneer, Syngenta, or any KAA Member, GRANTEE shall furnish a copy of the policy or policies.

(h) Failure of GRANTEE to provide and keep in force such insurance shall be regarded as a material default under this Agreement and GRANTORS shall be entitled to exercise any or all of the remedies provided in this Agreement for default of GRANTEE.

(i) GRANTEE acknowledges and agrees that GRANTEE's insurance shall be primary. Any insurance maintained by ADC, KAA, BASF, Pioneer, Syngenta, or KAA Members shall apply in excess of, and shall not contribute with insurance provided by GRANTEE.

9. **Condition /Assumption of Risk.** GRANTEE hereby agrees and acknowledges that neither ADC nor KAA nor KAA Members have made any representation or warranty, implied or otherwise, with respect to the condition of the Kekaha Lands or Premises, including any dangerous or defective conditions existing thereon, whether or not such conditions are known to ADC, KAA or KAA Members or reasonably discoverable by GRANTEE. GRANTEE agrees that neither ADC nor KAA nor any of the KAA Members shall be held responsible for any injury or damage to GRANTEE due to the presence of hazardous materials on or in the Kekaha Lands and/or the Premises. GRANTEE further agrees that any property left on the Kekaha Lands and/or the Premises during the term of this Agreement shall be left there at the sole risk of GRANTEE.

10. **Compliance with Laws and Regulations.** GRANTEE shall, at all times during the term of this Agreement, observe and comply with all applicable laws, rules and regulations, whether County, State or federal, including but not limited to, the laws applicable to the use of the Kekaha Lands and Premises and the securing of any and all necessary governmental and other approvals and permits for use of the Kekaha Lands and Premises.

11. **Prohibited Use.** Any use of the Kekaha Lands or the Premises not authorized by this Agreement, including but not limited to Paragraph 3 above, shall constitute a material breach of this Agreement and upon such breach ADC and/or KAA may terminate this Agreement with respect to some or all of the Kekaha Lands or the Premises forthwith without notice and pursue any other remedies to which they are entitled to by law or under this Agreement. To the extent GRANTEE performs any unauthorized activity on the BASF Fields, the Pioneer Fields or the Syngenta Fields, then BASF, Pioneer or Syngenta may order the suspension of any and all activities on their respective fields by GRANTEE, pending resolution of GRANTEE's unauthorized activity.

12. **Improvements.** GRANTEE shall not construct any improvements of any kind or nature upon the Kekaha Lands or the Premises without the express prior written consent of GRANTORS, which consent may be granted or withheld in any GRANTOR's sole discretion. Any improvements, including but not limited to structures, erected on or moved onto the Kekaha Lands or the Premises by GRANTEE shall remain the property of GRANTEE and GRANTEE shall have the right, prior to the termination or revocation of this Agreement, to remove the improvements from the Kekaha Lands or the Premises; provided, however, that in the event the GRANTEE shall fail to remove the improvements prior to the termination or revocation of this Agreement GRANTORS may, in their sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to GRANTEE. This provision shall survive the termination of this Agreement.

13. **No Lien.** GRANTEE shall not: (a) create, incur, or assume any attachment, judgment, lien, charge, or other encumbrance on the Kekaha Lands or the Premises or any improvements thereon without ADC's express prior written consent, which consent may be granted or withheld in ADC's sole discretion; or (b) suffer to exist any such encumbrance other than one created, incurred, or assumed by ADC.

14. **Non-transferrable.** This Agreement or any rights hereunder shall not be sold, assigned, conveyed, or otherwise transferred or disposed of without the express prior written consent of the GRANTORS.

15. **Additional Terms and Conditions.**

(a) No one may reside on the Kekaha Lands or the Premises, which may not be accessed for any other purpose except as authorized.

(b) Animals, plants, rocks, dirt and other materials that are on or part of the Kekaha Lands or the Premises shall not be harmed or removed from the Premises, except as may be authorized under this Agreement.

(c) If GRANTEE continues to enter or remain on the Kekaha Lands after the Termination Date, or leaves its physical property on the Kekaha Lands after the Termination Date, GRANTEE shall pay ADC and KAA as liquidated damages \$500.00 each for each calendar day (or part thereof) that such unlawful entrance and occupation of the Premises continues beyond the Termination Date. If GRANTEE continues to enter or remain on the BASF Fields, the Pioneer Fields, and/or the Syngenta Fields after the Termination Date, or leaves its physical property on the BASF Fields, the Pioneer Fields, and/or the Syngenta Fields, after the Termination Date, GRANTEE shall pay ADC and, respectively, BASF, Pioneer, and/or Syngenta \$500.00 each as liquidated damages for each calendar day, or part thereof, that such unlawful entrance and occupation continues. GRANTEE understands and agrees that such damages are not a penalty, but rather are reasonable estimates of the losses that the relevant GRANTORS would suffer and that the Parties acknowledge would be difficult to ascertain under the circumstances triggering the damages and are the GRANTORS' exclusive remedy, other than equitable relief (such as an injunction barring GRANTEE

from entering and remaining on the Kekaha Lands and/or the Premises) or legal relief (in the form of eviction of GRANTEE from the Kekaha Lands and/or the Premises or similar legal relief, but not damages) for such entrance or use.

(d) GRANTORS reserve the right to impose additional terms and conditions, if deemed necessary.

**16. Hazardous Materials.** In no event shall GRANTORS be liable for any damages due to the presence of Hazardous Materials, as defined in this Agreement, on, under or within the Kekaha Lands and/or the Premises. GRANTEE shall not cause or permit any Hazardous Material to be used, stored, generated, or disposed of on or in any portion of the Kekaha Lands or the Premises by GRANTEE, its agents, employees, contractors or anyone acting by, through or for GRANTEE. If in violation of the foregoing sentence Hazardous Materials are used, stored, generated, or disposed of on or in the Kekaha Lands or the Premises by GRANTEE, its agents, employees, contractors, or invitees, GRANTEE shall indemnify and hold harmless GRANTORS and their owners, managers, partners, subsidiaries, affiliates, successors and assigns, and any officer, member, director, employee and agent thereof, from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the Kekaha Lands or the Premises, damages caused by loss or restriction of usable area, or any damages caused by adverse impact on marketing of the Kekaha Lands or the Premises, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising on or after the date of this Agreement and arising as a result of that contamination. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any clean-up, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if GRANTEE, its agents, employees, contractors or anyone acting by, through or for GRANTEE, causes the presence of any Hazardous Material on the Kekaha Lands and/or the Premises and that results in contamination, GRANTEE at its sole expense, promptly shall take any and all necessary actions to return the affected portions of the Kekaha Lands or the Premises to the condition existing prior to the presence of any such Hazardous Material on the Kekaha Lands and/or the Premises. GRANTEE shall first obtain ADC's and KAA's written approval for any such remedial action. As used herein, the term "Hazardous Material" means and includes, without limitation, inflammable explosives, radioactive materials, asbestos, organic compounds (including polychlorinated biphenyls), pollutants, contaminants, hazardous wastes, toxic substances or related materials and any substances defined as or included in the definitions for "hazardous substances", "Hazardous wastes" "extremely hazardous wastes", Hazardous materials, or "toxic substances" under the following laws, ordinances and regulations ("Hazardous Materials Laws"): Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act, the Hazardous Materials Control Act, the Safe Drinking Water Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, Emergency Planning and Right-to-Know Act, as the same may be amended from time to time, and similar Hawaii State and local laws and ordinances,

and regulations now or hereafter adopted, accomplished and promulgated pursuant thereto applying to the Kekaha Lands and/or the Premises.

17. **Termination.** Notwithstanding any other provision contained herein, this Agreement is revocable at the will of ADC and KAA, and can be canceled or terminated at any time and for any reasons, including any breach of default hereunder, upon two (2) weeks written notice in accordance with Paragraph 18 below. In the event this Agreement is terminated as provided herein, GRANTEE shall immediately remove any and all of GRANTEE's property physically located on the Kekaha Lands and the Premises any such property not timely removed shall be deemed abandoned by GRANTEE, and GRANTOR shall have the right to dispose of the property in any commercially reasonable manner.

18. **Notices.** Any notice, request, demand, or other communication required or permitted to be given or made under this Agreement by either party hereto shall be in writing and shall be deemed to have been duly given or served if: (a) personally delivered; (b) sent by mail, postage prepaid and certified with return receipt requested; (c) transmitted by facsimile, or (d) sent by e-mail with request for delivery confirmation, at the address, facsimile number, or e-mail address given below:

STATE OF HAWAII  
AGRIBUSINESS DEVELOPMENT CORPORATION  
Attn: James Nakatani, Executive Director  
State Office Tower  
235 South Beretania St., Rm. 205  
Honolulu, Hawaii 96813  
Tel: (808) 586-0186  
Facsimile: (808) 586-0189  
E-mail:

KEKAHA AGRICULTURE ASSOCIATION  
Attn.: Landis Ignacio  
Telephone: (808) 639-1982  
Facsimile: (808) 639-1982  
E-mail: ignacio@hawaii.rr.com

BASF PLANT SCIENCE LP  
Attn.: Steven J. Lupkes  
Telephone: (808) 337-2065  
Facsimile: (808) 337-2065  
E-mail: steven.lupkes@basf.com

PIONEER HI-BRED INTERNATIONAL, INC.  
Attn.: John Petersen  
Telephone: (808) 338-8300

Facsimile: (808) 338-8300  
E-mail: jon.petersen@pioneer.com

SYNGENTA SEEDS, INC.  
Attn.: Mark Phillipson  
Telephone: (808) 621-2925  
Facsimile: (808) 621-2925  
E-mail: mark.phillipson@syngenta.com

POHAKU O' KAUAI, LLC  
3-1480 Kaumualii Highway  
Lihue, Kauai, Hawaii 96766  
Attn.: Stanley Morinaka  
Telephone:  
Facsimile:  
E-mail:

19. **Modification of Agreement.** This Agreement represents the entire Agreement between the parties hereto and may not be modified or terminated, in whole or in part, except by another Agreement in writing, duly executed by GRANTORS and GRANTEE.

20. **Headings, Captions.** The headings and captions of paragraphs or other parts hereof are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which the respective headings and captions may pertain.

21. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Hawaii.

22. **Counterparts.** This Agreement may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single Agreement.

23. **Time of Essence.** Time is of the essence of this Agreement. No provisions relating to the timeliness may be waived, extended or modified except by the written Agreement of all of the parties.

24. **Attorney's Fees.** In the event of any controversy, claim or dispute among the parties arising out of or relating to this Agreement or the breach hereof, all parties shall bear their own fees and costs.

25. **Invalidity, Severability.** If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement

shall not be affected thereby, provided that the essential provisions of this Agreement and the position of the parties hereto are not materially changed thereby.

26. **Consents, Approvals.** Where consents or approvals are required by any of the Parties, unless specifically provided to the contrary, the parties shall not arbitrarily withhold such consent or approval or require the payment of any monies therefore.

IN WITNESS WHEREOF, GRANTORS and GRANTEE have caused this Agreement to be executed as of the day and year first above written.

**"GRANTORS":  
AGRIBUSINESS  
DEVELOPMENT CORPORATION:**

**"GRANTEE":  
POHAKU O' KAUAI MATERIALS, LLC:**

By:   
Its: Executive Director

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**KEKAHA AGRICULTURE ASSOCIATION:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**PIONEER HI-BRED INTERNATIONAL, INC.:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**SYNGENTA SEEDS, INC.:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**BASF PLANT SCIENCE LP:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

IN WITNESS WHEREOF, GRANTORS and GRANTEE have caused this Agreement to be executed as of the day and year first above written.

**"GRANTORS":  
AGRIBUSINESS  
DEVELOPMENT CORPORATION:**

**"GRANTEE":  
POHAKU O' KAUAI MATERIALS, LLC:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**KEKAHA AGRICULTURE ASSOCIATION:**

By: *Joe Menechika*  
Its: \_\_\_\_\_

**PIONEER HI-BRED INTERNATIONAL, INC.:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**SYNGENTA SEEDS, INC.:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**BASF PLANT SCIENCE LP:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

IN WITNESS WHEREOF, GRANTORS and GRANTEE have caused this Agreement to be executed as of the day and year first above written.

**"GRANTORS":  
AGRIBUSINESS  
DEVELOPMENT CORPORATION:**

**"GRANTEE":  
POHAKU O' KAUAI MATERIALS, LLC:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**KEKAHA AGRICULTURE ASSOCIATION:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**PIONEER HI-BRED INTERNATIONAL, INC.:**

By: Mark Takemoto  
Its: Facility + Real Estate Mgr

**SYNGENTA SEEDS, INC.:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**BASF PLANT SCIENCE LP:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

IN WITNESS WHEREOF, GRANTORS and GRANTEE have caused this Agreement to be executed as of the day and year first above written.

**"GRANTORS":  
AGRIBUSINESS  
DEVELOPMENT CORPORATION:**

**"GRANTEE":  
POHAKU O' KAUAI MATERIALS, LLC:**

By: \_\_\_\_\_  
Its:

By: \_\_\_\_\_  
Its:

**KEKAHA AGRICULTURE ASSOCIATION:**

By: \_\_\_\_\_  
Its:

**PIONEER HI-BRED INTERNATIONAL, INC.:**

By: \_\_\_\_\_  
Its:

**SYNGENTA SEEDS, INC.:**

By: Mark A. Lumbus  
Its: Station Manager

**BASF PLANT SCIENCE LP:**

By: \_\_\_\_\_  
Its:

IN WITNESS WHEREOF, GRANTORS and GRANTEE have caused this Agreement to be executed as of the day and year first above written.

"GRANTORS":  
AGRIBUSINESS  
DEVELOPMENT CORPORATION:

"GRANTEE":  
POHAKU O' KAUAI MATERIALS, LLC:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

KEKAHA AGRICULTURE ASSOCIATION:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

PIONEER HI-BRED INTERNATIONAL, INC.:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

SYNGENTA SEEDS, INC.:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

BASF PLANT SCIENCE LP:

By:   
Its: *Research Station Manager*

IN WITNESS WHEREOF, GRANTORS and GRANTEE have caused this Agreement to be executed as of the day and year first above written.

**"GRANTORS":  
AGRIBUSINESS  
DEVELOPMENT CORPORATION:**

**"GRANTEE":  
POHAKU O' KAUAI MATERIALS, LLC:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By:   
Its: 

**KEKAHA AGRICULTURE ASSOCIATION:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**PIONEER HI-BRED INTERNATIONAL, INC.:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

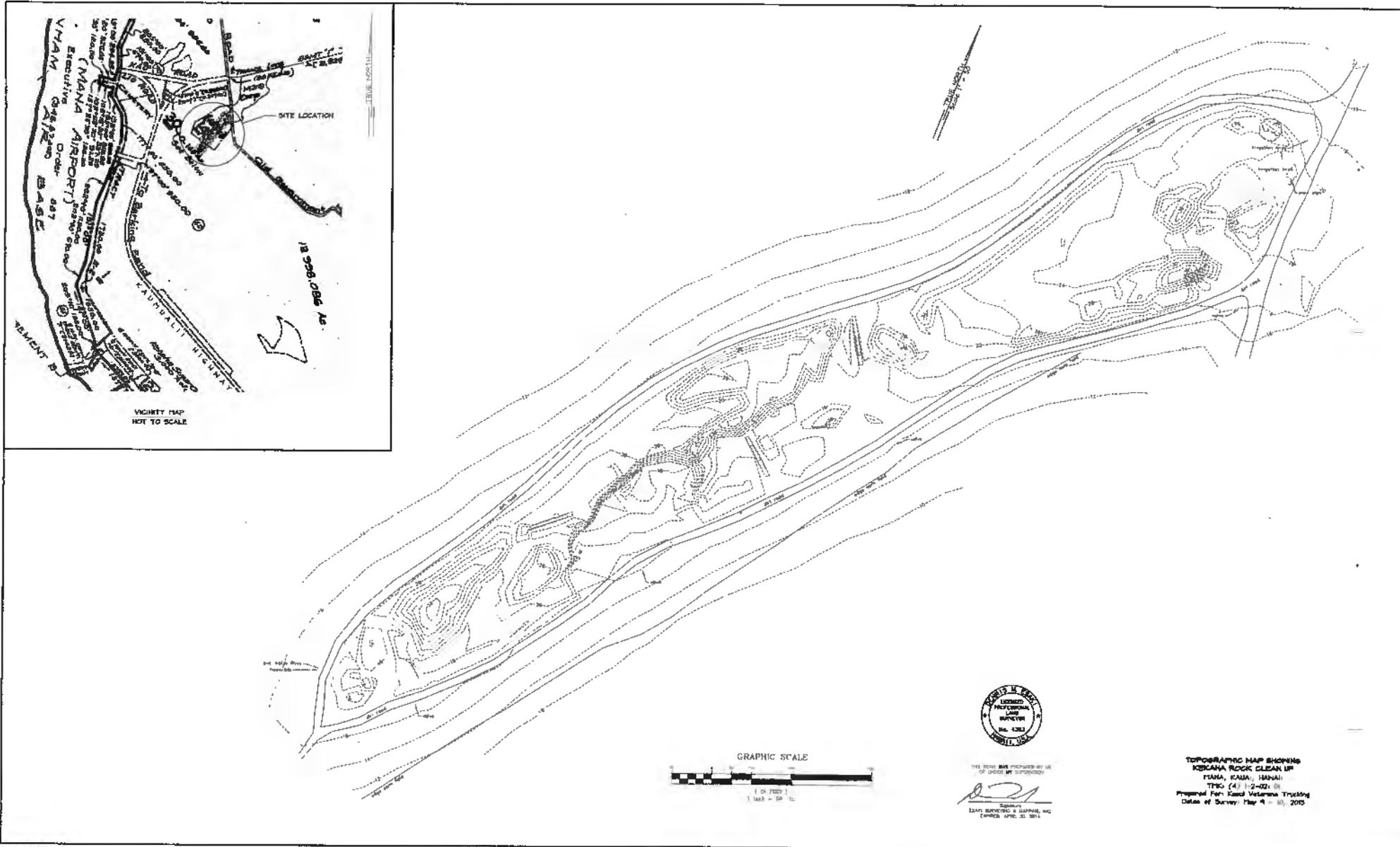
**SYNGENTA SEEDS, INC.:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**BASF PLANT SCIENCE LP:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_





Job Number: 15-01 81  
 Drawing Title: 15-01-01-01

CSAKI SURVEYING & MAPPING, INC.  
 Civil Engineers Land Surveyors Planners

1/2" = 100' (Vertical Scale)  
 1" = 50' (Horizontal Scale)

**DAVID Y. IGE**  
Governor

**JOSH GREEN**  
Lt. Governor



**JAMES J. NAKATANI**  
Executive Director

STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT CORPORATION**

235 S. Beretania Street, Room 205  
Honolulu, HI 96813  
Phone: (808) 586-0186 Fax: (808) 586-0189

April 20, 2022

**Subject:** Request for Approval to Amend the Water User Agreement for Bott Well Pump Station in Wahiawa, Oahu

**Authority:** Section 163D-4(a)(5), Hawaii Revised Statutes

**BACKGROUND:**

The Bott Well Pump Station ("well") is located at the Galbraith Agricultural Lands ("GAL") in Waialua, Oahu near the intersection of Kaukonahua Road and Wilikina Drive in the central-western point of the small farmer lots (see "Exhibit A"). The well has a capacity of 3 MGD and is the lifeline for the farmers on the GAL. The Agribusiness Development Corporation ("ADC") has a ground water use permit ("WUP 976") with an allocation of nearly 2 MGD from the Commission on Water Resource Management.

Since acquiring the GAL in 2013, the ADC has invested over \$5,000,000 in irrigation improvements, which include replacement of the well's diesel engine, rehabilitation of the distribution line and risers, installation of water meters and risers for the small farmer lots, construction of reservoirs and storage ponds, and other expenses. Additionally, the ADC spends roughly \$100,000 annually on a contract for the maintenance of the well, distribution lines, and water meters, as well as to perform limited operations. This contract also includes reporting annual air quality emissions and monthly ground water use.

In April 2020, Kelena Farms proposed that they continue performing a majority of the daily operations on their own, which included purchasing diesel fuel, operating the well pump, and filling reservoirs and storage ponds, and requested that the others users pay a share for diesel fuel, a cost which Kelena Farms had previously borne alone.

In June 2020, ADC executed Water User Agreements ("WUA") with all GAL tenants and began billing at \$0.89 per 1000 gallons effective July 1, 2020. At the time the agreements were executed, diesel fuel was less than \$1.70 per gallon. In June 2021, ADC raised the rates from \$0.89 per 1000 gallons to \$1.65 per 1000 gallons to help cover the rising fuel costs at Bott Well Pump Station. At that time, the cost of diesel fuel was \$2.44 per gallon – a 44% increase. As of March 26, 2022, the cost of diesel fuel was \$4.30 per gallon – a 76% increase from June 2021.

**REQUEST & DISCUSSION:**

ADC requests approval to raise the water rate from \$1.65 per 1000 gallons to \$1.75 per 1000 gallons to cover the fuel costs at Bott Well Pump Station. At the time this Board approved the WUA in May 2020, it stipulated that water rates would be revisited every two years. However, given the rapid rise in fuel prices in Hawaii and across the country, ADC cannot afford to subsidize our GAL farmers' fuel costs.

ADC contacted an accredited systems operator for information about the estimated cost to manually operate the Bott Well Pump Station to compare costs. If the ADC were to contract these services out to a third-party contractor and assuming the cost of diesel fuel is \$4.30, the estimated cost per 1,000 gallons of water would be \$2.34 (see "Exhibit B"). This cost factors fuel cost at \$4.30 per gallon, periodic

maintenance and mechanical failures, manual operation of Bott Well, manual operations of booster pumps, monthly reporting, and meter reading. Kelena Farms currently performs these tasks including monitoring the entire system to ensure it is operating efficiently.

Lastly, WUA paragraph 1 allows the early termination if the current agreement: "This agreement shall be effective at the date of execution and shall terminate upon the termination of the License, when USER quits the property covered by the License, or upon the earlier termination of this Agreement or the License at ADC's discretion, whichever shall first occur."

CONCLUSION:

Rising fuel costs have made it unsustainable for ADC to continue to subsidize fuel costs for GAL farmers, furthermore, current market volatility suggests that prices may rise even more. Given the reality of current fuel costs, ADC believes that a rate increase is necessary.

RECOMMENDATION:

Staff recommends that the Board authorize the Executive Director to terminate the current Water User Agreement and execute an amended Water User Agreement with all GAL water users, subject to the following conditions:

1. The current agreements shall terminate on April 30, 2022.
2. The amended agreements shall be effective immediately.
3. The amended water rate shall be no more than \$1.75 per 1000 gallons.
4. No water shall be delivered without an Agreement.
5. All other terms of the Agreement shall remain the same.

Respectfully submitted,



James J. Nakatani  
Executive Director



EXHIBIT B

Bott Well Water Cost Worksheet				3/26/2022		
Item	Description				Extended Component Cost	
<b>1</b>	<b>Fuel Costs:</b>					
	Flow Rate	Fuel Consumption	Assumed Fuel Cost	Fuel Cost		
	800 GPM	11.4 GPH	\$ 4.30 /gal.	1.02 /1000 gal.		
	1200 GPM	18 GPH	\$ 4.30 /gal.	1.08 /1000 gal.		
	1600 GPM	28.1 GPH	\$ 4.30 /gal.	1.26 /1000 gal.		
	1800 GPM	35.2 GPH	\$ 4.30 /gal.	1.40 /1000 gal.	\$	1.40
	2000 GPM	38.3 GPH	\$ 4.30 /gal.	1.37 /1000 gal.		
<b>2</b>	<b>Periodic Maintenance (scheduled engine servicing/overall system checks):</b>					
	Cost per Service:	Service interval:	Assumed Gals. / service	Cost per 1000 gals.		
	\$4,262.00 /service	250 hours	24,000,000.00 gallons	0.17758333	\$	0.18
	Assumes average flow rate is 1,600 gpm					
<b>3</b>	<b>Major Maintenance/ mechanical failures:</b>					
	Assumptions: Cost = \$100,000 per 10,000 hours at an average pumping rate of 1,600 GPM				\$	0.10
<b>4</b>	<b>Manual operation of Bott Well</b>					
	Assumptions: Daily manning= \$300 operate pump 8 hours @ 1,600 GPM				\$	0.39
<b>5</b>	<b>Manual operation of Booster Pump</b>					
	Monthly Rental of Pump @ \$2,000/month @24,000,000 per month:			0.08		
	Labor to operate pump: 15 days @ \$100 per day : \$1,500 =			0.06		
	Fuel/maintenance to operate pump: say \$100/day X 15 days per month:			0.06		
				0.21	\$	0.21
<b>6</b>	<b>Monthly CWRM Reporting:</b>					
	Monthly Cost:	Monthly Consumption:		Cost Per 1000 gallons		
	\$ 835.00	10,000,000	333,333 per day average	0.084		
		24,000,000	250 hours @ 1,600 GPM	0.035	\$	0.04
		48,000,000	500 hours @ 1,600 GPM	0.017		
<b>7</b>	<b>Monthly Meter Reading / Billing</b>					
	Monthly Cost:	Monthly Consumption:		Cost Per 1000 gallons		
	\$ 375.00	10,000,000	333,333 per day average	0.038		
		24,000,000	250 hours @ 1,600 GPM	0.016	\$	0.02
		48,000,000	500 hours @ 1,600 GPM	0.008		
<b>Water Cost Per 1,000 Gallons</b>					\$	<b>2.34</b>

**DAVID Y. IGE**  
Governor

**JOSH GREEN**  
Lt. Governor



**JAMES J. NAKATANI**  
Executive Director

**ITEM D-5**

STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT CORPORATION**

235 S. Beretania Street, Room 205  
Honolulu, HI 96813  
Phone: (808) 586-0186 Fax: (808) 586-0189

April 20, 2022

**Subject:** Discussion on the Request for Proposal to Construct and Operate a High-Pressure Processing Machine and Agricultural Facilities in the Whitmore Food Hub, Wahiawa, Oahu

**Applicant:** N/A

**Authority:** Section 163D-4(a)(5), Hawaii Revised Statutes

**Area:** Island of Oahu

**Tax Map Key:** N/A

**Land Status:** N/A

**Trust Land Status:** N/A

**Character of Use:** Processing Facility

**Contract Term:** TBD

**BACKGROUND:**

The State of Hawaii Agribusiness Development Corporation (ADC) seeks to solicit proposals to construct, operate and maintain a high-pressure processing (HPP) machine and agricultural facilities situated within the Whitmore Food Hub in Wahiawa, Oahu.

This request seeks to bring High Pressure Processing (HPP) technology to Hawaii for use by farmers and other food producers. Local farmers and food producers face challenges of: 1) delivery and shipping logistics, and 2) the limited shelf-life of Hawaii-made value-added food products. Addressing this challenge will immensely increase the economic development opportunities for Hawaii's agricultural and "value-added" industries.

HPP is a non-thermal technology that pasteurizes and preserves food, thereby extending the shelf-life of food products from several weeks up to months, without compromising overall food quality. It enables farmers and value-added processors to scale distribution and exports with non-thermal technology to preserve and pasteurize food products without compromising overall food quality and food safety. HPP machines can process a wide variety of foods, including fruits, vegetables, meats and seafoods. It

Discussion on the Request for Proposal to Construct and Operate a High-Pressure Processing Machine and Agricultural Facilities in the Whitmore Food Hub, Wahiawa, Oahu

April 20, 2022

Page 2 of 4

can deliver ready-to-eat meals, ready-to-cook meats, juices, soups, sauces, dips, and dairy-based products.

It is a proven, growing technology used extensively on the mainland, but so far, not available locally. High start-up costs make it difficult for the private sector to take on this investment.

Accordingly, the State is creating a “food hub”, that establishes HPP center at its core, with supportive facilities including cold storage and distribution capabilities. It will be located in Central Oahu within the Whitmore Food Hub (Tax Map Key numbers. (1) 7-1-002:009 and (1) 7-1-002:004. At full build out, The Food Hub will also include offices, additional warehousing, and workforce housing.

ADC is awarding up to Five Million Five Hundred Thousand Dollars (\$5,500,000) for the purchase, delivery, and installation of said machine(s), as well as hiring technical expertise, staff training, and project support. The funding was provided by the State of Hawaii Department of Business, Economic Development, and Tourism to progress the state’s agricultural post-production capacity to support local demand and scalability of value-added exports.

ADC will own the machine(s); however, it will be purchased, installed, and maintained by the selected Offeror. The selected Offeror will be responsible for providing materials and labor for operating and maintaining the HPP machine(s), as well as the food processing hub complex. It will establish user fees, as approved by ADC. The selected Offeror will also be responsible for obtaining all required land use entitlements, government approvals, and permits, and operating the HPP machine on behalf of the State for a minimum of seven years. In consideration of the Offeror’s services and the Offeror’s proposed rent schedule, the ADC will provide the selected Offeror with funding for the HPP machine and a ground lease for up to 553,778 square feet (12.3 acres) within the Whitmore Food Hub.

The ADC’s evaluation committee, comprised of at least three (3) qualified state employees, will evaluate the proposals and select the Offeror whose proposal best meets ADC’s objectives and the RFP selection criteria.

REQUEST:

Pursuant to Chapter 163D-4(8), authorize the Executive Director to issue a Request for Proposal (see “Exhibit A”) to purchase and operate a high-pressure processing machine and develop and manage a food processing facility in Wahiawa, Oahu.

RECOMMENDATION:

Based upon the above, the recommendation is to approve the request to issue a Request for Proposal to construct and operate a HPP machine and agricultural facilities and authorize the Executive Director to negotiate and enter into a public private partnership subject to the following conditions:

Discussion on the Request for Proposal to Construct and Operate a High-Pressure Processing Machine and Agricultural Facilities in the Whitmore Food Hub, Wahiawa, Oahu

April 20, 2022

Page 3 of 4

- 1) ADC will provide up to \$5.5 million to acquire at least one, possibly two HPP machine, and installation of said equipment, as well as project support;
- 2) The term of the Contract shall be for a minimum 7 years, with the option to extend;
- 3) ADC shall own the equipment throughout its usable life and the Offeror shall be responsible for operating and maintaining the HPP machine and facility for a minimum of 7 years;
- 4) ADC shall receive, at minimum, a fee equivalent to 1% of any gross sales over the first \$1 million of gross sales generated by the HPP machine operations; and
- 5) In consideration of the Offerors services, the ADC will provide the Offeror a lease for up to 553,778 square feet (12.3 acres) within the Whitmore Food Hub for the development of agricultural facilities.

Respectfully submitted,



James J. Nakatani  
Executive Director

Discussion on the Request for Proposal to Construct and Operate a High-Pressure Processing Machine and Agricultural Facilities in the Whitmore Food Hub, Wahiawa, Oahu  
April 20, 2022  
Page 4 of 4

EXHIBIT A

[see following pages 1 – 18]

“DRAFT Request for Proposals No. RFP-2022 Construct and Operate a High-Pressure Processing Machine and Agricultural Facilities, Wahiawa, Oahu”



State of Hawaii  
Agribusiness Development Corporation  
235 S. Beretania St., Rm. 205  
Honolulu, Hi 96813  
T: (808) 586-0186 F: (808) 586-0189

Release Date: May 2, 2022

Request for Proposals  
No. RFP-2022 Whitmore High Pressure Processing Machine & Agricultural Facilities

Sealed offers

**TO CONSTRUCT AND OPERATE A HIGH-PRESSURE PROCESSING MACHINE AND AGRICULTURAL FACILITIES AT THE WHITMORE FOOD HUB, WAHIAWA, OAHU**

Will be received up to 4:30 P.M. HST On July 15, 2022 in the Agribusiness Development Corporation Office (235 S. Beretania Street #205, Honolulu, HI 96813). Direct questions relating to this solicitation to Ken Nakamoto Telephone (808) 586-0087 or Email at [ken.t.nakamoto@hawaii.gov](mailto:ken.t.nakamoto@hawaii.gov).

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	<ul style="list-style-type: none"><li>• Attachment 1: SUBMISSION OF QUALIFICATIONS (SOQ)</li><li>• Attachment 2: REQUEST FOR PROPOSALS (RFP)</li><li>• Attachment 3: WHITMORE FOOD HUB</li><li>• Attachment 4: GENERAL LEASE</li><li>• Attachment 5: HPP MACHINE REPORT ***pending***</li></ul>	

## **Section One**

### **Introduction, Terms and Acronyms, and Key Dates**

#### **1.1 Introduction**

The State of Hawaii Agribusiness Development Corporation (ADC) is soliciting proposals to construct, operate, and maintain a high pressure processing (HPP) machine(s), and agricultural facilities situated in Wahiawa, Oahu.

ADC is providing up to Five Million Five Hundred Thousand Dollars (\$5,500,000) for the purchase, warranty, delivery, and installation of said HPP machine(s), as well as hiring technical expertise, staff training, and project support. ADC will own the machine(s); however, it will be purchased, installed, operated, and maintained by the selected Offeror for a minimum of seven years. The selected Offeror will be responsible for providing materials and labor for operating and maintaining the HPP machine(s) It will also establish user fees, as approved by ADC. In consideration of the Offeror's services and Offeror's proposed rent schedule, ADC will provide the Offeror with a 35-year lease with a 20-year extension option for up to 535,788 square feet (12.3 acres) within the Whitmore Food Hub for the development of agricultural facilities, including but is not limited to: cold storage; food processing; and distribution centers. The selected offeror will be responsible for providing materials and labor for the construction of the agricultural facilities, and obtaining all required land use entitlements, government approvals, and permits.

Qualified Offerors will be invited to submit proposals that are permitted under applicable Hawaii laws, ordinances, rules and regulations.<sup>1</sup>

The Evaluation Committee will select the Offeror whose proposal best meets ADC's objectives and the RFP selection criteria.

#### **1.2 Cancellation**

The Request for Submission of Qualifications (SOQs) and Request for Proposals (RFP) may be cancelled and any or all proposals rejected in whole or in part, without liability to the State, at any time, and when it is determined to be in the best interest of the State.

#### **1.3 Terms and Acronyms Use Throughout the Solicitation**

ADC	=	Agribusiness Development Corporation, 235 S Beretania Street #205, Honolulu, HI 96813
BAFO	=	Best and Final Offer
CPO	=	Chief Procurement Officer
DAGS	=	Department of Accounting and General Services
DOH	=	Department of Health
GC	=	General Conditions, issued by the Department of the Attorney General
GET	=	General Excise Tax
HAR	=	Hawaii Administrative Rules

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<sup>1</sup> Applicable laws include, but are not limited to Hawaii Revised Statutes (HRS) Chapter 163D, HRS, Chapter 321, the City and County of Honolulu Land Use Ordinances, and regulations set forth by the United States Department of Agriculture, Food Safety and Inspection Service or the State Department of Health.

HDOA	= Hawaii Department of Agriculture, 1428 South King Street, Honolulu, HI 95814
HPP machine	= High pressure processing machine for value-added product development
HRS	= Hawaii Revised Statutes
Offeror	= Any individual, partnership, firm, corporation, joint venture, or representative or agent, submitting an offer in response to this solicitation
POC	= Point of Contact for Offeror
Procurement Officer	= Contracting Officer for the State of Hawaii, Department of Agriculture
RFP	= Request for Proposals
State	= State of Hawaii, including each department and political subdivisions
Whitmore Food Hub	= Within TMKs No. (1) 7-1-002:009/(1) 7-1-002:004, as shown and delineated on the map labeled Attachment 3

#### 1.4 RFP Schedule and Significant Dates

The schedule represents the State’s best estimate of the schedule that will be followed. All times indicated are Hawaii Standard Time (HST). If a component of this schedule, such as "Proposal Due Date/Time" date is delayed, the rest of the schedule will likely be shifted by the same number of days. Any change to the RFP Schedule and Significant Dates shall be reflected in and issued in an addendum. The approximate schedule is as follows:

Notice of Request for Proposals	May 2
Site Visit	May 6
Deadline to Submit Written Questions	May 10
State’s Response to Written Questions	May 13
Submission of Qualifications Deadline	July 15 4:30 pm
Proposals Due Date / Time	July 15 4:30 pm
Proposal Evaluations	July 15 – August 15
Discussion with Priority Listed Offerors (if necessary)	August 19
Best and Final Offer Date / Time (if necessary)	August 30 4:30 pm
Notice of Award	September 5
Notice to Proceed	October 1
Contract Start Date	October 1

#### 1.5 Questions and Answers Prior To Opening of Proposals

All questions shall be submitted in writing and directed to Ken Nakamoto by (1) Mail: Department of Agriculture, Agribusiness Development Corporation Office, 235 S. Beretania Street Room 205, Honolulu, HI 96813; (2) Email: Please send a PDF version and Word version of your file to [ken.t.nakamoto@hawaii.gov](mailto:ken.t.nakamoto@hawaii.gov) by the due date specified in Section 1.4, RFP Schedule and Significant Dates, as amended.

The State will respond to questions through Addenda by the date specified in Section 1.4, RFP Schedule and Significant Dates, as amended.

[Remainder of page intentionally left blank]

## Section Two Background and Scope of Project

### 2.1 Need and Purpose

This RFP seeks to bring HPP technology to Hawaii for use by farmers and other food producers.

Local farmers and food producers face challenges of: 1) delivery and shipping logistics, and 2) the limited shelf-life of Hawaii-made value-added food products. Addressing this challenge will immensely increase the economic development opportunities for Hawaii's agricultural and "value-added" industries.

HPP is a non-thermal technology that pasteurizes and preserves food, thereby extending the shelf-life of food products from several weeks up to months, without compromising overall food quality. It enables farmers and value-added processors to scale distribution and exports with non-thermal technology to preserve and pasteurize food products without compromising overall food quality and food safety. HPP machines can process a wide variety of foods, including fruits, vegetables, meats and seafoods. It can deliver ready-to-eat meals, ready-to-cook meats, juices, soups, sauces, dips, and dairy-based products.

It is a proven, growing technology used extensively on the mainland, but so far, not available locally. High start-up costs make it difficult for the private sector to take on this investment.

Accordingly, the State is creating a "food hub", that establishes HPP center at its core, with supportive facilities including cold storage and distribution capabilities. It will be located in Central Oahu within the Whitmore Food Hub (Tax Map Key numbers. (1) 7-1-002:009 and (1) 7-1-002:004. At full build out, The Food Hub will also include offices, additional warehousing, and workforce housing.

### 2.2 Scope of Work

The Offeror shall provide the following items:

1. Ability to coordinate the purchase, delivery, and installation of at least one, possibly two HPP machine(s), as evidenced by prior projects (ADC will own the equipment, although Offeror will maintain the equipment for a minimum period of seven years)
  - a. Proven ability to purchase, deliver, and install the machine on time and within budget
  - b. The HPP machine(s) will process a total of 6,000 pounds per hour
  - c. The HPP machine(s) shall be capable of processing a wide variety of packaged products and fresh produce
2. Ability to design and rehabilitate an existing facility to house and operate the HPP machine(s)
  - a. Proven ability to develop facility on time and within budget
  - b. Construct all necessary on-site improvements, including driveways, and loading docks, in compliance with applicable laws and regulations
3. Technical support and labor to operate the HPP machine(s)
  - a. Proven ability to hire and manage operations teams
  - b. Proven ability to develop and implement training programs for operating the HPP machine(s).
4. Ability to operate the HPP machine(s)

- a. Proven ability to manage the HPP facility, as evidenced by current or previous operations.
  - b. Establish and collect user fees
5. Ability to provide upgrades for software and/or parts for manufactured HPP machine(s) and supporting and/or ancillary equipment
6. Equipment Maintenance
  - a. Ability to maintain purchased machine(s) per manufacturer's specifications and provide proof of maintenance or inspection records
  - b. Annual inspections must be performed by certified manufactures' representatives
7. Financial Records
  - a. Obtain and provide to ADC audited financial records
8. Annual Fee
  - a. Proven ability to remit to the ADC, at minimum, a fee equivalent to 1% of any gross sales over the first \$1 million of gross sales generated by the HPP machine(s) operation, based on audited financial records.
9. Expertise in development and construction management of agricultural facilities.
  - a. Proven ability to manage a construction project on time and within budget, as evidenced by prior development projects.
  - b. Ability to complete all site work, improvements, required remediation of hazardous materials (if any), and construct new buildings, which complies with Federal, State, and County laws and ordinances.
10. Expertise in development and construction management of agricultural facilities.
  - a. Proven ability to manage a construction project on time and within budget, as evidenced by prior development projects.
  - b. Ability to complete all site work, improvements, required remediation of hazardous materials (if any), and construct new buildings, which complies with Federal, State, and County laws and ordinances.

The Offeror will be expected to enter into a Contract with the State that will set forth the terms and conditions under which the selected Offeror shall operate and maintain the HPP machine(s). Lease agreement negotiations for the 535,788 square feet (12.3 acres) will commence when the Offeror has been selected.

### **2.3 ADC Responsibilities**

ADC will provide the following assets to the project.

1. Funding up to Five Million Five Hundred Thousand Dollars (\$5,500,000) for the purchase, delivery, and installation of the machine, includes hiring technical support, and staff training to operate the HPP machine
2. Provide land lease for up to 535,788 square feet (12.3 acres) of land within the Whitmore Food Hub for the development of agricultural facilities, including an existing building to house the HPP machine(s), and on-site utility necessary to operate the HPP machine(s)
3. Completion of necessary off-site infrastructure improvements, including water, drainage, electricity, and sewer.
4. Oversight of project management and resource of relevant information, if available, and as requested
5. Coordination between the State, County and Federal entities, which represent additional project support

## 2.4 Contract Administrator

For the purposes of this contract, Ken Nakamoto, Project Manager, Agribusiness Development Corporation Email: [ken.t.nakamoto@hawaii.gov](mailto:ken.t.nakamoto@hawaii.gov) Phone: (808) 586-0087, or authorized representative, is designated the Contract Administrator.

## **Section Three Proposal Format and Content**

### **3.1 RFP Solicitation and Selection Process**

#### Step 1: Submission of Qualifications

The RFP requires the submission of Statements of Qualifications (SOQs) from interested parties detailing their relevant engineering and machinery expertise, financial capabilities, and management experience. ADC will review the SOQs and determine which Offerors meet ADC's qualification criteria detailed in Section Four. ADC may, at its sole discretion, form a short list of the most qualified Offerors. The qualified Offerors (or a short list of the most qualified Offerors) will then be invited to participate in the proposal process. The required format and content of the SOQs are detailed in Attachment 1 and incorporated herein.

#### Step 2: Submission of Proposals.

Detailed development proposals, including a sealed rent proposal (sealed bid) shall be filed in writing by the designated deadline. ADC will review the proposals and will select the Offeror whose proposal best satisfies the ADC's development objectives and selection criteria as detailed in Section Four. The Board at a meeting open to the public, may approve the recommended Offeror and its development proposal. If approved by the Board, the selected Offeror and ADC will commence exclusive negotiations of a development agreement. Any amendments or extensions to the development agreement or terms or pre-development approvals not previously anticipated, may require further Board Approval. If the Board does not approve, then another proposal may be considered. The required format and content of the proposals are detailed in Attachment 2 and incorporated herein.

### **3.2 Offeror's Authority to Submit an Offer**

Other than the HPP machine(s) which the State will own, the State will not participate in determinations regarding an Offeror's authority to sell a product or service. If there is a question or doubt regarding an Offeror's right or ability to obtain and sell a product or service, the Offeror must resolve that question prior to submitting an offer or their proposal will be impaired accordingly.

### **3.3 Competency of Offeror**

Prospective Offeror must be capable of performing the work for which offers are being called. Either before or after the deadline for an offer, the ADC may require Offeror to submit answers to questions regarding prior projects, expertise, other facilities, equipment, personnel, financial status or any other factors relating to the ability of the Offeror to furnish satisfactorily the goods or services being solicited by the State. Any such inquiries shall be made and replied to in writing; replies shall be submitted with the signature of the persons who sign the offer. Any Offeror who refuses to answer such inquiries will be considered non-responsive and their submittal will be commensurately impaired.

### **3.4 Required Review**

1. Before submitting a SOQ or proposal, each Offeror must thoroughly and carefully examine this RFP, any attachment, addendum, and other relevant document, to ensure Offeror understands the requirements of the RFP. Offeror must also become familiar with State, local and federal laws, statutes, ordinances, rules, and regulations that may, in any manner, affect cost, progress, or performance of the work required.

2. Should Offeror find defects and questionable or objectionable items in the RFP, Offeror shall notify the Hawaii Department of Agriculture, Agribusiness Development Corporation in writing prior to the deadline for written questions as stated in the RFP Schedule and Significant Dates, as amended. This will allow the issuance of any necessary corrections and/or amendments to the RFP by addendum, and mitigate reliance of a defective solicitation and exposure of proposal(s) upon which an award could not be made.

3.

### **3.5 SOQ and Proposal Preparation Costs**

Any and all costs incurred by the Offeror in preparing or submitting a SOQ or proposal shall be the Offeror's sole responsibility whether or not any award results from this RFP. The State shall not reimburse such costs.

[Remainder of page intentionally left blank]

## **Section Four Evaluation and Selection of Proposal**

### **4.1 Evaluation Criteria of Submission of Qualifications**

ADC staff will conduct a review of the SOQs for adequacy and completeness. ADC may ask any Offeror for clarification of the information submitted or for additional information/materials to assist ADC in its review/evaluation of the Offeror's SOQ. ADC may also conduct interviews of any of the Offerors and/or members of the Offeror's team.

ADC staff will determine which Offerors meet the qualification criteria below. ADC, may at its sole discretion, form a short list of the most qualified Offerors. The qualified Offerors (or short list of the most qualified Offerors, if applicable), will then be invited to participate in the RFP process by submitting their development proposals in accordance with Section Three of this RFP.<sup>2</sup>

1. Qualification criteria. ADC shall evaluate the Offeror's qualifications based on the following criteria:
  - a. Successful real estate development experience relevant to the construction of agricultural facilities, including experience in community outreach and obtaining land use entitlements and government approvals/permits
  - b. Management experience relevant to the operations of HPP machines and/or produce distribution centers and facilities
  - c. Proof that the Offeror is versed and complies with Federal food safety and sanitation regulations
  - d. Financial capacity to fund the Offeror's proposed operations.
  - e. Creditworthiness and past experience in similar projects.

All Offerors will be notified of their qualification determination.

### **4.2 Evaluation Criteria of Proposals**

The Procurement Officer, or an evaluation committee of at least three (3) qualified state employees selected by the Procurement Officer, shall evaluate the proposals.

Evaluation criteria and the associated points are listed below. The award will be made to the responsible Offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria listed in this section.

The total number of points used to score this contract is 100.

1. Proven expertise in development and construction management as evidenced by prior development projects relevant to HPP machines and/or produce distribution centers, or food processing facilities (20)
2. Ability to coordinate the purchasing and installation of HPP machines or similar equipment, as evidenced by prior projects (20)

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<sup>2</sup> If there is only one qualified Offeror, ADC may, in its sole discretion, waive certain RFP submission requirements as detailed in Attachment 2.

3. Ability to source technical expertise and labor to operate the HPP machine (10)
4. Financial capability and credit worthiness to complete the project (25)
5. Project Proposal (25)
  - a. Methodology
  - b. Timeline
  - c. Expected Results – including but not limited to the amount of product to be treated; costs, revenues, profits, and fees to paid to ADC
  - d. Possible Shortfalls

### 4.3 Development Agreement

ADC will enter into exclusive negotiations with the selected applicant. During exclusive negotiations, ADC and the selected applicant will negotiate in good faith a development agreement setting forth the terms and conditions under which the selected applicant shall perform.

The exclusive negotiation period shall be six (6) months and will be based upon the development proposal submitted by the selected applicant. If the development agreement is not executed by the expiration of the exclusive negotiation period, then all rights of the selected applicant to negotiate the development agreement shall terminate, provided, however, that the Executive Director of ADC may, in his sole discretion, extend the negotiation period by written notice to the selected applicant for up to an additional six (6) months.

Upon the expiration of the exclusive negotiation period (including any extension) this RFP process shall terminate and no rights to negotiate any development agreement shall accrue to the selected applicant or to any other applicant.

ADC reserves the right to negotiate with the selected applicant any additional terms, conditions or modifications to the terms set forth in this RFP or to the selected applicant's proposal if it is in ADC's best interest to do so. At a minimum the development agreement shall include the following obligations:

1. Environmental Assessments and Environmental Impact Statements. The selected Offeror shall, at its sole expense, prepare and process any environmental assessments and environmental impact statements required by HRS Chapter 343 and HAR Chapter 11-200 (as amended).
2. Government Approvals/Permits. The selected Offeror shall, at its sole expense, obtain all government permits/approvals necessary to construct its proposed project.
3. Compliance with State Law. The selected Offeror shall comply with all laws governing entities doing business in the State including the following chapters and pursuant to HRS §103D-310(c):
  - a. Chapter 237, General Excise Tax Law;
  - b. Chapter 321, Department of Health
  - c. Chapter 383, Hawaii Employment Security Law;
  - d. Chapter 386, Worker's Compensation Law;
  - e. Chapter 392, Temporary Disability Insurance;
  - f. Chapter 393, Prepaid Health Care Act; and

- g. §103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

Offeror must provide proof of compliance with Hawaii Compliance Express (HCE).

The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service; Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

Vendors/contractors/service providers should register with (HCE) prior to submitting an offer at <https://vendors.ehawaii.gov>. The annual registration fee is \$12.00 and the 'Certificate of Vendor Compliance' is accepted for the execution of contract and final payment.

Timely Registration on HCE. Vendors/contractors/service providers are advised to register on HCE soon as possible. If a vendor/contractor/service provider is not compliant on HCE at the time of award, an Offeror will not receive the award.

4. Compliance with Federal Law. The selected Offeror shall comply with all Federal laws relating to food safety, including, but not limited to the following:
  - a. Title 9 Code of Federal Regulations Part 417; and
  - b. Director 5000.15, Food Safety and Inspection Service, Department of Agriculture, United States.

Offeror must provide proof of compliance.

5. Insurance. The selected Offeror shall procure at its sole expense and maintain insurance coverage acceptable to the State in full force and effect throughout the term of the Development Agreement generally consisting of:

- a. Commercial General Liability Insurance

Commercial general liability insurance coverage against claims for bodily injury and property damage arising out of all operations, activities or contractual liability by the Contractor, its employees and subcontractors during the term of the Contract. This insurance shall include the following coverage and limits specified or required by any applicable law: bodily injury and property damage coverage with a minimum of \$1,000,000 per occurrence; personal injury of \$1,000,000 per occurrence; and with an aggregated limit of \$2,000,000. The commercial general liability policy shall be written on an occurrence basis. All policies shall provide legal defense costs and expenses in addition to the limits of liability stated above. The Contractor shall be responsible for payment of any premiums and deductibles applicable to these policies.

- b. Equipment Insurance

Warranty covering the HPP machine for the full replacement or repair in addition to other equipment. Said warranty may terminate once it is replaced by similar insurance policy from the entity who will operate the HPP machine post-installation.

c. **Automobile Liability Insurance**

Automobile liability insurance covering owned, non-owned, leased, and hired vehicles with a minimum of \$1,000,000 for bodily injury for each person, \$1,000,000 for bodily injury for each accident, and \$1,000,000 for property damage for each accident.

d. Appropriate levels of per occurrence insurance coverage for workers' compensation and any other insurance coverages required by federal or State laws.

**4.4 Debriefing**

Pursuant to HAR §3-122-60, a non-selected Offeror may request a debriefing from the Procurement Officer to understand the basis for the award.

A written request for debriefing shall be made within three (3) working days after the posting of the award of the contract. The Procurement Officer or designee shall hold the debriefing within seven (7) working days to the extent practicable from the receipt date of the written request.

**4.5 Protest Procedures**

Pursuant to HRS §103D-701, HAR §3-126-3, and §3-126-4 an actual or prospective offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. Any protest shall be submitted in writing to the Procurement Officer at: Phyllis Shimabukuro-Geiser, Hawaii Department of Agriculture, Chairperson Office's, 1428 South King Street, Honolulu, HI 95814. Email: Phyllis.Shimabukuro-Geiser@hawaii.gov; Phone: (808) 973-9553; Fax: (808) 973-9613.

A protest shall be submitted in writing. A protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further, a protest of an award or proposed award shall be submitted within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto, and in any event, within five (5) working days posting of the award, or if debriefing is requested, then within five (5) working days after posting of the award, or if debriefing is requested, then within five (5) working days after the PO's debriefing was completed.

**4.6 ADC Discretion and Reservation of Rights; Cancellation of RFP; Non-Liability and Waiver**

ADC reserves the right to (1) request from any Offeror a clarification of any information submitted or additional information/materials to assist ADC or ADC's evaluation committee in the review of the Offeror's qualifications or proposal; (2) reject any and all submissions in whole or in part; (3) require amendments or modifications to the submissions; (4) waive any of the submission requirements; (5) cancel this RFP; and/or (6) re-advertise for new qualifications and/or proposals, all with no liability whatsoever, whether or not it is in ADC's best interest to do so. ADC also reserves the right to amend this RFP, including but not limited to, the deadlines and submission requirements, at any time prior to the applicable submission deadline.

**The Offerors, by submitting a response to this RFP, waive all rights to protest or seek legal remedies whatsoever regarding any aspect of this RFP except as allowed by this RFP.**

## **Section Five**

### **Attachments and Exhibits**

- Attachment 1: SUBMISSION OF QUALIFICATIONS (SOQ)
- Attachment 2: REQUEST FOR PROPOSALS (RFP)
- Attachment 3: WHITMORE FOOD HUB (PREMISES)
- Attachment 4: GENERAL LEASE
- Attachment 5: HPP MACHINE REPORT \*\*\*pending\*\*\*

## ATTACHMENT 1

### SUBMISSION OF QUALIFICATIONS (SOQ)

#### TO CONSTRUCT AND OPERATE A HIGH-PRESSURE PROCESSING MACHINE AND AGRICULTURAL FACILITIES, WHITMORE FOOD HUB, WAHIAWA, OAHU

##### **INTRODUCTION**

The purpose of this section is to solicit Statements of Qualifications from companies interested in operating and maintaining a high-pressure processing machine and developing 553,778 square feet (12.3 acres) in the Whitmore Food Hub. ADC's review and evaluation of the potential developers' SOQ will help in ensuring that the selected Offeror has the experience, expertise and financial capacity to successfully undertake its proposed development plan and successful delivery and installation of the high-pressure processing machine.

Offerors will be responsible for all risks and for the payment of all costs and expenses in connection with the preparation of their respective SOQs, as well as any and all planning costs incurred by the Offeror. ADC assumes no risks or costs associated with any Offeror's participation in this portion of the selection process.

##### **SITE VISIT**

There will be a site visit at the Whitmore Food Hub in Wahiawa, Oahu located at 1126 Whitmore Ave., Wahiawa, Oahu 96786 on May 6, 2022, to explain ADC's development objectives and the RFP process, and answer questions from potential Offerors. Attendance by any prospective Offeror is highly encouraged, but is not required.

##### **SUBMISSION REQUIREMENTS**

Each Offeror shall submit a Statement of Qualifications which shall include the information and materials described below. The SOQ shall be organized in a manner that is consistent with the headings and sequence presented below. Offerors shall submit three (3) hard copies and one (1) electronic copy of the SOQ to ADC.

1. **Cover Letter.** Submit a cover letter on the Offeror's letterhead addressed to ADC and signed by an authorized representative of the Offeror.
2. **Applicant – Type of Entity and Ownership Interests.** Provide the following information:
  - a. **Name.** The legal name of the Offeror.
  - b. **Type of Entity.** Identify the type of entity (e.g., corporation, limited liability company, etc.), and the state or country of organization.
  - c. **Owners.** Identify all individuals or entities holding a 10% or more ownership interest in the Offeror and their respective ownership interests. Provide any additional background information about any of the owners that may support the qualifications of the application with respect to this SOQ, including descriptions of any key roles that any of these individuals or entities will play in the Offeror's development of the high-pressure processing machine project. Any foreign corporation or business entity must obtain the appropriate certificate of authority to do business in the State of Hawaii.
  - d. **Directors/Officers.** Identify the directors and officers of the Offeror, including names and titles. Provide any additional background information about any of the directors and officers that may support the qualifications of the Offeror with respect to this SOQ, including descriptions of key

roles that any of these individuals will play in the Offeror's development of the high-pressure processing project.

- e. Development Team. Describe the organization of the Offeror and the development team, and the roles and responsibilities of each member of the development team, including major consultants (e.g., architect, planners, etc.), joint venture or limited partners, and legal counsel. Include members that may be added to the development team in the future to develop or manage the project and describe the arrangement or commitment, if any, between the Offeror and the projected future development team members. Provide an organizational chart and the names, titles, and contact information of the principals of each member of the development team.

Describe any previous experiences of the development team with projects that are similar in type, size, and scope to the proposed high pressure processing machine warehouse and the status of those projects.

- f. Other Experience. Describe any other experience that may be appropriate to establish the Offeror's qualifications.
- g. Financial Capacity and Credit History. Provide satisfactory evidence to support the financial ability of the Offeror to develop and operate the proposed high pressure processing project. Such evidence should include evidence of Offeror's past or current debt or equity financing, Offeror's financial statements for the past three fiscal years, current credit report(s), and evidence of capital resources or financing commitments. Describe any loan or lease defaults, bankruptcies, judgments or any litigation or other disputes that may potentially have an adverse effect on the Offeror's current financial or operational capability.
- h. Other Information. Provide any other information regarding the Offeror, the development team, or its members that may be pertinent to establishing the Offeror's qualifications.
- i. References. Provide references (including name, title, address, email address, phone number) that ADC may contact to confirm the Offeror's and development team members' qualifications and any of the information provided in the SOQ.

## ATTACHMENT 2

### REQUEST FOR PROPOSALS (RFP)

#### TO CONSTRUCT AND OPERATE A HIGH-PRESSURE PROCESSING MACHINE AND AGRICULTURAL FACILITIES, WHITMORE FOOD HUB, WAHIAWA, OAHU

#### **INTRODUCTION**

If more than one Offeror is determined by ADC staff to be qualified, ADC will invite the qualified Offerors (or the short list of the most qualified Offerors), to submit their respective development proposals in accordance with Section Three.

The Procurement Officer, or an evaluation committee of at least three (3) qualified state employees selected by the Chairperson of ADC's Board of Directors, shall evaluate proposals. The evaluation will be based solely on the evaluation criteria set out in Section Four of this RFP.

Prior to holding any discussion, a priority list shall be generated consisting of Offers determined to be acceptable or potentially acceptable. However, proposals may be accepted without such discussions.

If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may rank the proposals and limit the priority list to three responsive, responsible offerors who submitted the highest-ranked proposals.

ADC shall request the Board's approval of the selected Offeror's proposal. Upon the Board's approval, ADC shall commence exclusive negotiations with the selected Offeror of the development agreement.

Offerors will be responsible for all risks and for the payment of all costs and expenses in connection with the preparation of their respective SOQs, as well as any and all pre-development and planning costs incurred by the Offeror. ADC assumes no risks or costs associated with any Offeror's participation in this portion of the selection process.

#### **RFP SUBMISSION REQUIREMENTS**

Each Offeror shall submit a development proposal, which proposal shall include: (1) a development plan; (2) an economic proposal; and (3) a business plan. The development proposal shall include the information and materials requested below and shall be organized in a manner that is consistent with the headings and sequence presented below. Offerors shall submit one (1) electronic copy of the SOQ to ADC.

1. Cover Letter. Submit a cover letter on the Offeror's letterhead addressed to ADC and signed by an authorized representative of the Offeror.
2. Executive Summary. Provide an executive summary of the critical aspects of the Offeror's development proposal.
3. Development Plan. Provide the Offeror's development plan for the operation and maintenance of the HPP machine and construction of agricultural facilities, including the following:
  - a. Operations Plan. Provide an operations plan showing the procedure and timeline for the selection, acquisition, delivery and installation of the High-Pressure Processing Machine with a capacity of 6,000 throughput pounds/hour, including the following:

- i. Utility and infrastructure metrics required to house and operate the machine, including, but not limited to, power, electricity, water, sewer, and foundational support; and
    - ii. General HPP machine metrics, including, but not limited to, number of machines, size and weight of the machine, as well as the floor plan.
  - b. Site Plan. A conceptual site plan showing the location, configuration, and approximate sizing of the proposed agricultural facilities.
  - c. Narrative Description. Provide a narrative description of the development plan, including the timeline from selection, design, and construction.
4. Economic Proposal. Provide Offeror's economic proposal, which shall detail the fees and costs to be paid by ADC, and shall include, at a minimum, the following:
  - a. Development Agreement Fees.
  - b. Rent schedule proposal (sealed bid) for 535,788 square feet and HPP facility.
  - c. Terms and Conditions. Describe the proposed commencement of payment in relation to the Offeror's proposed development schedule. Identify which predevelopment events must occur prior to the commencement of payment. Describe any other critical terms and conditions, and the Offeror's rationale for such terms and conditions.
  - d. Discounts, Credits and Offsets. Describe any proposed discounts, offsets, or other terms or conditions that the Offeror believes are necessary or reasonable in consideration for the Offeror's implementing its development proposal, including the Offeror providing, maintaining, and/or managing any proposed public uses, improvements or facilities.
  - e. The depreciation schedule for all equipment shall be the total cost / useful life of 7 years, or manufacturer's expected life of the equipment, whichever is lesser for financial reporting purposes. (E.g. \$1,000,000 total cost / 7 years useful life = \$142,857.14 depreciation per fiscal year over its useful life). When the equipment is no longer needed or needs to be replaced, the applicant must obtain disposition instructions and approval from the State.
5. Business Plan. Provide the applicant's business plan for the proposed project, including the following:
  - a. Reasonableness of the development schedule and understanding of the requirements necessary to implement the development proposal in a timely manner.
  - b. Market and financial feasibility of the development proposal.
  - c. Ability to finance the development proposal.
  - d. Planning for 7 years of HPP machine operations, at minimum. If the applicant fails to operate the project for a minimum of 7 years, then the applicant must pay for the housing and maintenance of the machine and is responsible for finding a new company to operate and maintain the machine for the remaining years.
  - e. Applicant may charge others to process their products; however, ADC retains broad discretion and oversight in order to ensure that all charges are fairly assessed.

ATTACHMENT 3  
WHITMORE FOOD HUB



**ATTACHMENT 4**

**GENERAL LEASE**



Return by Mail ( ) Pickup ( )

TO: STATE OF HAWAII  
AGRIBUSINESS DEVELOPMENT CORPORATION  
235 SOUTH BERETANIA STREET, ROOM 205  
HONOLULU, HAWAII 96813  
No. of Pages: 28

Tax Map Key No. 7-1-002-009 (por.)

STATE OF HAWAII  
AGRIBUSINESS DEVELOPMENT CORPORATION  
GENERAL LEASE NO. LE - WM2201

between

STATE OF HAWAII

and

\_\_\_\_\_  
WHITMORE, WAHIAWA, ISLAND OF OAHU, STATE OF HAWAII

LEASE AGREEMENT NO. LE- WM2201

between

STATE OF HAWAII  
AGRIBUSINESS DEVELOPMENT CORPORATION  
as LESSOR

and

---

as LESSEE

STATE OF HAWAII  
AGRIBUSINESS DEVELOPMENT CORPORATION

LEASE AGREEMENT NO. LE- WM2201

THIS LEASE made and issued this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and between the State of Hawaii by its AGRIBUSINESS DEVELOPMENT CORPORATION, whose place of business and mailing address is 235 South Beretania Street, Room 205, Honolulu, Hawaii 96813, hereinafter called "LESSOR," and \_\_\_\_\_, whose business and post office address in the State of Hawaii for purposes of this Lease Agreement is \_\_\_\_\_, hereinafter called "LESSEE."

W I T N E S S E T H:

THE TERMS AND CONDITIONS upon which LESSOR grants the aforesaid Lease are as follows:

1. Premises. In consideration of the rent to be paid and of the terms and conditions herein contained to be observed and performed by LESSEE, LESSOR hereby grants to LESSEE an exclusive lease to use that portion of the Property identified as Tax Map Key 7-1-002-009 containing approximately \_\_\_\_\_ square feet, respectively, of land at Whitmore, Wahiawa, Oahu, more particularly described as follows:

All of the space in that certain building more commonly known as Buildings X, together with the right to occupy and use the underlying the surrounding \_\_\_\_\_ square feet of land, hereinafter referred to as the "exclusive area", as outlined in red on Exhibit A, which is attached hereto and made a part hereof, hereinafter referred to as the "premises." The "premises" shall not include any common area that are under the control, operation, or management of LESSOR.

Reserving, however, unto LESSOR, from time to time and at all times during the term hereof, the right to make minor adjustments to the boundaries of the exclusive area and to grant easements for any purpose as LESSOR deems fit. Said Premises may be subject to any encumbrance shown on the Land Court Certificates of Title pertaining to the land under the premises.

2. Term. The term of this Lease shall commence upon the execution date and shall continue for 35 years, or until such time as LESSEE ceases to use the Premises, or unless this Lease is sooner terminated as hereinafter provided.

LESSEE shall have the option to extend the term of this Lease for an additional 20-year period, provided that:

(a) At the time of the exercise of the option to extend the lease term and at the commencement of the applicable option period, (i) LESSEE is not then in default in the performance of any of LESSEE's obligations contained in this Lease, and (ii) this Lease is then in full force and effect,

(b) The extended term shall be upon terms, covenants and conditions acceptable to LESSOR, and

(c) LESSEE shall exercise its option to extend the term of this Lease by giving written notice thereof to LESSOR at least one hundred eighty (180) days prior to the expiration of the preceding term.

The base lease fee for the option period shall be computed as set forth in Article 5.

3. Base Annual Rental. The base annual rental for this Lease shall be payable in monthly installments, within thirty (30) days of receipt of the lease fee invoice, as follows:

Buildings : \_\_\_\_\_ square feet X \$\_.\_\_\_ = \$  
Exclusive Area: \_\_\_\_\_ square feet X \$\_.\_\_\_ = \$

Total Rent: \$\_\_\_\_\_

4. Reopening of Annual Rental. The annual rental shall be reopened and redetermined at the expiration of the twentieth year of the term herein, provided however, in no event shall the base annual rental be revised downward.

5. Determination of Annual Rental Upon Reopening. The base annual rental and additional rental for any ensuing period shall be the fair market rental at the time of reopening. At least six (6) months prior to the time of reopening, the fair market rental of the land in the specific use or uses for which this Lease was made shall be determined by an appraiser whose services shall be contracted for by LESSOR, and LESSEE shall be notified promptly of the determination; provided that should LESSEE disagree with the fair market rental as determined by LESSOR's appraiser, LESSEE may appoint its own appraiser, within fourteen (14) days after written notice of the fair market rental, to prepare an independent appraisal report.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. Should differences still exist fourteen (14) after the exchange, the two appraisers, within seven (7) days thereafter, shall appoint a third appraiser who shall also prepare an independent appraisal report and shall furnish copies thereof to the first two appraisers within

forty-five (45) days of the appointment. Within twenty (20) days after receiving the third appraisal report, all three appraisers shall meet to determine the fair market rental. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both LESSOR and LESSEE, subject to chapter 658A, Hawaii Revised Statutes ("HRS"). LESSEE shall pay for its own appraiser. The cost of the services of the third appraiser shall be borne equally by LESSOR and LESSEE. All appraisal reports shall become part of the public record of LESSOR.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, LESSEE shall continue to pay the rent at the rate effective for the previous rental period, but LESSEE shall make up any deficiency within thirty (30) days after the new rental has been determined. LESSEE's or its appraiser's failure to comply with the procedures set forth herein shall constitute a waiver of LESSEE's right to contest the new fair market rental, and LESSEE shall pay the rental as determined by LESSOR's appraiser without adjustment.

6. Common Area. The phrase "Common Area" as used in this Article and throughout this Lease is defined in the DEFINITIONS section of this Lease.

LESSEE and LESSEE's employees and customers shall have the right, in common with other lessees of the Property and their respective employees and customers, to use the Common Area which may from time to time exist in connection with this LESSEE's business to be conducted upon the Premises, subject to all terms and conditions set forth in this Lease. The rights of LESSEE hereunder in and to the Common Area, including parking areas and the driveways, entrances and exits thereto and sidewalks and pedestrian passageways, shall be subject to the rights of LESSOR and of all other lessees of LESSOR using the same in common LESSEE, and it shall be the duty of LESSEE to keep all of said areas free and clear of any obstructions created or permitted by LESSEE or resulting from LESSEE's operations and to permit the use by LESSEE's employees, customers, patrons and service suppliers of any said parking, driveway, entrance and exit areas only for normal parking and ingress and egress to and from the premises occupied by LESSEE and such other LESSEES of LESSOR.

The Common Area shall be subject to the exclusive management and control of LESSOR. LESSOR shall have the right, from time to time, to designate as, withdraw from, re-designate as, relocate and limit as Common Area such areas as LESSOR shall from time to time determine in its sole discretion. LESSOR shall have the right to establish, promulgate and enforce such reasonable rules and regulations concerning Common Area applicable to all lessees on the Property as it may deem necessary or advisable for the proper and efficient

management, security, operation, maintenance, and use thereof, and LESSEE shall comply with the same. Except as otherwise provided in this Lease, LESSOR shall make reasonable efforts to maintain the Property including the Common Area in good order, condition and repair.

LESSOR may at any time and from time to time during the term hereof exclude and restrain any persons from the use or occupancy of the parking or other Common Area, excepting, however, bona fide customers, patrons and service suppliers of LESSEE and other lessees of LESSOR who make use of said areas in accordance with the rules and regulations equitably applicable to all other LESSEES of the Property established by LESSOR from time to time with respect thereto. LESSEE shall have the right to remove from the Common Area or to restrain the use of any of the Common Area by any persons not specifically authorized by LESSOR or by LESSEE or by other lessees not making use of the Common Area in accordance with the rules and regulations of LESSOR. If in the opinion of LESSOR unauthorized persons are using any of the Common Area by reason of the presence of LESSEE in the Premises, LESSEE, upon demand of LESSOR, shall enforce such rights against all such unauthorized persons by appropriate proceedings. Nothing contained herein shall affect the rights of LESSOR at any time to remove any unauthorized person from the Common Area or to restrain the use of any of the Common Area by unauthorized persons.

7. Common Area Maintenance Fee. Upon execution and delivery of this Lease, LESSEE shall pay the sum of no more than 2.5% of the base annual rent set forth in Article 3, above, which shall during the term of this Lease be assessed for the maintenance, repair, and care of such common areas identified in Article 6.
8. Interest on Delinquent Rental. The interest rate on the principal amount of any and all unpaid or delinquent base annual rent, common area maintenance fee, or any other fee or charge duly assessed under this Lease Agreement shall be one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each delinquent payment.
9. Holdover. If LESSEE shall remain in possession of the Premises after the expiration of the Lease term without executing or intending to execute a document extending or renewing this Lease, LESSEE shall be deemed to occupy the Premises as a tenant from month-to-month at the rent herein reserved, subject to all the other terms, covenants, and conditions herein contained insofar as the same are applicable to a month-to-month tenancy. Both LESSOR and LESSEE have the right to terminate such month-to-month tenancy with at least thirty (30) days prior written notice to the other party.

10. Taxes, Assessments, and Utilities. LESSEE shall pay, if and when due, all taxes and similar rates, assessments, charges, and outgoings of every nature and kind whatsoever, which shall during the term of this Lease be lawfully charged, assessed, imposed, or become due and payable upon the Premises and the improvements now on or hereafter erected by LESSEE thereon.
  
11. Character of Use. LESSEE shall not do or commit, or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the Premises, any nuisance in and upon the Premises, or any unlawful or improper use of the Premises.
  - (a) LESSEE shall use the Premises hereby demised solely to utilize the facilities on the Premises. LESSEE's use of the Premises shall be subject to any recorded covenants, conditions, and restrictions of any and all recorded encumbrances on the Premises existing as of the date of this Lease.
  - (b) No cesspools shall be constructed on the Premises. However, upon approval from both LESSOR and the State Department of Health, LESSEE may use alternative wastewater treatment and disposal systems which do not pose a threat to the groundwater.
  - (c) LESSEE shall take appropriate steps to reduce the risk of any excessive soil erosion by reason of LESSEE's use of the Premises and to address any material increase in weeds or litter on the Premises.
  
12. Utilization of facility. LESSEE may utilize and develop the facility in accordance with LESSEE's plan for utilization and development which has been approved by LESSOR before execution of this Lease and which may be incorporated in LESSEE's land utilization plan as an attached exhibit. Any modification or deviation from LESSEE's utilization and development plan without the prior written approval of LESSOR may constitute a breach of this Lease and a cause for the termination thereof.
  
13. Subleasing. LESSEE may not sublease any portion of the Premises without first obtaining's Lessor's prior written consent. Any subleasing request shall be submitted in writing to LESSOR, together with a copy of the sub-lessee's rental payment schedule for LESSOR's consideration. Profit on any sublease charges is neither allowed, nor shall be sought by LESSEE.
  
14. Setback requirements. Building setback lines shall be in accordance with applicable county ordinances and rules.
  
15. Sanitation. LESSEE shall keep the Premises and improvements in a strictly clean, sanitary, and orderly condition.

16. Improvements. During the term of this Lease, LESSEE may not construct, place, maintain, or install on the Premises any building, structure, signs, or improvement, except as otherwise allowed herein, and without first obtaining the prior written approval of LESSOR. LESSOR may require any and all reasonable conditions to any construction, placement, maintenance or installation as LESSOR deems appropriate under the circumstances. All buildings, structures, signs, or improvements constructed, placed, maintained, or installed pursuant to this paragraph shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in LESSEE until the expiration or sooner termination of this Lease, at which time the ownership thereof shall, at the option of LESSOR, vest in LESSOR or shall be removed by LESSEE at LESSEE's sole cost and expense.

17. Repairs and Maintenance. LESSEE shall, at its expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the Premises in good order, condition, and repair, reasonable wear and tear and damage by the elements, fire or other casualty excepted.

LESSEE shall have the right to repair and may offset said cost of repairs from the monthly rent upon written approval by LESSOR.

The plumbing facilities and infrastructure within, or under the Premises and the Common Area shall not be used for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by LESSEE, who shall, or whose employees, agents or invitees shall have caused it.

18. Involuntary Liens. LESSEE shall not commit or suffer any act or neglect which results in the Premises or any improvement thereon becoming subject to any involuntary attachment, lien, charge, or encumbrance, and shall indemnify, defend, and hold LESSOR harmless from and against all attachments, liens, charges, encumbrances, and all resulting expenses affecting the Premises and caused by LESSEE.

19. Dwelling Restrictions. Residential use and residential dwellings shall not be permitted on the Premises.

20. Non-Discrimination. LESSEE shall not use the Premises, nor permit the Premises to be used in support of, any policy that unlawfully discriminates against anyone based upon creed, color, national origin, sex, or a physical handicap. LESSEE shall not practice any unlawful discrimination based upon creed, color, national origin, sex, or a physical handicap.

21. Breach or Default. Except as otherwise provided, in the event of a breach or default of any term, covenant, restriction, or condition of this Lease, including payment of any Common Area Maintenance Fee payable directly to LESSOR, after delivery by LESSOR of a written notice of such failure by personal service or by registered or certified mail to LESSEE and to each holder of record having any security interest in the Premises covered by or subject to this Lease, making demand upon LESSEE to cure or remedy the breach or default within sixty (60) days from the date of receipt of the notice; or, if LESSEE becomes bankrupt or insolvent or files any debtor proceedings or takes any proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Code seeking readjustment, rearrangement, postponement, composition, or reduction of LESSEE's debts, liabilities or obligations or if any such proceedings are taken against LESSEE and not dismissed within ninety (90) days thereafter; then, in any such event, LESSOR may, at its option, cancel this Lease and thereupon take immediate possession of the Premises without further notice or court action, and pursue any other remedies provided under this Lease or available at law or in equity.
22. Acceptance of Rent Not a Waiver. The acceptance of rent by LESSOR shall not be deemed a waiver of any breach by LESSEE of any term, covenant, or condition of this Lease, of LESSOR's right to re-entry for breach of covenant in accordance with Article 21 above, or of LESSOR's right to declare and enforce a forfeiture for any breach; and the failure of LESSOR to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred herein, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option unless reduced to writing and signed by LESSOR.
23. Security Deposit. Upon execution of this Lease, LESSEE shall deposit with LESSOR an amount equal to one month's lease fee as security for the faithful performance of all of these terms and conditions. The deposit will be returned to LESSEE upon termination of this Lease, but only after all of the terms and conditions of this Lease have been observed and performed.
24. Assignment. Except as expressly provided in this Lease, this Lease is not transferable. At no time during the term of this Lease shall LESSEE assign, mortgage, or pledge its interest in this Lease, or its interest in the improvements now or hereafter erected on the Premises, without the prior written consent of LESSOR, which consent will not be unreasonably withheld.
25. Liability Insurance. LESSEE shall maintain during the entire period of this Lease a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for personal injury, death, and property damage which

may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire Premises, including all buildings, structures, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the control or use of LESSEE. The minimum limit of said policy or policies shall not be less than \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii.

LESSEE, prior to entry and use of the Premises or within fifteen (15) days from the effective date of this Lease, whichever is sooner, shall furnish LESSOR with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of this Lease, and furnish like certificate(s) upon each renewal of the policy(ies). The certificate(s) for such insurance shall contain or be accompanied by an assurance that a notice of cancelation and time to cure by LESSEE or by LESSOR at its option, shall be issued to LESSEE and LESSOR at least thirty (30) days before cancelation. The policy shall include LESSOR as an additional insured as its interests appear under this Lease.

LESSOR shall retain the right at any time to review the coverage and amount of the insurance required by this Lease. If, in the opinion of LESSOR, the insurance provisions in this Lease do not provide adequate protection for LESSOR, LESSOR may require LESSEE and any permitted sub-lessee to obtain insurance sufficient in coverage and amount to provide adequate protection. LESSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LESSOR shall notify LESSEE in writing of changes in the insurance requirements and LESSEE shall deposit copies of acceptable insurance policy(ies) or certificate(s) thereof with LESSOR incorporating the required changes within thirty (30) days of LESSEE's receipt of the notice from LESSOR requiring the same.

26. Property Insurance. At all times during the term of this Lease, LESSEE shall at its own cost and expense keep insured all buildings and improvements erected on the demised premises in the joint names of LESSOR, LESSEE, and any mortgagee, as their interests may appear, against loss or damage by fire, including perils specified in the extended coverage endorsement and in an amount equal to the full replacement value thereof, and shall pay the premiums thereon at the time and place the same are payable; the policy or policies of insurance shall be made payable in case of loss to LESSOR, LESSEE, and any mortgagee, as their interests may appear, and shall be deposited with the mortgagee, if any, or otherwise be held by LESSEE; and any proceeds derived therefrom in the event of total or partial loss shall be immediately available, and as soon as

reasonably possible, to be used by LESSEE for rebuilding, repairing, or otherwise reinstating the same buildings or improvements in a good and substantial manner according to the plans and specifications approved in writing by LESSOR. The certificates of insurance shall indicate LESSOR as an additional insured as its interests appear under this Lease.

LESSEE shall furnish to LESSOR on or before the commencement date of this Lease a certificate showing such policy(ies) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(ies). Each certificate for such insurance shall contain or be accompanied by an assurance that a notice of cancelation and time to cure by LESSEE or by LESSOR at its option, shall be issued to LESSEE and LESSOR at least thirty (30) days before cancelation. The policy(ies) shall also provide that all rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

27. Right to Enter. LESSOR reserves the right for its agents or representatives, at all reasonable times during the term, upon prior notice to LESSEE and accompanied by a representative of LESSEE (except in the event of an emergency), to enter and cross any portion of the Premises at any time for the purpose of performing any public or official duties.
28. Inspection of Premises. LESSEE shall permit LESSOR and its agents or representatives, at all reasonable times during the term, upon prior notice to LESSEE and accompanied by a representative of LESSEE (except in the event of an emergency), to enter the Premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of LESSEE in connection with the administration of this Lease.
29. Surrender. At the end of the term of this Lease or other earlier termination of this Lease, LESSEE will peaceably deliver to LESSOR possession of the Premises together with all improvements thereon by whomsoever made, in good repair, order and condition, reasonable wear and tear and unavoidable casualty excepted.

LESSEE may, at its option, remove any trade fixtures placed on the Premises by LESSEE which can be reasonably removed from the Premises. If LESSEE fails to remove any personal property or trade fixtures that LESSEE has informed LESSOR will be removed from the Premises, after thirty (30) days written notice by LESSOR, LESSOR may remove such trade fixtures and personal property from the Premises and either deem them abandoned and dispose of them or place them in storage at the cost and expense of LESSEE, and LESSEE does agree to pay all costs and expenses for disposal, removal, or storage of the trade fixtures and personal property.

LESSEE will allow LESSOR during the last month of the term hereof to affix to or keep on the Premises "For Rent" notice, and will allow LESSOR to show the Premises during business hours to prospective LESSEE upon advance notice.

30. Withdrawal for Public Purpose. LESSOR shall have the right to withdraw the Premises, or any portion thereof, at any time during the term of this Lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and the Premises shall be subject to the right of LESSOR to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the Premises; provided that, upon any withdrawal or taking which causes any portion of the Premises originally demised to become unusable for the specific use or uses for which it was demised, the base annual rental set forth in Article 3, shall be reduced in proportion to the value of the Premises withdrawn or made unusable.
31. Condemnation. If any portion of the demised Premises shall be condemned for public purposes by any authority having the power of eminent domain, this Lease shall cease and terminate as of the date LESSEE is required to vacate the Premises, and the rent reserved shall be apportioned and paid up to that date. All compensation and damages payable for or on account of the Premises and common areas and Property thereof, except for improvements constructed or owned by LESSEE, shall be payable to and be the sole property of LESSOR. LESSEE shall be compensated for all improvements constructed or owned by LESSEE. LESSEE shall not be entitled to any claim against LESSOR for condemnation of or indemnity for the leasehold interest of the LESSEE.
32. Partial Taking. In case only part of the Premises shall be so taken or condemned, the rent thereafter payable for the unexpired remainder of the term shall be reduced in the same proportion that the area of the Premises so taken or condemned bears to the total area of the Premises hereby demised, provided, however, that either party has the right to terminate this Lease at its option in the event of a partial taking of at least 25% of the Premises.
33. Inspection by Prospective Bidders. For purposes of informing and apprising that person or persons of the condition of the Premises preparatory to the proposed disposition thereof at the expiration of the term or earlier termination of this Lease, LESSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following an announcement at any of LESSOR's public meetings of any proposed disposition of the Premises; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice

to enter is first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or designated agents of LESSEE.

34. Extension of Time. Notwithstanding any provision to the contrary, wherever applicable, LESSOR, for good cause shown, may allow additional time beyond the time or times specified herein in which LESSEE may comply, observe, and perform any of the terms, conditions, and covenants contained in this Lease.
35. Quiet Enjoyment. LESSOR covenants and agrees with LESSEE that, upon payment of rent at the times and in the manner specified and upon the observance and performance of the covenants, terms, and conditions hereof on the part of LESSEE to be observed and performed, LESSEE shall have, hold, possess, and enjoy the Premises for the term demised, without hindrance or interruption by LESSOR or any other person or persons lawfully claiming by, through, or under LESSOR.
36. Abandonment and Termination. If, after putting the Premises into service, LESSEE abandons or ceases to use the Premises for a period of four (4) or more consecutive months, except if during a period when the Premises have been rendered temporarily unusable due to damage by casualty or the elements or due to force majeure, LESSOR shall have the right to terminate this Lease. Any abandonment, termination, or cessation shall not affect or release any liability of LESSEE at such time existing by reason of a breach of any of the terms hereof.
37. Non-warranty. LESSOR does not warrant the condition of the Premises, as the same is being leased "as is." LESSEE assumes all risks incident to its use.
38. LESSEE'S Risk. All personal property of any kind or description whatsoever on the Premises shall be at the LESSEE'S sole risk, and LESSOR shall not be liable for any damage done to or loss of such personal property or damage or loss suffered by the business or occupation of the LESSEE arising from any act or neglect of co-tenants or other occupants of the building or of other persons, from bursting, overflowing, or leaking of water, gas, sewer, or steam pipes or from any fixtures, appliances or devices connected to same, or from electric conduit, wires, fixtures, appliances or devices, or from chemicals or bacteria or odors, or caused in any other manner whatsoever unless caused by the negligent act or omission of LESSOR or its authorized representatives.
39. Applicable Law; Severability. This Lease shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this Lease is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.

40. Costs of Litigation. If LESSOR shall be made a party to any litigation commenced by or against LESSEE (other than condemnation proceedings), without any fault on LESSOR's part, LESSEE shall pay all costs and expenses incurred by or imposed on LESSOR, including, but not limited to, attorney's fees; furthermore, LESSEE shall pay all costs and expenses which may be incurred by or paid by LESSOR in enforcing the covenants and agreements of this Lease, in recovering possession of the Premises, or in the collection of delinquent license fees, taxes, and any and all other charges due from LESSEE hereunder.
41. Indemnity. LESSEE shall indemnify, defend, and hold harmless the State of Hawaii, LESSOR, and their officers, employees, and agents from and against any claim or demand for loss, liability, damage, cost, expense, and attorneys' fees, including claims for property damage, personal injury, or wrongful death, to the extent arising out of any occurrence on the Premises or on sidewalks, parking areas, and roadways adjacent thereto, resulting from any act or omission of LESSEE, or occasioned by any act or nuisance made or suffered on the Premises, or by any accident or fire thereon caused by LESSEE, or growing out of or caused by any failure on the part of LESSEE to maintain the Premises in a safe condition, or by any act or omission of LESSEE, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance by LESSEE of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.
42. Hunting. No hunting shall be allowed on the Premises during the term of this Lease.
43. Drainage Easements. The Premises shall be subject to drainage and flowage easements now of record or otherwise existing under law as and to the extent that the same are applicable to the Premises as of the commencement date of this Lease. The easement area(s) shall not be altered or used for any purposes which may obstruct flow or reduce the effectiveness of the drainage way, except with LESSOR's prior written consent which may be conditioned upon appropriate measures undertaken by LESSEE to divert, re-direct, retain, or detain any storm waters in a manner approved by LESSOR. LESSEE shall accept the storm runoff draining into and through the easement area(s), respectively, and shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.
44. Roadway and Utility Easements. The Premises shall be subject to all existing roadway and utility easements, which easements shall

be in favor of property owners served by such easements, provided that LESSEE may cross and may have access over and upon all such easements located on the Premises at any point; provided further that LESSEE shall be responsible for maintenance of the easements.

45. Compliance with Laws. LESSEE shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the Premises which are now in force or later may be in force.
46. Environmental Regulations. LESSEE shall comply with all applicable federal, state, and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and rules governing historic preservation. LESSEE shall be responsible for obtaining all necessary federal, state, or county clearances.
47. Hazardous Materials. Any environmental issue occurring on Premises after the date of this Lease and arising out of the acts or omissions of LESSEE shall be the responsibility of LESSEE.

(a) During the term of this Lease, LESSEE shall not cause or permit the escape, disposal, or release of any hazardous materials, except as permitted by federal, state, and local law. LESSEE shall not allow the storage or use of such materials in any manner not sanctioned by such federal, state, and local law. LESSOR may, upon reasonable request and for reasonable cause, require testing of the Premises to ascertain whether or not there has been any release of hazardous materials by LESSEE. In the event that the results of such testing establish that there has been a release of hazardous materials on the Premises by LESSEE, LESSEE shall, in addition to LESSEE's other obligations hereunder, be responsible for the cost of such testing.

LESSEE shall execute affidavits, representations, and the like from time to time at LESSOR's request concerning LESSEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by LESSEE. If LESSEE at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the Premises which could subject LESSOR, LESSEE, or the Premises to any liability or restrictions on ownership, occupancy, transferability, or use of the Premises under any hazardous materials laws, LESSEE shall immediately advise LESSOR thereof in writing and provide to LESSOR such detailed reports thereof as may be reasonably requested by LESSOR. LESSOR shall have the right in its sole discretion to join and participate in any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

(b) LESSEE shall be responsible for and shall indemnify, defend, and hold harmless LESSOR and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials occurring on, under, or about the Premises during the term of this Lease and caused by LESSEE, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any repair, clean-up, or detoxification of the Premises required by hazardous materials laws and of the preparation and implementation of any related closure, remedial, or other required plans; (3) the costs of LESSOR's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of LESSOR's enforcement of this covenant, whether or not a lawsuit is brought therefore; and (5) all reasonable costs and expenses incurred by LESSOR in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees.

(c) The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

48. American Society of Testing and Materials (ASTM) Phase I Environmental Site Assessment. At any time during the term or upon termination of this Lease, LESSOR, for good cause, may require LESSEE to conduct at LESSEE's own expense, an ASTM Phase I Environmental Site Assessment and, if indicated thereby, an ASTM Phase II investigation and, if indicated thereby, a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health, the State Department of Agriculture, and the State Department of Land and Natural Resources, of any hazardous materials attributable to the discharge of any hazardous materials on the Premise during the term of this Lease and caused by LESSEE. This provision shall survive and continue in effect after termination of this Lease.

49. Encumbrances. This Lease is subject to all existing recorded and unrecorded encumbrances. At any time during the term of this Lease, LESSOR may create easements and encumbrances upon the Premises in addition to any easements and encumbrances which currently affect the Premises, provided that any such new easements or encumbrances do not unreasonably restrict or interfere with LESSEE's use of the Premises.

50. Interpretation. The use of any gender shall include all genders. If there is more than one LESSEE, all words used in the singular shall extend to all LESSEES.
51. Paragraph Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this Lease.
52. Exhibits - Incorporation in Lease. All Exhibits referred to in this Lease are attached to this Lease and are hereby deemed incorporated by reference.

SPECIAL CONDITIONS:

1. [Reserved].
2. Common Area Maintenance Fee. LESSOR shall waive the collection of the Common Area Maintenance fee set forth in Article 7 for the term of this Lease set forth in Article 2, reserving, however, unto the LESSOR, at the time of the exercise of the option to extend the lease term and at the commencement of the applicable option period, the right to assess the fee set forth in Article 7.
3. Commercial Operations. LESSEE, its employees, customers, guests, agents, and/or invitees may not display or offer for sale or sell any article(s) or merchandise whatsoever within the Premises without the prior written approval of LESSOR and upon such terms and conditions established by LESSOR, and provided that such commercial activity is authorized by state and local laws.
4. Abandoned Vehicles. LESSEE shall not under any circumstances place or store abandoned vehicles within the Premises. Any and all abandoned vehicles within the Premises shall be removed by LESSEE at LESSEE's cost and expense.
5. Removal of Trash. LESSEE shall be responsible for the removal of all illegally dumped trash within the Premises at LESSEE's cost and expense.
6. Prehistoric and Historic Remains. In the event any unanticipated historic, prehistoric, or archaeological sites or remains, such as shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the Premises, LESSEE and LESSEE's agents, employees, and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes, and shall notify LESSOR of these events.

7. Audits. LESSOR reserves the right, for purposes of conducting an audit, to examine, and to make copies of all books, accounts, records, and receipts of LESSEE concerning its operations under this Lease PROVIDED THAT:
- a. Such examination and copying shall take place at a reasonable time and upon such other conditions as LESSEE may reasonably establish;
  - b. LESSEE shall have the right to mark with the legend "Confidential" any and all confidential, proprietary, and/or trade secret documents and/or other information, in any form, tangible or intangible, obtained by LESSOR as the result of an audit pursuant to this paragraph if the disclosure of such documents and/or other information would likely cause substantial competitive harm to LESSEE;
  - c. In the event that LESSOR receives a request pursuant to the Hawaii Open Records Law (also known as the Uniform Information Practices Act), Hawaii Revised Statutes Chapter 92F, for disclosure of any documents or other information obtained by LESSOR during an audit pursuant to this paragraph and marked with the legend "Confidential":
    - i. LESSOR shall, within three (3) business days of receiving the request, provide LESSEE with written notice thereof; and
    - ii. Pursuant to §92F-13(3) of the Hawaii Revised Statutes, LESSOR shall withhold such documents or other information from disclosure; and
  - d. In the event that a requesting party challenges LESSOR's withholding of any documents or information pursuant to the special conditions in Paragraph 5(c) above, LESSOR shall, within three (3) business days of receiving notice thereof, provide LESSEE written notice and shall not disclose any such documents or information until LESSEE has had a reasonable opportunity to obtain a court order prohibiting the disclosure of such documents or information pursuant to §92F-13(4) of the Hawaii Revised Statutes.
8. Passage and Access. LESSEE shall not impede or restrict passage or access by co-tenants or other occupants of the building and its agent to any Common Area serving the Property or any part thereof (including the Premises) that may be located on the Premises.
9. Recordation. LESSOR and LESSEE agree that this Lease or a short form or memorandum hereof may be recorded in the Bureau of Conveyances of the State of Hawaii or with the Assistant Registrar

of the Land Court of the State of Hawaii, as applicable, to give notice of this Lease to third parties and of the lease of the Premises granted hereunder by LESSOR to LESSEE for the term specified herein.

10. Performance Bond. LESSEE shall procure and deposit with LESSOR and thereafter keep in full force and effect during the term of this Lease, a good and sufficient surety bond in an amount equal to two times the annual base rental, conditioned upon the full and faithful observance and performance by LESSEE of the Lease terms, conditions, and covenants of this Lease. The bond shall provide that in case of an uncured breach or default of any of the terms, conditions, and covenants contained herein, the full amount of the bond shall be paid to LESSOR as liquidated and ascertained damages and not as a penalty.

LESSOR reserves the right to waive or suspend the performance bond requirement at its discretion; provided that LESSEE has substantially complied with the terms, conditions, and covenants of this Lease; and provided further that LESSOR reserves the right to reinstate the performance bond requirement at any time throughout the term of this Lease.

11. Justification of Sureties. The bonds that are required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as a surety in the State of Hawaii, or by no less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in section 78-20, HRS; provided that LESSEE may furnish a written bond in the same amount and with the same conditions, executed by it alone as obligor, if, in lieu of any surety or sureties, LESSEE shall furnish and at all times thereafter keep and maintain any of the forms of financial guarantee of performance that is approved by LESSOR.

#### D E F I N I T I O N S :

As used in this Lease, unless the context otherwise requires:

"Property" means all of that certain parcel of land situate at Wahiawa, District of Wahiawa, City and County of Honolulu, State of Hawaii, described as follows:

LOT 370 consisting of an area of 24.092 acres, more or less, as shown on Map [23](#), filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1562 of Hawaiian Pineapple Company, Limited;

Being land(s) described in Transfer Certificate of Title No. 1072019 issued to AGRIBUSINESS DEVELOPMENT CORPORATION, a public body corporate and politic, and an instrumentality of the State of Hawaii pursuant to Chapter 163D of the Hawaii Revised Statutes

and more commonly designated as Tax Map Key number 7-1-002-009 (por).

"Common Area" means those portions of the Property that are not encumbered by any exclusive lease or other conveyance to any lessee, permittee, or other grantee and any other area of the Property which may be designated by LESSOR from time to time for the shared use of all lessees, permittees, or other grantees, in common with such other authorized users, and shall include, but is not limited to, vehicle parking areas, roadways, service areas, driveways, and areas of ingress and egress used in connection with and for the convenience users of the Property, sidewalks and other pedestrian ways, areas containing buildings or structures thereon, public restrooms and other common facilities from time to time provided for the convenience and common use of all lessees of the Property, landscaped areas, planted areas together with plants and planting thereon, and areas containing gates, signs, directories, pylons or structures defining the locations of or the direction to various areas or advertising the common name for the Property.

"Days" shall mean calendar days, unless otherwise specified.

"Diversified agriculture" means the conduct of activities concerned with the production and marketing of nursery products and horticultural crops such as vegetables, melons, orchards, flowers, foliage, and others, including activities related thereto, and shall include aquaculture, but shall not include any livestock or poultry operations.

"Drainage easements" and "flowage easements" mean natural or improved drainage courses that serve to convey stream flows from one point to another.

"Hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, including any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, as defined in or pursuant to hazardous materials laws.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the Premises.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of LESSEE's knowledge, contemplated or threatened, with respect to the Premises pursuant to any hazardous materials laws, and (ii) any and all claims made or threatened in writing by any third party against LESSEE or the Premises seeking damages, contribution, cost recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the Premises.

"Hazardous materials laws" means and includes all federal, state, and local laws, ordinances, and regulations now or hereafter in effect relating to environmental conditions, industrial hygiene and/or hazardous materials on, within, under, or about the Premises, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act 49 U.S.C. §1801, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. §§300f through 300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar state or local laws, ordinances, and the regulations now or hereafter adopted, published, and/or promulgated pursuant thereto.

"LESSEE" includes LESSEE, his or her or its heirs, personal representatives, executors, administrators, successors, and permitted assigns.

"Security interest" means any interest created, attached or perfected by a lien, mortgage, assignment by way of mortgage, or financing statement and encumbering the Lease, the Premises, or personal property located at, affixed or to be affixed to, or growing or to be grown upon the demised Premises.

"Sub-leasing," includes any long-term or short-term rental of the property to a third party.

"Waste" includes (1) permitting the Premises or any portion thereof to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds or alien plant species in or on the demised Premises (3) abandonment of the demised Premises as set forth in Paragraph 36 of the Lease.

(remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the dates noted below.

LESSOR:

STATE OF HAWAII  
AGRIBUSINESS DEVELOPMENT CORPORATION

By \_\_\_\_\_  
James J. Nakatani  
Its Executive Director  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

LESSEE:

\_\_\_\_\_  
By \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF HAWAII )  
 ) ss.  
 CITY & COUNTY OF \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me personally appeared \_\_\_\_\_, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
 Print  
 Name: \_\_\_\_\_

\_\_\_\_\_  
 Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

(Notary Stamp or Seal)

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: _____	
Document Date: _____	
No. of Pages: _____	
Jurisdiction (in which notarial act is performed): _____	
Signature of Notary	Date of Notarization and Certification Statement
Printed Name of Notary	(Notary Stamp or Seal)

STATE OF HAWAII )  
 ) ss.  
CITY & COUNTY OF \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me personally appeared \_\_\_\_\_, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Print  
Name: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

(Notary Stamp or Seal)

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: _____	
Document Date: _____	
No. of Pages: _____	
Jurisdiction (in which notarial act is performed): _____	
Signature of Notary	Date of Notarization and Certification Statement
Printed Name of Notary	(Notary Stamp or Seal)

**DAVID Y. IGE**  
Governor

**JOSH GREEN**  
Lt. Governor



**JAMES J. NAKATANI**  
Executive Director

**ITEM D-6**

STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT CORPORATION**

235 S. Beretania Street, Room 205  
Honolulu, HI 96813  
Phone: (808) 586-0186 Fax: (808) 586-0189

April 20, 2022

**Subject:** Request for Approval to Enter into a No Cost Service Agreement with Ms. Susan Hendry and Mr. Alex Hendry, Whitmore, Oahu, Tax Map Key (1)7-1-001:005 (por)

**Authority:** Section 163D-4(a)(5), Hawaii Revised Statutes

**BACKGROUND:**

The ADC acquired over 1,700 acres of undeveloped farmland previously owned by the Estate of George Galbraith to increase local agricultural production in Central Oahu. The land acquisition included the subject area located on TMK 7-1-001:005 shown in Exhibit "A". Easement "D" is an access easement situated on the subject area in favor of a parcel owned by the Hendry's, identified as TMK 7-1-001:035.

TMK 7-1-001:005 was overrun by armed criminals and homeless encampments who were using Easement "D", as well as other access points along Kamehameha Hwy. to access the 236.245-acre property. Numerous attempts by ADC to block these access points, which included installing gates, boulders, berms, and concrete pylons, were repeatedly removed and/or destroyed.

On February 26, 2020, a joint law enforcement team conducted a coordinated sweep of TMK 7-1-001:005, in an attempt to clear the area of unlawful activities. Immediately after the enforcement effort, the ADC installed two 20-foot concrete jersey barriers to stop unauthorized vehicles from accessing Easement "D" via Kamehameha Hwy and hired special duty police officers and roving security guards to prevent criminals from returning. Despite efforts made by ADC to secure the parcel, this area continues to be a hotbed for criminal activity.

On March 11, 2022, the ADC received a request on behalf of Ms. Susan Hendry from her son, Alex Hendry, in the matter of gaining access to TMK 7-1-001:035 through Easement "D", however the jersey barriers prevent such access at this time. The Hendry's are proposing to install a vehicle barrier on TMK 7-1-001:005 that will allow access to Easement "D". They also plan to remove all trash and debris on the easement road and keep the area clear at their sole expense.

OPERATIONAL PLAN:

The Hendry's shall be authorized to 1) install and maintain the vehicle barrier and access easement for Easement "D", which includes providing all materials, laborers, vehicles, and tools; 2) Clear and remove all trash and debris on Easement "D", and all related appurtenances; and 3) provide ADC with the means to access the subject area through the vehicle barrier at no cost to the state (see "Exhibit B").

ADC will be responsible for 1) removing the jersey barriers; and 2) continue to provide roving security to periodically check for unauthorized vehicle entry through Easement "D".

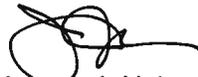
DISCUSSION:

The no cost service agreement does not convey or permit any real property interest to Ms. Hendry. This agreement is not a lease, license, permit, or further grant of easement. The intent of this agreement is to outline the terms, conditions and scope of services to be carried out by each party.

RECOMMENDATION:

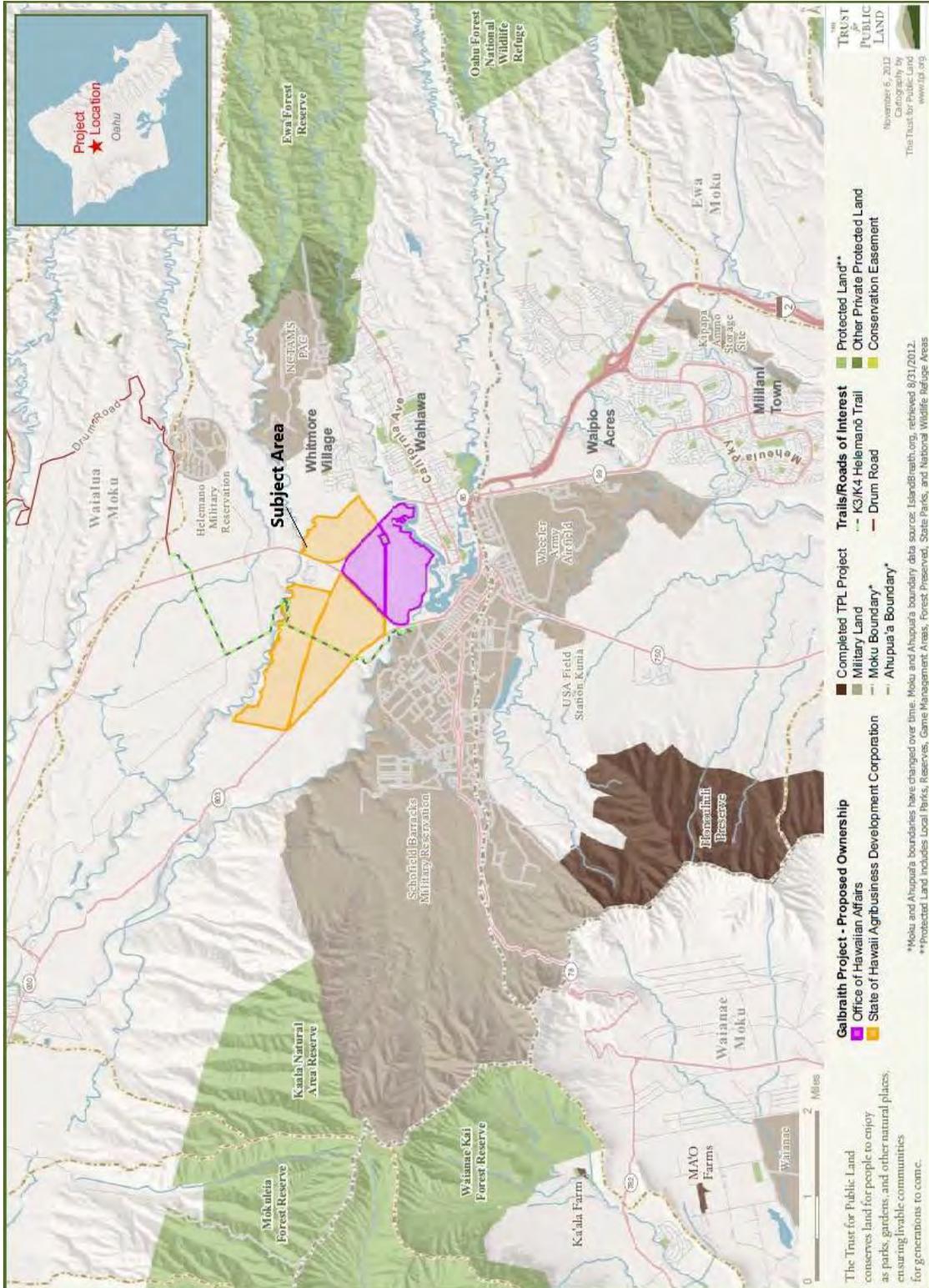
Based on the foregoing, staff recommends that the Board authorize the Executive Director, or their designee, negotiate and execute a no cost service agreement with Ms. Susan Hendry and Mr. Alex Hendry in Whitmore, Oahu, as described above.

Respectfully submitted,



James J. Nakatani  
Executive Director

**EXHIBIT A**



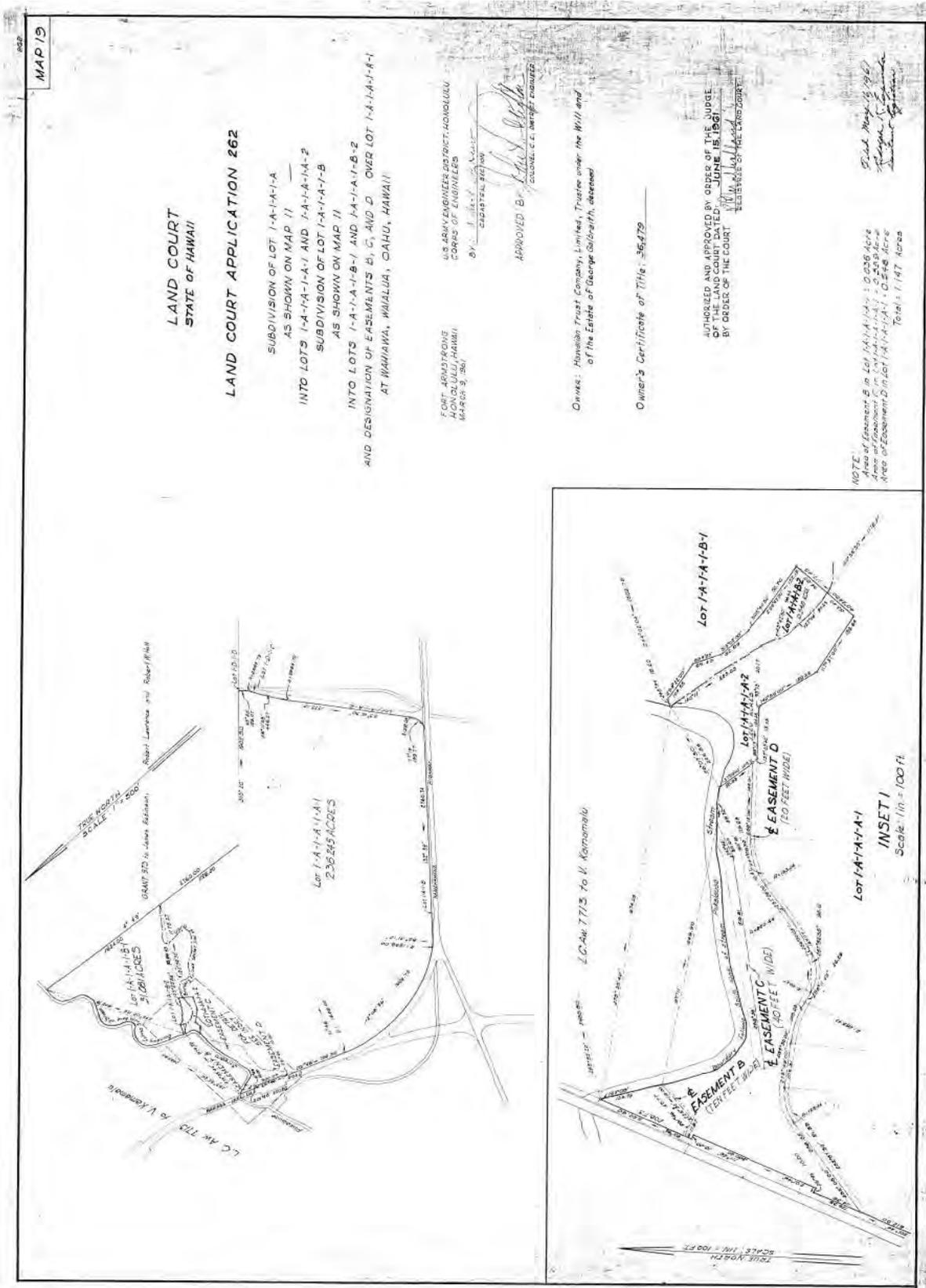


EXHIBIT B

No Cost Services Agreement

[see following pages]

## NO COST SERVICES AGREEMENT

THIS NO COST SERVICES AGREEMENT (Agreement) by and between the State of Hawai‘i AGRIBUSINESS DEVELOPMENT CORPORATION (ADC), whose address for purposes of this Agreement is 235 S. Beretania Street, Suite 205, Honolulu, HI 96813, and SUSAN HENDRY and ALEX HENDRY (collectively, the Hendrys), whose address for purposes of this Agreement is 64-1770 Kamehameha Hwy., Wahiawa, HI 96786, shall be effective as of May 1, 2022. ADC and the Hendrys are sometimes referred to collectively as “Parties”, or individually as “Party”.

### RECITALS

1. The Hendrys are the beneficiaries of a right of way (Easement “D”) that burdens property owned by the State of Hawai‘i and identified herein as Tax Map Key 7-1-001-005 (Premises). *See* maps attached to this Agreement as Exhibit “A”.

2. ADC has assumed management and control of the Premises, which is primarily comprised of property designated for agricultural use.

3. The Premises have been, and continue to be, a hotbed of criminal activity. The Premises has been the subject of numerous criminal investigations, which includes illicit drug activity, theft, arson, and murder.

4. The Premises have been, and continue to be, an enclave for homeless individuals.

5. The Premises have been and continue to be the subject of complaints by Whitmore Village residents, the Wahiawa Community, the Hawai‘i State Legislature, and community action groups.

6. The Premises have been the subject of numerous unfavorable reports by newspaper and television media.

7. In an effort to forestall illegal activity, ADC installed gates, berms, and boulders along Kamehameha Hwy. to prevent unlawful access to the Premises.

8. The gates, berms, and boulders were routinely destroyed or moved by criminals who continue to access the Premises without permission.

9. On February 26, 2020, a joint law enforcement team conducted a coordinated sweep of the Premises, in an attempt to clear the area of unlawful activities. Several armed individuals were arrested as a result of the sweep.

10. After the joint law enforcement sweep, ADC installed two twenty-foot concrete jersey barriers on the northwest side of 71-190 Kamehameha Hwy. to prevent criminals from returning to the Premises. ADC also hired special duty police officers and roving security guards to patrol the area.

11. The installation of the jersey barriers and the roving security details has disrupted some of the criminal activities to some extent but has failed to eliminate the problem.

12. Easement "D" allows the Hendrys access to property identified as Tax Map Key 7-1-001-035.

13. The Hendrys's have expressed their desire to utilize Easement "D" to access their property identified as Tax Map Key 7-1-001-035, however the jersey barriers prevent such access at this time.

14. ADC recognizes its obligation to provide the Hendrys with unrestricted access to the property identified as Tax Map Key 7-1-001-035.

15. The Hendrys's recognize ADC's efforts to prevent criminal activities from occurring on the Premises.

### **SCOPE OF SERVICES**

16. The Hendrys have proposed to repair and/or install an entry gate (Entry Gate) along Kamehameha Hwy. that will allow access to Easement "D". The Entry Gate will be located on the northwest side of 71-190 Kamehameha Hwy., Wahiawa, HI 96786 (Gate Location).

17. ADC has accepted the Hendrys's offer to repair and/or install the Entry Gate at the Gate Location subject to the construction plans dated March 29, 2022 that are attached to this Agreement as Exhibit "B".

18. The Hendrys acknowledge that the Entry Gate installed by ADC is currently inoperable due to vandalism.

19. The Hendrys and their Agents may install an Entry Gate at the Gate Location. Once installed the Entry Gate shall be maintained in such a manner that it will effectively exclude and prevent entry of unauthorized vehicles and unauthorized individuals onto the Premises.

20. The Hendrys and their Agents are authorized to maintain and repair the Entry Gate, and to clean and remove trash and debris along Easement "D" and appurtenances at their sole cost and expense.

21. The Hendrys will provide ADC with the means to access the Premises through the Entry Gate at any time.

22. ADC shall remove the jersey barriers, boulders and/or berms that restrict access to Tax Map Key 7-1-001-035.

23. ADC will continue to provide roving security to the Premises.

### **TERMS AND CONDITIONS**

24. The term of this agreement is for one year. The term of the Agreement may be extended, by mutual written agreement, executed by both parties prior to the termination date.

25. Notwithstanding any provision to the contrary, ADC or the Hendrys may terminate this agreement, in whole or in part, upon providing fifteen days written notice of termination to the Parties at the addresses listed above. The written notice shall specify the effective date of the termination.

26. No construction, placement, maintenance, installation, signage, or improvements of any kind shall be placed on the premises without the prior written approval of ADC.

27. This is a no cost service agreement. The cost of any construction, placement, maintenance, installation, signage, improvements, or disposal of materials, including payment of all taxes, shall be borne by the Party initiating the construction, placement, maintenance, installation, signage, improvements, or disposal.

28. The Hendrys's shall have ownership of any improvements purchased by the Hendrys and placed on the premises during the term of this Agreement. Upon the expiration or sooner termination of this Agreement, the ownership of any improvements shall vest in ADC, or shall be removed by the Hendrys, at ADC's option, at the Hendrys's sole cost and expense.

29. Any and all personal property and equipment that may be on the premises at any time during the term of this Agreement, regardless of ownership of the property, shall be at the sole risk and hazard of the Hendrys, and ADC shall not be liable or responsible for any loss or damage caused by theft, vandalism, weather, water, fire or by any other cause whatsoever.

30. The Hendrys, their guests, and Agents shall comply with the requirements of all federal, state, and county authorities, and observe all federal, state, and county laws, ordinances, and rules that are now in force or may later be in force.

31. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Hawai'i.

32. The Agreement is non-transferable.

33. The Hendrys's and their Agents shall maintain general liability and vehicle insurance policies and coverage at their sole cost and expense in an amount sufficient to cover all activities conducted on the Premises.

34. The Hendrys's shall defend, hold harmless, and indemnify the State from and against all claims or demands for bodily injury, property damage, and/or death resulting from activities conducted by the Hendrys's and/or their Agents and guests on the Premises.

35. This is the total and complete Agreement of the Parties relating to the subject matter hereof, voluntarily entered into by the Parties as evidenced by their signatures below.

MS. SUSAN HENDRY

AGRIBUSINESS DEVELOPMENT  
CORPORATION, STATE OF HAWAII

\_\_\_\_\_  
An Individual

Date: \_\_\_\_\_

\_\_\_\_\_  
Executive Director

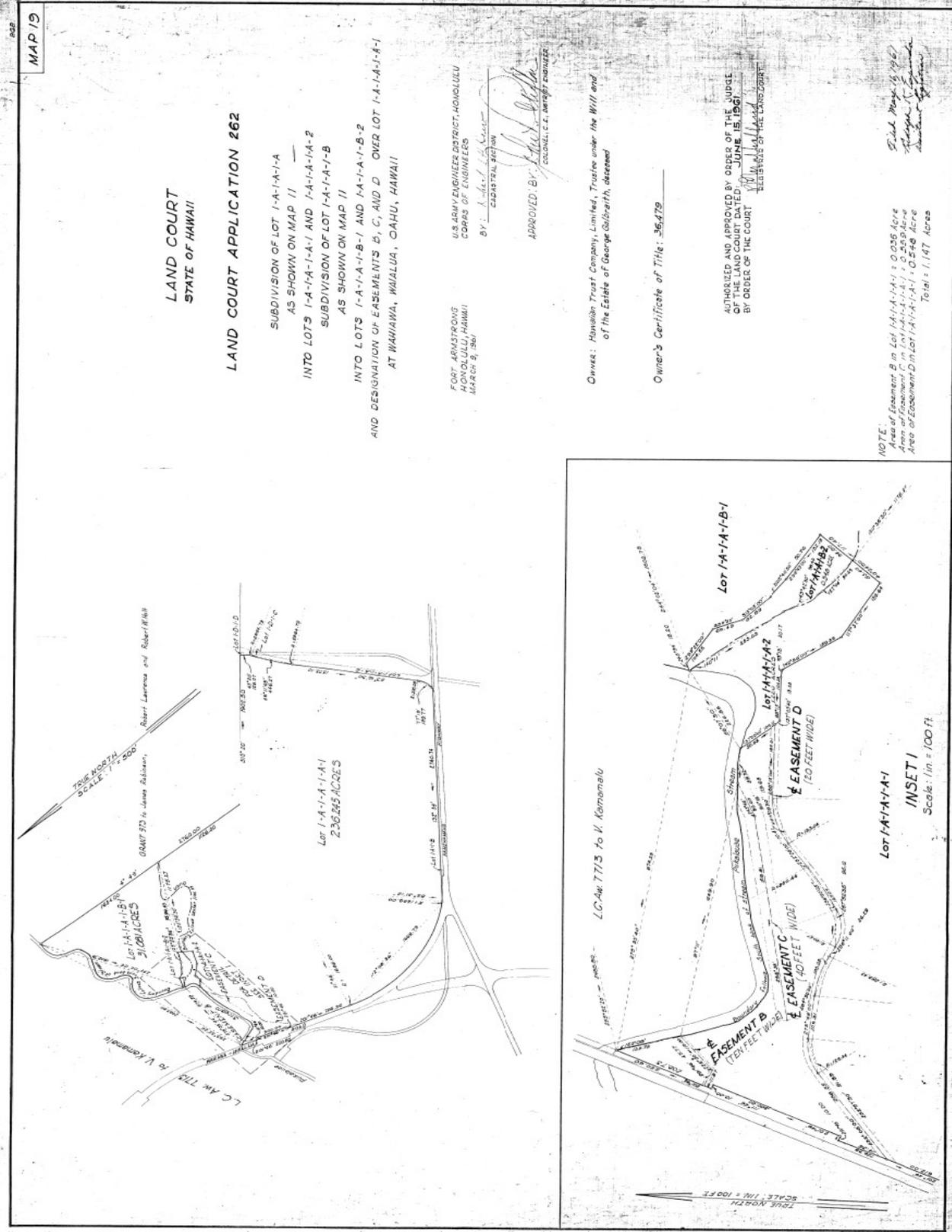
Date: \_\_\_\_\_

MR. ALEX HENDRY

\_\_\_\_\_  
An Individual

Date: \_\_\_\_\_

EXHIBIT "A"



LAND COURT  
STATE OF HAWAII

LAND COURT APPLICATION 262

SUBDIVISION OF LOT 1-A-1-A-1  
AS SHOWN ON MAP II  
INTO LOTS 1-A-1-A-1 AND 1-A-1-A-2  
SUBDIVISION OF LOT 1-A-1-A-2  
AS SHOWN ON MAP II  
INTO LOTS 1-A-1-A-1-B-1 AND 1-A-1-A-1-B-2  
AND DESIGNATION OF EASEMENTS B, C, AND D OVER LOT 1-A-1-A-1-A-1  
AT WAHIAWA, WAIALUA, OAHU, HAWAII

FOR REINSTRONGING  
FILED IN THE LAND COURT  
MARCH 3, 1961

U.S. ARMY ENGINEER DISTRICT, HONOLULU  
CORPS OF ENGINEERS

BY: *[Signature]*  
CADASTRAL SECTION  
APPROVED BY: *[Signature]*  
COUNCIL OF ENGINEERS

Owner: Hawaiian Trust Company, Limited, Trustee under the Will and  
of the Estate of George Galsbreath, deceased

Owner's Certificate of Title: 36479

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE  
OF THE LAND COURT DATED: JUNE 15, 1961  
BY ORDER OF THE COURT: *[Signature]*  
CLERK OF THE LAND COURT

NOTE:  
Area of Easement B in Lot 1-A-1-A-1 = 0.026 Acre  
Area of Easement C in Lot 1-A-1-A-1 = 0.259 Acre  
Area of Easement D in Lot 1-A-1-A-1 = 0.276 Acre  
Total = 1.141 Acre

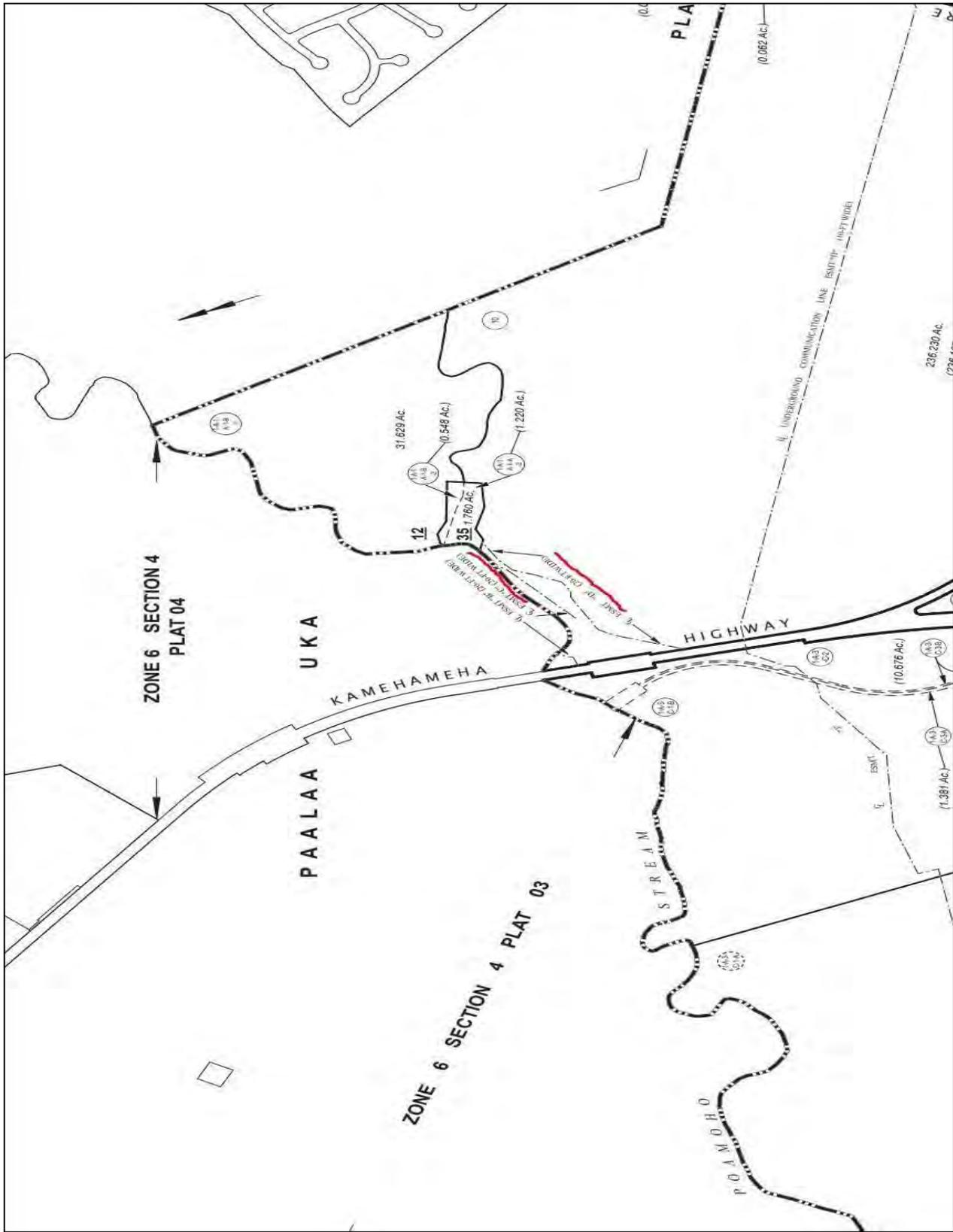
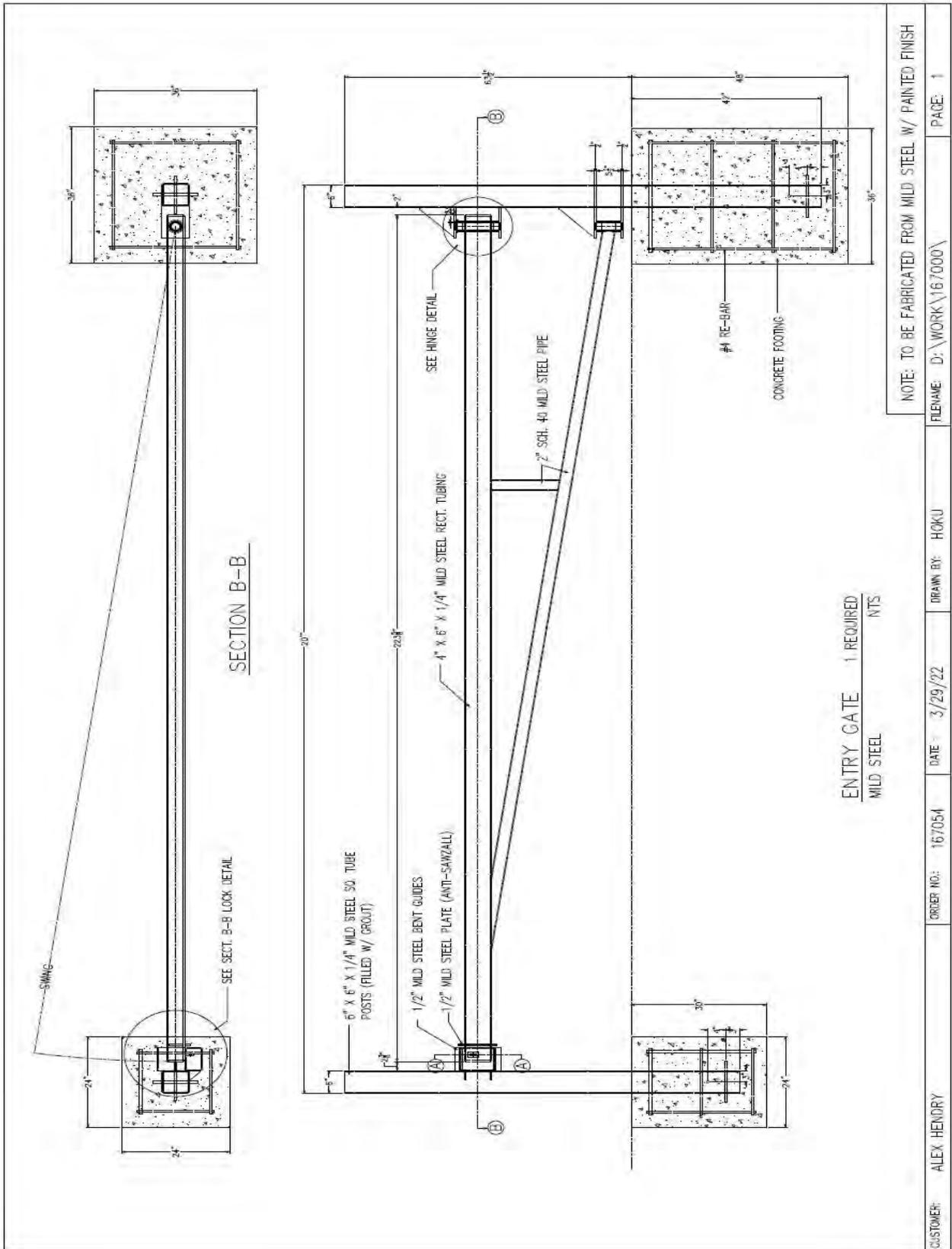


EXHIBIT "B"



FILENAME: D:\WORK\167000\

PAGE: 1

DRAWN BY: HOKU

DATE: 3/29/22

ORDER NO: 167054

CUSTOMER: ALEX HENDRY

DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



JAMES J. NAKATANI  
Executive Director

ITEM E-1

STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT CORPORATION**

235 S. Beretania Street, Room 205  
Honolulu, HI 96813  
Phone: (808) 586-0186 Fax: (808) 586-0189

April 20, 2022

Subject: For Information Only: Progress Report on the Continuing Work of the Investigative Committee on Agricultural Policy and Strategic Planning Regarding the Development of Policies and Procedures

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**BACKGROUND:**

The present iteration of the Agribusiness Development Corporation (“ADC”) Board of Directors Investigative Committee on Agricultural Policy and Strategic Planning (the “Committee”) was authorized by the Board at their meeting on November 10, 2021 as a permitted interaction group pursuant to Chapter 92-2.5, HRS.

The Committee was established to develop policy and procedure recommendations to the Board for later discussion and adoption. The Committee has met a number of times and in the course of their work, have developed a table of contents and begun discussing and developing policy recommendations in the form of a policy and procedures manual.

This update by the Committee is for informational and feedback purposes only and is not meant to represent the final product or recommendation of the Committee.

Respectfully Submitted,

*Mary Alice Evans*

Mary Alice Evans, Chair  
Investigative Committee on Agricultural Policy  
& Strategic Planning



STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT CORPORATION**

235 S. Beretania Street, Room 205  
Honolulu, HI 96813  
Phone: (808) 586-0186 Fax: (808) 586-0189

April 20, 2022

Subject: Request to Delegate Authority to ADC Executive Director to Negotiate and Purchase Three Deep Wells in Paalaa Uka, District of Waialua, Oahu from Dole Food Company, Inc.

Applicant: Dole Food Company, Inc., seller ("Dole")

Authority: Section 163D-5, 7, and 8, Hawaii Revised Statutes

Area: 6.066 acres (easement acreage)

Field No(s).: N/A  
Well No. 3-3102-002 ("Helemano pump no. 24")  
Well No. 3-3203-001 ("Helemano pump no. 25")  
Well No. 3-3102-002 ("Waialua pump no. 26")

Tax Map Key: (1) 6-4-003:022

Land Status: Fee simple interest owned by Dole Food Company, Inc.

Trust Land Status: Ceded land under Section \_\_\_ lands of the Hawaii Admission Act  
Yes \_\_\_ No X

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution?  
Yes \_\_\_ No X

Character of Use: Irrigation ground water well facilities

Land Doc. Type: Easement agreement, terms in negotiation

Term: Perpetual

Rental Rate: N/A  
Purchase Price, in negotiation

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**BACKGROUND:**

ADC began its land-banking campaign in 2012, beginning with the acquisition of approximately 1,250 acres of the George Galbraith Estate lands in Wahiawa. Between 2012 and 2020, ADC acquired an additional 2,600 acres of land, more or less, located from Whitmore to Waialua. Approximately 650 acres of these lands are currently irrigated by the Wahiawa Irrigation System, owned and operated by Dole. Approximately 1,250 acres of the Galbraith land is currently irrigated by ADC's Bott well [Well No. 3-3103-001 ("Del Monte pump no. 5")] and approximately 350 acres of Galbraith and former Dole lands are irrigated by Helemano pump no. 25. An additional 800 acres of former Dole lands currently have no immediate irrigation water delivery system in place,

although water can be pumped and delivered from the Wahiawa Irrigation System or Helemano pumps no. 24 and 26 to them. (See attached map for lands and their current or potential irrigation sources, "Exhibit A".)

<u>Map</u>	<u>Irrigation source</u>	<u>Owner</u>	<u>Acres</u> (approximate)
X	Wahiawa Irrigation System	Dole	650
Y	Bott well	ADC	1250
Z	Helemano pump 25	Dole	350
Z	Helemano pump 24, 26	Dole	<u>800</u>
TOTAL:			3050 acres

Dole Food Company, Inc. (Dole) owns a 2,636.817-acre Ag-1, Agricultural-zoned parcel, identified as tax map key no. (1) 6-4-003:022, between Kamehameha Highway and Kaukonahua Road, across the street from the Dole Plantation in Paalaa Uka, District of Waialua on which the three wells are situated. The wells are permitted to take water from the Wahiawa Aquifer System. The Wahiawa Aquifer has a current sustainable yield of approximately 23 mgd. The wells have a combined daily water use allocation of 5.742 mgd from the Commission on Water Resource Management as follows:

<u>Well / Pump ID</u>	<u>Year installed</u>	<u>Water use allocation as of 2014 (MGD)</u>
Helemano Pump 24 ("Pump 24")	1973	2.580
Helemano Pump 25 ("Pump 25")	1974	1.720
Waialua Pump 26 ("Pump 26")	1975	<u>1.442</u>
TOTAL:		5.742

The wells were drilled between 1973 and 1975 and are nearly 50 years old. With the exception of Pump 25, the wells have not been in consistent or regular use for at least 20 years. Pump 25 has been in use since the mid-2000's. The pump and pump accessories for Pump 25 do not belong to Dole. It is privately operated by Kelena Farms.

Dole has offered to sell the three wells, well sites, existing well pumps and other equipment and well accessories that belong to Dole, and waterline easements to ADC.

Easement Well site 1	0.037 acres
W-1	0.496 acres
W-4	<u>1.505 acres</u>
Total acres	2.038 acres

Easement Well site 2	0.067 acres
W-2	<u>3.253 acres</u>
Total acres	3.32 acres

Easement Well site 3	0.049 acres
W-3	<u>0.659 acres</u>
Total acres	0.708 acres

TOTAL EASEMENT AREA 6.066 acres

The parties agree that the interest being sold will be in the form of an easement. ADC has conducted preliminary due diligence, and has secured a draft of an appraisal, but the parties have

not reached a mutually agreed upon price. All remaining terms of the sale also are under negotiation, including the form of the appropriate documentation and extent, the nature of the easement interest being sold, the current condition of the fixtures (pumps and accessories), and the impact of that condition and anticipated costs of remediation upon the purchase price. Because of the ongoing negotiations, discussion on the draft appraisal and the specifics of sale terms should be discussed in executive session.

ADC currently has a capital improvement project (“CIP”) appropriation for \$4.700,000 to purchase the three wells.

LAND REQUEST:

N/A.

WATER NEEDS AND SOURCE OF WATER:

N/A.

OPERATIONAL PLAN:

Before developing an operation plan, the pumps will likely require rehabilitation or replacement, and the distribution system need to be developed. ADC has made a request to the legislature for \$3 million in CIP funds for agricultural infrastructure improvements, which includes rehabilitating and connecting the wells.

Once the wells are operational and connected to the existing irrigation system, ADC anticipates developing an operational plan similar to the existing Bott well plan. The current Bott well plan covers the cost to secure, repair, maintain and run the pumps. ADC’s largest tenant, Kelena Farms, partners with ADC to operate the Bott well. thereby reducing ADC’s outlay of costs. If ADC is unable to find a partner for the Helemano pumps with and share the operating cost, it will need to find a third party operator, which will raise ADC’s overhead cost exponentially. Currently, with a partner, ADC’s share of the annual cost for the Bott well pump is \$500,000. This includes 24/7 security, a maintenance contract, and cost of diesel fuel.

CONSERVATION PLAN:

N/A

DISCUSSION:

The Helemano wells are strategically located in the middle of the former Dole and Galbraith estate lands that ADC has acquired over the past 10 years. These wells historically serviced former pineapple and sugar lands from Wahiawa to Waialua. The acquisition of these wells will provide irrigation to an additional 800 acres of ADC lands, as well as provide the redundancy in ADC irrigation systems that are currently lacking. This acquisition is critical to ADC fulfilling its mission which this Board recently ratified, to wit: “to acquire and manage, in partnership with farmers, ranchers, and aquaculture groups, selected arable lands, water systems and infrastructure for commercial agricultural use...” There is nothing more fundamental to this objective than to acquire water sources to irrigate the former Dole lands that ADC has amassed, most of which this Board has approved for disposition to farmers.

RECOMMENDATION:

Based on the foregoing, it is recommended that this Board delegate to the ADC Executive Director and his staff the authority to conduct all appropriate and reasonable due diligence into the current condition of each of the three wells, assess the value of the wells, pumps and accessories, and access and distribution easements, and purchase the same in an amount not to exceed \$4,700,000. To the extent costs of sale can be paid for by ADC by non-CIP funds, it is recommended that this Board further authorize the payment of costs of sale from non-CIP funds.

Respectfully submitted,



James J. Nakatani  
Executive Director

Request to Delegate Authority to ADC Executive Director to Negotiate and Purchase Three Deep Wells in Paalaa Uka, District of Waialua, Oahu from Dole Food Company, Inc.  
April 20, 2022  
Page 5 of 5

EXHIBIT A

Location Map of Subject Wells

[see following page]

# Legend

- Major Roads
- Other Roads
- Wahiawa Ditch
- Other Ditches
- Perennial Streams
- Lakes / Reservoirs

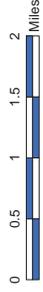
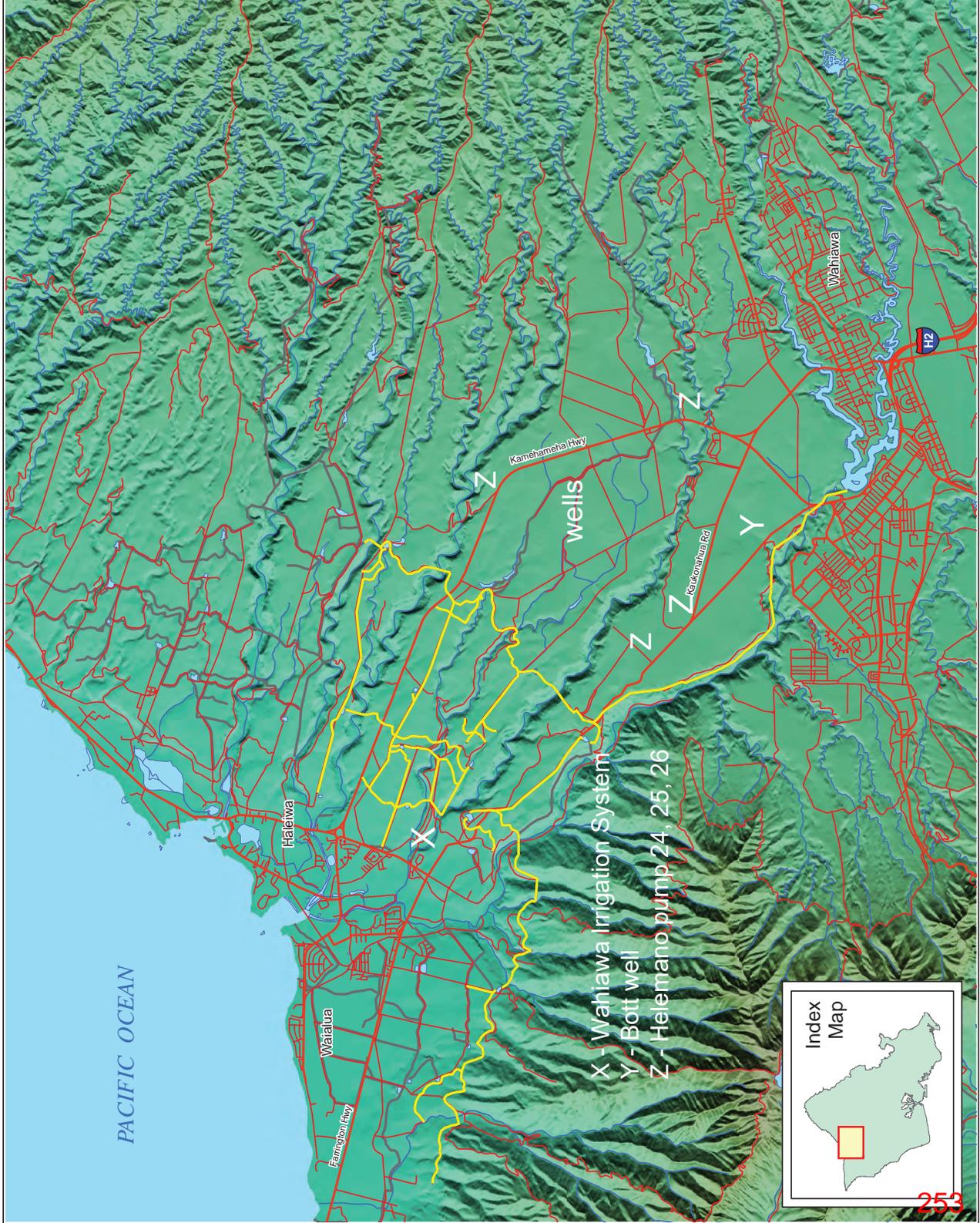


Figure 1-2

## Project

## Location Map

### Wahiawa Irrigation System





STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT CORPORATION**

235 S. Beretania Street, Room 205  
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Phone: (808) 586-0186 Fax: (808) 586-0189

**Executive Director's Update**

April 20, 2022

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1. Kekaha

Hartung Brothers Hawaii, LLC ("HBH") and Aloun Farms, Inc. ("Aloun") have entered into a contract farming agreement by which HBH will situate requested plantings from Aloun around the farm based on availability of land and the desired crop rotation. HBH will provide primary and heavy tillage work and initial fertilizer application. Aloun staff will for beds and transplant plantlets (i.e. watermelon, honeydew melons, kabocha, pumkins, etc.), and scout fields and request spray applications. HBH will provide sprays as appropriate, and Aloun will manage harvest operations using some HBH baseyard facilities.

2. Wahiawa

ADC will be issuing a Revised Draft Environmental Assessment ("Revised EA") to the Office of Planning and Sustainable Development for publication in The Environmental Notice for public comment. The Revised EA is in response to recent updates to the plan in response to a determination by the Hawaii Department of Health that a back-up location for off-spec effluent would not be necessary based on their review of past operations and on-site storage capacity. Once published, the public comment period is open for 30 days.

3. Legislative Update

**2022 Legislative Session Bill Tracking**

The ADC is tracking several bills heading to Conference. The following are the Legislative bills related to ADC:

- SB 2480 – Relating to the Wahiawa Irrigation System

This measure authorizes the issuance of bonds to the Department of Land and Natural Resources, Hawaii Department of Agriculture, and ADC to purchase the Wahiwa Irrigation System, which includes Lake Wilson.

- SB2473 – Relating to Economic Development

This measure transfers the ADC from the Hawaii Department of Agriculture to the Department of Business, Economic Development, and Tourism. The bill also This measure amends the focus, scope, and management of the ADC.

4. Administrative

On September 17, 2021, ADC issued a public notice of Invitation for Bids via HlePRO for property management software to assist staff in more accurately managing ADC's property holding. The bid award was made to Yardi Systems ("Yardi") and a contract has been executed. ADC will issue a Notice to Proceed on or about July 1, 2022.

Yardi currently provides land management software and services to the Department of Land and Natural Resources Land Division and Division of Boating and Ocean Recreation