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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5731

between

STATE OF HAWAII

and

KAHEAWA WIND POWER, LLC

covering a Portion of Government (Crown) Land of Ukumehame

situate at Ukumehame, Lahaina, Wailuku, Maui, Hawaii

PRELIM. APPR'D.
Department of the
Attorney General

200
1-20-11

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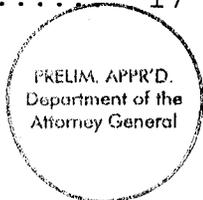
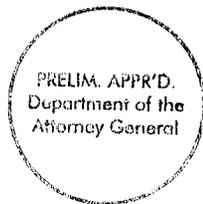


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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5731

THIS LEASE, made this 19th day of January 2005, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," whose address is Post Office Box 621, Honolulu, Hawaii, 96809, and KAHEAWA WIND POWER, LLC, a Delaware limited liability company, hereinafter referred to as the "Lessee," whose address is c/o UPC Wind Management, LLC, 100 Wells Avenue, Suite 201, Newton, Massachusetts, 02459.

WITNESSETH:

Lessor, pursuant to Section 171-95(a)(2), Hawaii Revised Statutes, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of Lessee to be kept, observed and performed, does lease unto Lessee, and Lessee does lease from Lessor the premises at Ukumehame, Lahaina, Wailuku, Island of Maui, State of Hawaii situate in the County of Maui and temporarily identified as "Lease Area (for Wind Farm Purposes) together with access and electrical transmission line easements," more particularly described in Exhibit A attached hereto and made a part hereof. Lessee understands and agrees that Exhibit A is only a temporary map. Within six (6) months from lease commencement, Lessee shall, at its own cost, provide to the Lessor a survey-standard CAD map of the legal metes and bounds of the parcel (which shall not exceed 200 acres) together with the access and electrical transmission line easements, by a surveyor licensed to do business in Hawaii and in accordance with the standards established by the Department of Accounting and General Services (DAGS), Land Survey Division, such map to be confirmed and converted to a CSF map and description by the DAGS Land Survey Division. The parties hereto specifically agree to amend this Lease by replacing Exhibit A with the DAGS Land Survey Division CSF map and description.

TO HAVE AND TO HOLD the premises unto Lessee for the term of twenty (20) years with an option to extend for an additional twenty (20) years subject to Paragraph 57, commencing on the 1st day of February, 2005, up to and including the 31st day of January, 2025, unless sooner terminated as hereinafter

provided, Lessor reserving and Lessee yielding and paying to Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental as provided hereinbelow:

A. First year rent waived. All rent shall be waived for the first year of the term.

B. Minimum Annual Rent. For the second (2nd) to tenth (10th) years of the term, Lessee shall pay a Minimum Annual Rent of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000) due in equal semi-annual installments on January 1st and July 1st, payable in advance, without notice or demand.

C. Percentage Rent. For the second (2nd) to tenth (10th) years of the term, the Lessee shall pay Percentage Rent in an amount equal to TWO AND ONE-HALF PERCENT (2.5%) of Gross Revenue, as defined below, to the extent such amount exceeds the Minimum Annual Rent in any year. Any Percentage Rent over and above the Minimum Annual Rent shall be due and payable within thirty (30) days of the end of the second year of the term and within thirty (30) days of each anniversary date thereafter. Each payment shall be accompanied by a Rent Report as defined below.

D. Gross Revenue defined. "Gross Revenue" shall be defined as all revenues earned relating to electrical energy generated on the premises by Lessee and delivered to purchasers of generated electricity or used in-house ("Energy"), and all revenues from green tag/certificates, pollution or environmental credits or offsets, and carbon credits (collectively "Green Certificates"), excluding, however, all revenues from other sources, including without limitation, federal and/or state production and investment tax credits, financing activities or the sale of the wind farm project. Gross Revenue shall be calculated in any given period on the basis of actual sales of Energy and Green Certificates. Energy and/or Green Certificates generated at the premises that are donated or bartered shall, for the purpose of calculating Gross Revenue, be valued at the rate of their most recent prior sale by the Lessee to the recipient of the donated or bartered Energy and/ Green Certificates or at prevailing commercial rates, whichever is higher.

E. Rent Reports. Lessee shall keep an accurate record and account of all Gross Revenues earned for the payment period in accordance with acceptable record keeping practices

within the business community. Lessee shall forward to the Lessor itemized statements ("Rent Reports") showing the amount actually earned for the last payment period. The Rent Reports shall be in reasonable and sufficient detail to enable Lessor to verify the accuracy of the rental payments provided for herein.

F. Rental reopenings, dates. The rental reserved, including both the Minimum Annual Rent and Percentage Rent shall be reopened and redetermined as of the day following the expiration of the tenth (10th) year of the term (hereinafter referred to as "11th-Year Reopening") and at Repowering (as defined in Paragraph 59).

G. Rental reopenings, conduct of. The rental for any ensuing period shall be the fair market rental at the time of reopening, provided that for the 11th-Year Reopening only, the Percentage Rent shall not be less than 2.5% nor higher than 3.5%. Except as provided herein, the provisions in Hawaii Revised Statutes, Chapter 658A, shall be followed. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by a staff appraiser or independent appraiser, as allowed by law, whose services shall be contracted for by the Lessor, and the Lessee shall be promptly notified by certified mail, return receipt requested, of the fair market rental as determined by Lessor's appraiser; provided, that should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt thereof that Lessee disagrees with the fair market rental as determined by Lessor's appraiser and that Lessee has appointed its own appraiser to prepare an independent appraisal report, then the fair market rental as determined by Lessor's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening. If Lessee has notified Lessor and appointed his appraiser as stated hereinabove, Lessee's appraiser shall complete his appraisal and the two appraisers shall then exchange their reports within forty-five (45) days from the date of Lessee's appointment of the appraiser.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. However, should differences still exist fourteen (14) days after the exchange, the two appraisers shall within seven (7) days thereafter appoint a third appraiser who shall also prepare an independent appraisal report based on the review of the two appraisal reports prepared and any other data. Copies thereof shall be furnished 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 shall meet and 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 658A-23 and 658A-24, Hawaii Revised Statutes. Each party shall pay for its 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.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, or by the foregoing prescribed time, whichever is later, the Lessee shall pay the fair market rental as determined by Lessor's new appraised value until the new rent is determined and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate to reflect the fair market rental determined as set forth hereinabove. However, Lessee or Lessee's appraiser's failure to comply with the procedures set forth above shall constitute a waiver of Lessee's right to contest the new rent, and the Lessee shall pay the rent as determined by Lessor's appraiser without any retroactive adjustments.

H. Repowering. Lessee shall notify Lessor in writing of any intent to repower the Wind Project no less than nine (9) months prior to Repowering. The Lessee shall be responsible for obtaining any permits or approvals necessary for any Repowering. Following receipt of a Repowering notice by Lessee, new Minimum Annual Rent and Percentage Rent shall be renegotiated in accordance with Section G. above.

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

RESERVING UNTO LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas,

coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that minerals shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises 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 premises 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, damaged or rendered unusable or commercially unproductive at the site.

2. Prehistoric and historic remains. Any regulatory rights and ownership of the State of Hawaii over prehistoric or historic remains found in, on or under the premises, established pursuant to state law, including Chapter 6(E) Hawaii Revised Statutes.

3. Ownership of 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 prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.

LESSEE AND LESSOR COVENANT AND AGREE WITH EACH OTHER AS FOLLOWS:

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

2. Taxes, assessments, etc. Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, 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 those installments, together with interest, which becomes due and payable during the term of this lease. All taxes and assessments for partial years during the term of this lease shall be prorated. Lessee shall have the right, at its own cost and expense, to refuse to pay and to contest the amount or validity of any tax or assessment by an appropriate proceeding diligently conducted in good faith which shall operate to prevent the collection of any such tax or assessment so contested or the sale of the premises to satisfy the same. Pending final judgment in an appeal from any such proceeding, Lessor shall not have the right to pay, remove, or discharge any tax or assessment thereby contested, provided that Lessee shall protect Lessor and the premises from any lien by adequate surety bond or other appropriate security.

3. Utility services. The Lessee shall be responsible for obtaining any utility services deemed necessary for Lessee's use and enjoyment of the premises and 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 the premises or any part, or any improvements, or Lessee may become liable for during the term as a result of Lessee's use. The Lessee is authorized to grant to Maui Electric Company, Limited, hereinafter referred to as "MECO," a right of entry upon the premises for the construction, maintenance, repair and operation of MECO's poles, wire lines, underground power lines, guys, conduits and other appliances and equipment as may be necessary for the transmission of electricity to be used for light and power and communication and control circuits.

4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

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

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or

offensive use of the premises or any part thereof, nor, without the prior written consent of the Lessor which shall not be unreasonably withheld, conditioned or delayed, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.

7. Compliance with laws. The Lessee, in its exercise of its rights under this lease, shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

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

9. Improvements. The Lessee shall, at its own cost and expense, within three (3) years from the commencement of the lease term, complete the construction of a 30-megawatt wind power project or Project Improvements, in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Chairperson and in full compliance with all applicable laws, ordinances, rules and regulations, such approval not to be unreasonably withheld or delayed. Initial construction or installation of the Project Improvements shall not commence until the Department of Land and Natural Resources has been provided evidence of full financing of the construction costs of the project, and the construction and installation of the Project Improvements shall be completed free and clear from all liens and claims. Any grading, realigning and/or paving of the existing access road by the Lessee for the safe transporting of heavy equipment to the premises during the construction phase shall be at the Lessee's sole cost and expense. Thereafter, the Lessee shall not construct, place, maintain or install on the premises any building, structure or improvement of any kind except with the prior written approval of the Chairperson and upon those conditions the Chairperson may impose, including but not limited to any adjustment of rent, unless otherwise explicitly provided in this lease. The Lessee shall name the Lessor as an obligee on all its contractor bonds and guaranty agreements, including but not limited to: (a) Performance Bond and Labor and Materialman's Bond issued by Goodfellow Brothers,

Inc., and (b) the guaranty agreements issued by GE Company and ABB, Inc.

10. [Intentionally omitted.]

11. Ownership of improvements. During the term of this lease, the improvements constructed by the Lessee, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of the Lessee. At early termination for whatever reason or expiration of this lease, all existing improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein shall be removed at the Lessee's sole expense, unless the Lessor elects to assume ownership of improvements as provided herein. Wind turbine foundations shall be removed to a depth of two (2) feet below grade. Those improvements of which Lessor assumes ownership shall transfer to the Lessor free of cost and free of subsequent liability to the Lessee. Throughout the term of the lease, Lessee shall not permit any claim of lien made by any mechanic, materialman, laborer or other similar liens to stand against the premises for work or labor done, services performed, or materials used or furnished to be used in or about the premises for or in connection with any construction, improvements or maintenance or repair thereon made or permitted to be made by Lessee, its agents or sublessees. Any liens, encumbrances or claims of third parties with respect to any of the foregoing, shall be expressly subordinate and subject to the rights of the Lessor under this lease.

12. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements hereafter constructed or installed on the premises by Lessee in good order, condition and repair, reasonable wear and tear excepted. The Lessee shall also be obligated to repair and maintain any improvements shared with Lessor to the extent of Lessee's use of such improvements.

13. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses. The Lessee shall have

the right to contest any attachments or liens recorded against Lessor or the premises and resulting from any works of improvement made by or for Lessee provided (i) Lessee contests such attachment or lien by appropriate proceeding diligently conducted in good faith, and (ii) at the request of Lessor, Lessee shall furnish a lien release bond or other security acceptable to Lessor in the principle amount of such attachment or lien.

14. Character of use. The Lessee shall use or allow the premises to be used solely for the following purpose(s): (i) to conduct wind and weather monitoring activities, including the erection, relocation, maintenance and operation of anemometers and other wind and weather monitoring equipment, steel towers, concrete slabs, fences and buildings to properly operate, house, protect and otherwise facilitate Lessee's wind and weather monitoring activities, the location of such equipment and related facilities to be determined by Lessee in its sole discretion; (ii) the erection, relocation, maintenance and operation of large wind turbine generators ("Turbines") and all related equipment and improvements necessary or useful for the conversion of wind energy into electricity, including but not limited to steel towers, foundations and concrete pads, footings, guy wires, anchors, fences and other fixtures and facilities, maintenance, security, office and/or guest facilities, staging areas for the assembly of equipment, required lines and substation facilities to transfer power from the Turbines to power transmission lines, energy storage devices, and other power production equipment, all in such number and in such locations as Lessee, in its sole discretion, may determine; (iii) the erection, maintenance and operation of power transmission lines, poles, anchors, support structures, underground cables, substations and interconnection facilities and associated roads for access and for installation and maintenance purposes as Lessee in its sole discretion deems to be necessary or appropriate to transmit power and transport workers, tools, material, equipment and other necessary items to and from or across the premises; and (iv) the use and enjoyment of the free flow of wind across the premises without interference from Lessor. Lessor also hereby grants to Lessee a non-exclusive easement in gross on, over and across any and all access routes to and from the premises for purposes of ingress and egress to and from the premises.

15. Assignments, etc. Except as otherwise provided in this lease, the Lessee shall not transfer, assign, or permit any other person to occupy or use the premises or any portion

thereof or transfer or assign this lease or any interest herein, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession and any transfer or assignment made contrary to the terms hereof shall be null and void; provided that with the prior written approval of the Board the assignment and transfer of this lease, or any portion, may be made in accordance with current industry standards, as determined by the Board; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989, as amended, a copy of which is attached hereto as Exhibit B. The premium on any subsequent assignments shall be determined as specified in the above-mentioned Evaluation Policy.

If the Lessee is a partnership, joint venture or corporation, the sale or transfer of 51% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph. Notwithstanding the above, a sale or transfer by Lessee of an ownership interest in the project greater than 51% in connection with any tax financing of the project shall not be deemed an assignment for purposes of this Paragraph 15, provided that Lessee retains control of the partnership, joint venture or corporation.

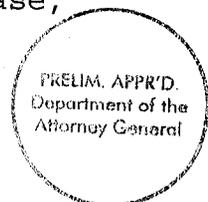
Notwithstanding the foregoing provisions of this Paragraph 15, Lessee shall at all times have the right to sell, assign, encumber, or transfer any or all of its rights and interests under this lease without Lessor's consent and without payment of any premium to any entity predominantly owned or controlled by or under common ownership or control with Lessee; provided, however, that the term of any such transfer shall not extend beyond the term of this lease and that any and all such transfers shall be expressly made subject to all of the terms, covenants and conditions of this lease. No such sale, assignment, transfer, or easement shall relieve Lessee of its obligations under this lease.

16. Subletting. The Lessee shall not rent or sublet the whole or any portion of the premises, without the prior

written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent of the premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward.

17. Indemnity. Except to the extent caused by the negligent or intentional acts of the Lessor or its employees, contractors or agents, the Lessee shall indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of the Lessee or its employees, contractors or agents relating to the Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the portion of the premises in the Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments. In case the Lessor shall, without any fault on its part, be made a party to any litigation commenced by or against the Lessee with respect to this lease or Lessee's occupancy or use of the premises (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, 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 premises, or in the collection of delinquent rental, taxes, and any and all other applicable charges attributable to the premises.

18. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to Lessor, in full force and effect throughout the term of this lease,



commercial general liability insurance, with a minimum combined occurrence and annual limitation of Five Million Dollars (\$5,000,000) with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

The 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 the Lessor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire lease term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor.

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

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

It is agreed that any insurance maintained by the Lessor will apply in excess of, and not contribute with, insurance provided by Lessee's policy.



19. Bond, performance. The Lessee shall, at its own cost and expense, within seventy-five (75) days from the commencement of the term of this lease, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease (and any additional period of time that the Lessee requires to remove the Project Improvements and restore the premises) a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000). This bond shall provide that: (a) in case of Lessee's uncured breach or default of any of the lease terms, covenants, conditions, and agreements, the Lessor may draw upon the bond for liquidated and ascertained damages and not as a penalty, and (b) that upon the expiration, cancellation or early termination of this Lease, the Lessor may draw upon the bond in order to remove the Project Improvements (except for access roads) and to restore the premises to its original or better condition. Any portion of a bond or security deposit held by Lessor and not applied to cure a breach or default of Lessee hereunder or not applied to remove the Project Improvements and restore the premises as herein provided shall be returned to Lessee. This provision shall survive the expiration, cancellation or other early termination of this Lease.

20. Lessor's lien. Subject to the other provisions of this lease, the Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all Lessor's 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 provided in this lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid.

21. Mortgage. Except as provided in this lease or in any separate instrument executed by the Chairperson, the Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease without the prior written approval of the Chairperson and any mortgage, hypothecation, or pledge without the approval shall be null and void. Upon due application and with the written consent of the Chairperson, the Lessee may mortgage this lease, or any interest, or create a security interest in the leasehold of the public land to a third

party to the extent necessary to secure financing for the project. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or the United States, the consent may extend to foreclosure and sale of Lessee's interest at the foreclosure to any purchaser, including the mortgagee or holder, without regard to whether or not the purchaser is qualified to lease, own, or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable. The term "mortgagee or holder" shall mean and include any mortgagee or holder of a security interest in the premises and Lessee's interests under the lease, as well as any insurer or guarantor of the obligation or condition of the 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 these Federal agencies.

Should Lessee mortgage any of its interest as provided in the preceding paragraph, Lessee and Lessor expressly agree between themselves and for the benefit of any mortgagee or holder (collectively, "Lenders") as follows:

(a) The Lenders shall have the right to do any act or thing required to be performed by Lessee under this lease, and any such act or thing performed by a Lender shall be as effective to prevent a default under this lease and/or a forfeiture of any of Lessee's rights under this lease as if done by Lessee itself.

(b) No default which requires the giving of notice to Lessee shall be effective unless a like notice is given to all Lenders. If Lessor shall become entitled to terminate this lease due to an uncured default by Lessee, Lessor will not terminate this lease unless it has first given written notice of such uncured default and of its intent to terminate this lease to each Lender and has given each Lender at least thirty (30) days to cure the default to prevent such termination of this lease. Furthermore, if within such thirty (30) day period a Lender notifies Lessor that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under

this lease in order to cure the default, Lessor shall not terminate this lease and shall permit such Lender a sufficient period of time as may be necessary for such Lender, with the exercise of due diligence, to foreclose or acquire Lessee's interest under this lease and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Lessee. Upon the sale or other transfer of any interest in and rights granted hereunder by any Lender, such Lender shall have no further duties or obligations hereunder.

22. Breach. Time is of the essence in this lease and if the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided within thirty (30) days after delivery by the Lessor of a written notice of breach or default, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default, by personal service, registered mail or certified mail to Lessee at its last known address and to each Lender or holder of record having a security interest in the premises, and subject to the provisions of Paragraph 21 above, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part thereof, and upon or without the 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 termination, at the option of the Lessor, all buildings and improvements and personalty not removed by Lessee within three-hundred sixty-five (365) days after such termination shall remain and become the property of the Lessor; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages. The Lessee may request a twelve-month license following termination to remove such improvements and personalty.

23. Condemnation. If at any time, during the term of this lease, any portion of the 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 the proportionate value

of the Lessee's improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, but shall not be required to in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the 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 the leasehold interest by reason of the 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 taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

24. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the lands preparatory to the proposed disposition; provided, however, that any 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 authorization shall be given more than two years before the expiration of the term of this lease.

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

26. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times

specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

27. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the 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 a period the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor 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 this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

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

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

30. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, restore and peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition and with or without the Project Improvements as in accordance with Paragraph 11 of this lease. Furthermore, upon the expiration, termination, and/or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises within the prescribed period, after notice thereof, the Board may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all reasonable costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the lease.

31. Non-warranty. Except as set forth in this Paragraph 31 and Paragraph 32 below, Lessor does not warrant the condition or prior uses of the premises, as the same are being leased as is. Notwithstanding the foregoing, Lessor promises, represents and warrants to Lessee that (i) Lessor owns the entire premises in fee simple, subject to no liens or encumbrances except as disclosed in writing to Lessee in a title report or other document delivered to Lessee on or prior to the execution of this lease by Lessor; (ii) Lessor and each person signing this lease on behalf of Lessor has the full and unrestricted power and authority to execute and deliver this lease, and to lease the premises and the rights herein granted; and (iii) there are no tenants on the premises, or such tenants have prior to or concurrent with the execution of this lease, delivered a subordination agreement to Lessor in form and substance satisfactory to Lessee.

32. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee 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 Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. Lessor hereby consents to the lawful and reasonable use of lubricating oil and grease, normal paint and cleaning compounds. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, 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.

Lessee agrees to indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises if (i) such release is caused by any person other than Lessor and such release occurs on or at any portion of the premises that is under the control of Lessee or (ii) such release is caused by Lessee or persons acting under Lessee and such release occurs on or at any portion of the premises that is not under the control of Lessee. These covenants shall survive the expiration or earlier termination of the lease.

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

33. Fire and extended coverage insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the land leased in the joint names of Lessor and Lessee, with the standard mortgage clause for any Lender, as their interest may appear, in an amount equal to the

replacement cost of the facilities and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same facilities in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage and the Lessee shall then receive that portion of the proceeds which the unexpired term of this lease at the time of the loss or damage bears to the whole of the term, the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the commencement date of this lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) 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(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

34. Compliance with CDUP. The Lessee shall comply with all terms and conditions of Conservation District Use Permit (CDUP) No. MA-3103 as approved by the Board at its meeting of January 24, 2003 under agenda item D-9 and as may be thereafter amended.

35. Wind data rights. Upon termination or expiration of this lease for whatever reason, the Lessee shall provide the Lessor with copies of all Wind Data relating to the premises. The Lessor shall have an unlimited license to use such data for any purpose, whether for its own purposes or for distribution to third parties, without charge.

36. Further assurances. (a) Each of the parties to this lease agrees to perform all such acts (including but not limited to, executing and delivering such instruments and documents) as reasonably may be necessary to fully effectuate each and all of the purposes and intent of this lease, including consents to any assignments, pledges, subleases or transfers permitted under Paragraphs 15, 16 and 21 herein as may be

required by any Lender or required in connection with the transfer by Lessee of the rights granted under this lease.

(b) Lessor expressly agrees that it will from time to time enter into reasonable nondisturbance agreements with any Lender which requires such an agreement providing that Lessor shall recognize the rights of the Lender and not disturb its possession of the premises so long as it is not in default of any of the provisions of this lease. Lessor and Lessee further agree that they shall, at any time during the term of this lease within (10) days after a written request by the other party, execute, acknowledge and deliver to the requesting party a statement in writing certifying that this lease is unmodified and in full force and effect (or modified and stating the modifications). The statements shall also state the dates on which the payments and any other charges have been paid and that there are no defaults existing or that defaults exist and the nature of such defaults.

(c) The Lessor may not take any action on the premises which interferes with or is incompatible with Lessee's use and enjoyment of the premises or which in any way interferes with the wind flow across the premises. Lessor may replace, rebuild, or reconstruct any improvement in existence on the premises at the time of execution of this lease in the same or substantially the same form as such improvement existed at such time, and Lessor may build, construct, or locate new improvement(s) on the premises, provided that any such improvement(s) shall not (i) interfere with the wind flow across the premises, (ii) interfere with or obstruct Lessee's rights under this lease or its operations on the premises, nor (iii) impede or obstruct Lessee's access to the premises. In no event during the term of this lease shall Lessor construct, build, or locate or allow others to construct, build, or locate any wind energy conversion system, wind turbine, or similar project on the premises. Lessee shall have the right to remedy any such interference by any appropriate means.

37. Notices. All notices or other communications required or permitted hereunder, including notices to Lenders, shall, unless otherwise provided herein, be in writing, shall be personally delivered, delivered by reputable overnight courier, or sent by first class mail and postage prepaid, addressed to the parties at the addresses set forth on the first page of this lease. Notices personally delivered shall be deemed given the day so delivered. Notices given by overnight courier shall be deemed given on the first business day following the mailing

date. Notices mailed as provided herein shall be deemed given on the third business day following the mailing date. Notice of change of address shall be given by written notice in the manner detailed in this Paragraph 37, provided that Lessee's mailing address shall at all times be the same for both billing and notice. In the event there are multiple Lessees hereunder, notice to one Lessee shall be deemed notice to all Lessees.

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

39. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

40. 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.

41. [Intentionally omitted].

42. Time is of the essence. Time is of the essence in all provisions of this lease.

43. Archaeological sites. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the premises, the Lessee and the 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.

44. [Intentionally omitted.]

45. Clearances. The Lessee shall be responsible for obtaining all necessary federal, state or county clearances, permits and approvals.

46. Hunting. No hunting shall be allowed on the premises during the term of this lease.

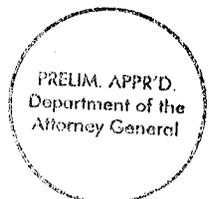
47. Records. The Lessee shall prepare, maintain, and keep records in accordance with acceptable record keeping practices. A clear, complete, detailed record and accounting of business affecting payment due the Lessor and Project Improvements, electric production and delivery to the power

purchaser shall be maintained at a location in Hawaii for a period of at least four (4) years following payment of rent. Further, the Lessee shall prepare, maintain and keep records of Wind Data, as defined herein, and management practices conducted on the premises, including but not limited to, the use of pesticides, for the term of this lease or as required by law or any permit.

48. Audit and examination of books, etc. The Lessee shall, at all reasonable times, permit the Lessor and/or its authorized agents and employees, upon reasonable notice given by the Lessor, to audit, examine and to make copies of all books, accounts, records and receipts of the Lessee, including any power purchase agreements, for the purpose of verifying the amount of electric production and delivery to the power purchaser and/or proceeds received by the Lessee from the premises or for the purpose of determining and enforcing compliance with the provisions of this lease. If an audit shows a deviation of more than three percent (3%) from the Gross Revenue rental payment made to the State, the Lessee shall pay the difference and pay for the cost of the audit. The Lessee shall immediately pay all such additional amounts due plus interest from the date such payment was originally due and payable but in no case later than thirty (30) days after notice of the additional amount due.

49. 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 regulations governing historic preservation. Within thirty (30) days after the expiration or termination of this lease, Lessee shall conduct a Phase One Hazardous Waste Evaluation (record research only). In addition, Lessee shall be required to remove and abate any hazardous materials that have been released, disposed of or stored by Lessee on or at the premises during the term hereof promptly following the expiration or termination of this lease to the extent required by then existing federal, state and county environmental impact regulations. This Paragraph 49 shall survive the expiration or termination of this lease.

50. Fair interpretation. The parties agree that the terms and provisions of this lease embody their mutual intent and that such terms and conditions are not to be construed more liberally in favor, nor more strictly against, either party.



51. Partial invalidity. If any term or provision of this lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this lease or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be effected thereby, and each remaining term and provision of this lease shall be valid and enforceable to the fullest extent permitted by law.

52. Survey and boundary stakeout. The Lessee shall be solely responsible for any survey and boundary stakeout of the leased premises.

53. [Intentionally omitted.]

54. Counterparts. This lease may be executed and recorded in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

55. Complete agreement. This lease, and the exhibits and riders hereto, contains the entire agreement between the parties hereto with respect to the subject matter hereof and any prior agreements, discussions or understandings, written or oral, are superceded by this lease and shall be of no force or effect. No addition or modification of any term or provision of this lease shall be effective unless set forth in writing and signed by the authorized representatives of the parties.

56. Renewable energy producer. Lessee understands and agrees that this Lease is being issued by direct negotiation pursuant to Section 171-95, Hawaii Revised Statutes (HRS). Throughout the term of this Lease, the Lessee shall be and remain a "renewable energy producer" and Lessee shall not assign or transfer this Lease to any entity that does not qualify as a "renewable energy producer." A violation or other breach of this provision shall be considered a material default under this Lease.

57. Extension of lease term. Provided the Lessee is in full compliance with all of the terms and conditions of this Lease, Lessee may exercise its option to extend this Lease for an additional twenty (20) year term by submitting a written request to Lessor no later than nine (9) months prior to the expiration of the Lease. The Minimum Annual Rental and Percentage Rent during any extended term shall be determined in accordance with Section G (Rental reopenings, conduct of) of

this Lease. Notwithstanding the foregoing, any extension of this Lease is contingent upon and subject to the parties mutually agreement on such terms and conditions to be added to or amended in the Lease for the purpose of achieving the most current industry leasing standards for wind energy projects.

58. Public Utilities Commission approval. The Lessee shall obtain approval from the Public Utilities Commission for the power purchase agreement with MECO and shall provide Lessor written evidence of such approval. The Lessee shall also provide Lessor a copy of the duly executed power purchase agreement with MECO.

59. Additional definitions. As used in this lease, unless clearly repugnant to the context:

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

(b) "County" means the County of Maui.

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

(d) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased 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 this interest.

(e) "Lessee" means and includes Lessee and its successors or permitted assigns.

(f) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(g) "Project Improvements" includes wind turbines, all appurtenant meteorological towers and equipment, electrical components (overhead and underground power lines and their supporting structures, transformers, switching and connection enclosures, metering systems, communication lines and auxiliary equipment), service buildings, access controls (gates, cattle guards and fences), safety and wind project identification signage, erosion and fire control features and roads that may be used in connection therewith located on the premises.

(h) "Renewable energy producer" means any producer of electrical energy produced by wind that sells all of the net power produced from the demised premises to an electric utility company regulated under Chapter 269, Hawaii Revised Statutes. Up to twenty-five percent of the power produced by a renewable energy producer and sold to the utility may be derived from fossil fuels.

(i) "Repowering" means: (1) the renewal or replacement of the majority (more than 80%) of the wind turbines as evidenced by, but not limited to, contemporaneous replacement of the wind turbines with different models or (2) a significant modification to that portion of the Wind Project located on the premises such that a significant revision to the existing land use permit or a new land use permit is required for the premises. The following shall not constitute Repowering: (1) reuse of the Project Improvements, including roads, erosion control and premises access improvements, meteorological towers or transmission interconnection related to the premises, (2) replacement of the Wind Project substation for any reason, (3) replacement of wind turbines on the premises with substantially the same make and model in the same locations, or (4) replacement of any or all of the wind turbines and Project Improvements on the premises as a result of casualty or loss.

(j) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.

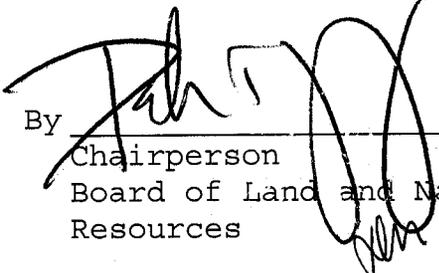
(k) "Wind Data" means maps showing the locations and orientation of anemometer or other towers, including UTM coordinates and heights of towers, all wind survey data collected (data shall be formatted to include at a minimum monthly speed, direction and other useful reports generated by off-the-shelf commercial software provided by the manufacturer of the wind monitoring equipment) and any interpretations, reports or conclusions derived from this data.

(l) "Wind Project" means the wind energy facility consisting of wind turbines interconnected by an electrical collection system and their associated project improvements. A Wind Project may extend across State land and other ownership in a given area.

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

STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meeting held on December 10, 2004.

By  _____
Chairperson
Board of Land and Natural
Resources

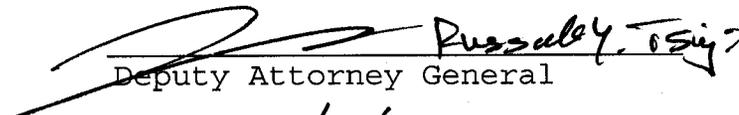
LESSOR

KAHEAWA WIND POWER, LLC

By  _____
Its
VICE PRESIDENT

LESSEE

APPROVED AS TO FORM:

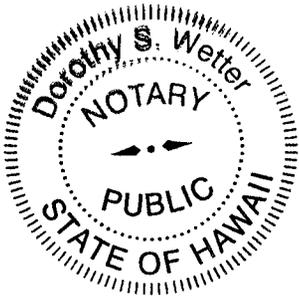

Deputy Attorney General

Dated: 12/29/04

PRELIM. APPR'D.
Department of the
Attorney General

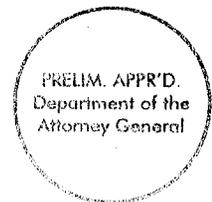
STATE OF HAWAII)
) SS.
COUNTY OF Maui)

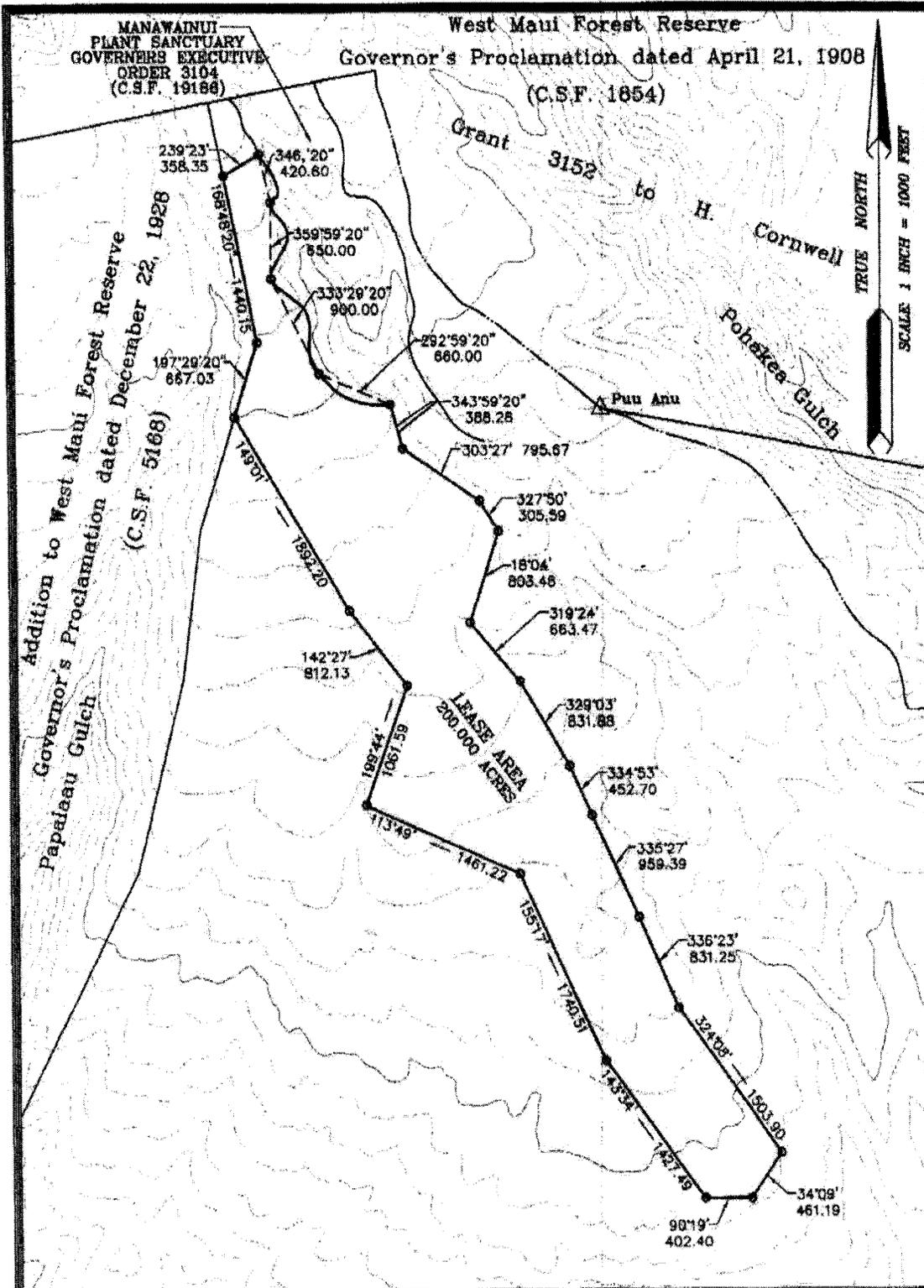
On this 3rd day of January, 2005,
before me personally appeared Mike Ereshan
and _____, to me personally known,
who, being by me duly sworn or affirmed, did say that such
person(s) executed the foregoing instrument as the free act and
deed of such person(s), and if applicable in the capacity shown,
having been duly authorized to execute such instrument in such
capacity.



Dorothy S. Wetter
Notary Public, State of Hawaii
Dorothy S. Wetter

My commission expires: NOV. 23, 2007





BRUCE R. LEE
 LICENSED PROFESSIONAL LAND SURVEYOR
 No. 5983-LS
 HAWAII, U.S.A.

THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION.

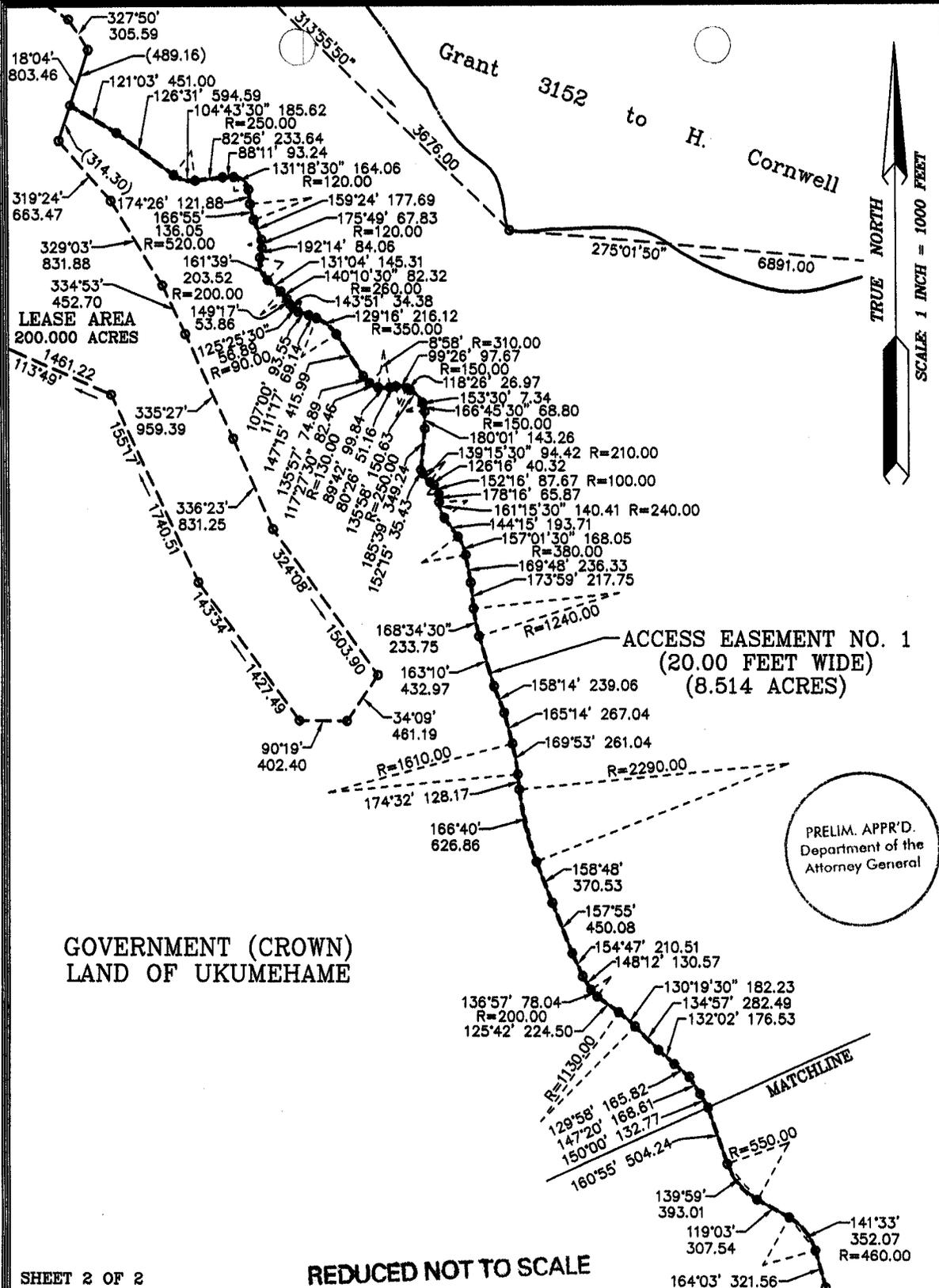
T.M.K.:(2) 4-8-001: POR. 001

PLAT SHOWING
 LEASE AREA (FOR WIND FARM PURPOSES)
 ON A PORTION OF THE GOVERNMENT (CROWN)
 LAND OF UKUMEHAME
 SITUATED AT UKUMEHAME, LAHANA, WAILUKU, MAUI, HAWAII

PREPARED FOR: SMITH DEVELOPMENT 1043 MAKAWAO AVE., SUITE 208 MAKAWAO, HI 96768	PREPARED BY: NEWCOMER - LEE LAND SURVEYORS, INC. 1498 LOWER MAIN STREET, SUITE D. WAILUKU, MAUI, HAWAII 96793
SCALE: 1 INCH = 1000 FEET	DATE: DECEMBER 6, 2004

EXHIBIT "A"

PRELIM. APPR'D.
 Department of the
 Attorney General



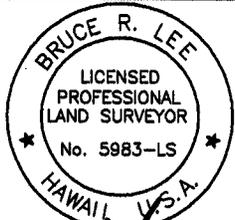
GOVERNMENT (CROWN)
LAND OF UKUMEHAME

ACCESS EASEMENT NO. 1
(20.00 FEET WIDE)
(8.514 ACRES)

PRELIM. APPR'D.
Department of the
Attorney General

SHEET 2 OF 2

REDUCED NOT TO SCALE



Bruce R. Lee
THIS PLAT WAS PREPARED BY ME OR
UNDER MY DIRECT SUPERVISION.

T.M.K.:(2) 4-8-001: POR. 001

PLAT SHOWING
ACCESS EASEMENT NO. 1 AFFECTING
A PORTION OF THE GOVERNMENT (CROWN)
LAND OF UKUMEHAME
SITUATED AT UKUMEHAME, LAHAINA, WAILUKU, MAUI, HAWAII

PREPARED FOR:
SMITH DEVELOPMENT
1043 MAKAWAO AVE., SUITE 208
MAKAWAO, HI 96768

PREPARED BY:
NEWCOMER - LEE
LAND SURVEYORS, INC.
1498 LOWER MAIN STREET, SUITE D,
WAILUKU, MAUI, HAWAII 96793

SCALE: 1 INCH = 1000 FEET

DATE: JANUARY 17, 2005

8.5" X 14"

DWG NO. 6865AE (ML) JOB NO. 04-6865

EXHIBIT "A"

ASSIGNMENT OF LEASE EVALUATION POLICY

1. Enabling Statute.

Act 104, effective May 24, 1989, amended Chapter 171-36(a) (5) to read in part:

"... provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee;" (revision underlined)

2. Qualifying Leases.

This policy shall be applicable to the subject lease.

3. Prior Approval.

Prior to giving its consent to an assignment, DLNR must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the purchase agreement and the proposed assignment agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statement or balance sheet no older than 1 year prior to date of purchase agreement of the proposed assignee or any other such statement, audited or certified as correct by a financial officer of the proposed assignee.

Assignments of lease shall not be entered into until the Attorney General has reviewed the proposed assignment and the Land Board have given their approval. Such assignments shall be entertained only if they meet the criteria set forth in Section 171-36(a) (5), HRS.

4. Qualifications of Assignee.

If qualification was required of a lessee as a pre-condition of the lease, the prospective assignee must also be qualified to assume the lease.

EXHIBIT "B"

5. Consideration to be Paid.

Prior to review by the Attorney General and approval by the Land Board, the lessee (assignor) must present with written evidence of the consideration to be paid by the assignee and any other cost data that the state may require.

6. Payment of Premium.

The act permits the state to receive from the lessee (assignor) a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The value of the inventory of merchandise and any other tangible assets in the sale of a business shall be deducted from the consideration paid. The appropriate cost index is then applied to determine the adjusted depreciated cost.

All lessees shall be required to furnish the state with the actual costs of construction of all improvements and renovations within 30 calendar days after its completion as well as the purchase costs of all trade fixtures acquired for the lessee's operation on the premises within 30 calendar days after their purchase. Lessees shall be required to furnish evidence of the actual costs by copy of the construction contract, receipts or otherwise. Lessees shall also be required to furnish an inventory of all personal property placed on the premises. Records of all costs incurred by the lessee for construction of improvements or renovations as well as trade fixtures submitted by the lessee shall be maintained in the lease file and shall include the Construction Cost Index for Apartments, Hotels, Office Buildings (CCI) and the Honolulu Consumer Price Index for All Urban Consumers (CPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the year construction is completed.

The replacement cost for improvements or renovations is calculated by using the CCI for the evaluation year divided by the CCI for the year in which the improvements or renovations were completed (base year). The result is then multiplied by the original cost of the improvements or renovations. For trade fixtures, the cost is similarly calculated by using the CPI for the purchase year (base year) and the evaluation year.

Depreciation of improvements and trade fixtures will be determined on a straight line basis. Depreciation of improvements or renovations will be determined in the same proportion that the expired term of the improvements or renovations bear to the whole term. The whole term will be

from the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner, except that the whole term will be the anticipated life of the trade fixture.

The premium will be a maximum of 50% of the excess. The percentage will decrease by 5% after every 5 years of the term has elapsed in accordance with Schedule C. The sliding scale will encourage long term occupancy and prevent speculation as well as recognize the investment, effort, and risk of the lessee.

In cases where the lessee is unable to furnish the Department of Land and Natural Resources with evidence of the actual cost of construction of improvements because the lessee has performed the work itself, the State may determine the cost or the lessee shall have the option of paying for an appraiser, to be selected by the Department of Land and Natural Resources, to determine what the improvements would have cost if the labor had been performed by a third party rather than the lessee. The lessee shall exercise its option by giving written notice to the lessor within thirty (30) calendar days after completion of construction of the improvements. If the lessee fails to exercise its option within this period, the lessor shall have the right to determine the cost of the improvements.

Schedule D attached provides a typical example of the evaluation calculations using Schedule A to calculate the replacement cost for improvements or renovations and depreciation, Schedule B to calculate the cost and depreciation for trade fixtures, and Schedule C to obtain the premium percentage.

7. Non-qualifying Deductions.

The statute only recognizes tangible items. Intangibles such as "goodwill", business name recognition, etc., are not deductible.

8. Subsequent Assignments.

If the consideration for any subsequent assignment includes the purchase of existing tenant owned improvements, the evaluation will be conducted in a similar manner as the first assignment. An example is shown on Schedule E.

Using Schedule E, the consideration the assignor paid less included inventory and any premiums will be used to obtain the adjusted depreciated cost of improvements and trade fixtures. Also, the Base Year is redefined to be the date

the assignor received the Consent of the Board to occupy the premises. The holding period (redefined Base Year to assignment date), or actual occupancy of the assignor, is used in place of the "expired term" when calculating depreciation. Depreciation will be calculated by dividing the holding period by the whole term of the lease (The whole term will remain unchanged).

The change in the CCI will be reflected by comparing the CCI for the redefined base year to the most current CCI.

The holding period will be the basis for determining the appropriate premium percentage. Subtracting the included inventory and any premiums from the consideration the assignor paid will result in a reassessment of the market value of the improvements. If additional improvements were constructed by the assignor, they will be treated in the same manner as improvements constructed by an original lessee.

The excess of subtracting the adjusted depreciated consideration the assignor paid and the adjusted depreciated cost of additional improvements, if any, from the consideration the assignor received will be used against the appropriate premium percentage to determine the amount payable to the state.

9. Rights of Holders of Security Interest-Agricultural Leases only.

In the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.

10. When state-owned improvements are included in the leased premises, improvement renovation requirements shall be recognized as being tenant-owned improvements for evaluation in the policy.

In other words, the total expenditure of the lessee to fulfill the requirement would be treated as though a new improvement was constructed.



SCHEDULE A. Adjusted Depreciated Cost of Improvements or Renovations

1. Adjusted Cost of Improvements or Renovations.

Multiply the actual cost of the improvements or renovations by the most recent U.S. Construction Cost Index for Apartments, Hotels, Office Buildings (CCI)* and divide the result by the CCI of the year construction was completed (base year) to get the adjusted cost of improvements or renovations.

2. Depreciation

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the improvements or renovations by the whole term of the improvements or renovations, the whole term beginning on the date the improvements or renovations are completed to the expiration date of the lease. Multiply the adjusted cost of the improvements or renovations by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Improvements or Renovations

Subtract the depreciation from the adjusted cost of improvements or renovations. The balance is the depreciated cost of improvements or renovations.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Example

	Actual cost:	\$500,000
	CCI (most recent):	121.1
	CCI (base year):	102.3
1. Adjusted Cost of Improvements or Renovations	Expired term:	57 mos.
	Whole term:	408 mos.

$$\text{Actual Cost} \times \frac{\text{CCI (most recent)}}{\text{CCI (base year)}}$$

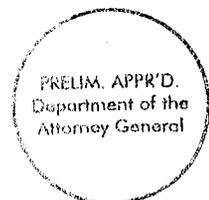
$$\$500,000 \times \frac{121.1}{102.3} = \$591,887$$

2. Depreciation

$$\$591,887 \times \frac{57 \text{ mos.}}{408 \text{ mos.}} = \$82,690$$

3. Adjusted Depreciated Cost of Improvements or Renovations

$$\$591,887 - \$82,690 = \underline{\$509,197}$$



SCHEDULE B. Adjusted Depreciated Cost of Trade Fixtures

1. Adjusted Cost of Trade Fixture.

Multiply the actual cost of the trade fixture by the most recent Honolulu Consumer Price Index for All Urban Consumers (CPI)* and divide the result by the CPI of the year in which the purchase was made (base year).

2. Depreciation.

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the trade fixture by its anticipated life. Multiply the adjusted cost of the trade fixture by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Trade Fixtures.

Subtract the depreciation from the adjusted cost of the trade fixture. The balance is the depreciated cost of the trade fixture.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Refrigerator

Example

	Actual cost:	\$1,510
	CPI (most recent):	118.1
	CPI (base year):	104.6
1. Adjusted Cost of Trade Fixture	Expired term:	57 mos.
	Whole term:	96 mos.
	(Anticipated life)	

$$\text{Actual Cost} \times \frac{\text{CPI (most recent)}}{\text{CPI (base year)}}$$

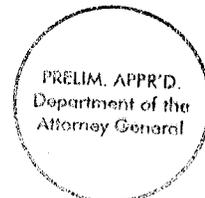
$$\$1,510 \times \frac{118.1}{104.6} = \$1,705$$

2. Depreciation

$$\$1,705 \times \frac{57 \text{ mos.}}{96 \text{ mos.}} = \$1,012$$

3. Adjusted Depreciated Cost of Trade Fixture

$$\$1,705 - \$1,012 = \$693$$



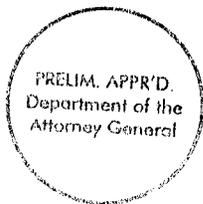
SCHEDULE C. Premium Percentages

1. For the first 5 years, the premium is 50% of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The percentage will decrease by 5% after every 5 years of the total term has elapsed.

<u>Years</u>	<u>Percentage</u>
1 - 5	50%
6 - 10	45%
11 - 15	40%
16 - 20	35%
21 - 25	30%
26 - 30	25%
31 - 35	20%
36 - 40	15%
41 - 45	10%
46 - 50	5%
51 -	0%

As an example, if a 55 year lease was assigned after 57 months, the premium percentage would be 50%. If the assignment occurs after 130 months (10+ years), the percentage would be 40%.

2. The Board of Land and Natural Resources may impose a ten percent (10%) surcharge if the assignor has not performed lease covenants to improve or use the property.



SCHEDULE D. Assignment of Lease Calculations

1. Subtract from the consideration for the assignment that amount, if any, that is attributable to inventory.
2. Calculate the Adjusted Depreciated Cost of Improvements or Renovations (see Schedule A).
3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule B).
4. Calculate the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee by subtracting the amounts derived by no. 2 and 3 from the amount in no. 1 above.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

A lease is being assigned 57 months after completion of the improvements at a consideration of \$600,000.

The initial cost of the improvements was \$500,000 while the current year CCI and base year CCI were 121.1 and 102.3, respectively. The whole term for the improvements is 408 months.

For the trade fixtures, the initial cost was \$1,510 with the current year CPI and base year CPI being 118.1 and 104.6, respectively. The total life expectancy is 96 months.

1.	Net Consideration:		\$600,000
2.	Adj Cost Imp/Ren:	\$591,887	
	Depreciation:	<u>- 82,690</u>	
	Adj Dep Cost Imp/Ren:		-509,197
3.	Adj Cost Trade Fixtures:	1,705	
	Depreciation:	<u>- 1,012</u>	
	Adj Dep Cost Trade Fixtures:		- <u>693</u>
4.	Excess:		\$ 90,110
5.	Premium:	Percentage: 50%	\$ 45,055



SCHEDULE E. Subsequent Assignment of Lease Calculations

1. Subtract from the consideration the assignor received for the assignment that amount, if any, that is attributable to inventory to derive the net consideration received.
2. Subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to inventory. Also, subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to premiums. The net consideration paid is now defined to be the value of improvements as of the date of the occupancy by the assignor.
3. Using the result from no. 2, calculate the Adjusted Depreciated Value of Improvements or Renovations (see Schedule A).
4. Subtract the amount derived by no. 3 from the amount in no. 1 to determine the amount by which the consideration received for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated value of improvements being transferred to the assignee.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

An assignor is assigning a lease 107 months after receiving the consent of the Board. Occupancy or the holding period is defined to be 107 months. The consideration received is \$1,000,000.

The consideration paid by the assignor was \$600,000 while the current year CCI and redefined base year CCI were 156.4 and 121.1, respectively. The whole term was 408 months.

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Attorney General

No inventory was included in either consideration. However, a premium of \$45,055 was paid to the state by the previous occupant from the \$600,000 consideration.

1.	Net Consideration <u>Received</u> :		\$1,000,000
2.	Consideration <u>Paid</u> :	\$600,000	
	Premium:	- 45,055	
	Net Consideration <u>Paid</u> :		\$554,945
3.	Adj Value Consideration (improvements):		
	\$554,945 X $\frac{156.4}{121.1}$	=	\$716,708
	Depreciation:		
	\$716,708 X $\frac{107 \text{ mos.}}{408 \text{ mos.}}$	=	<u>-187,960</u>
	Adj Dep Value Consideration:		- <u>528,748</u>
4.	Excess:		\$ 471,252
5.	Premium: Percentage:	45%	<u>\$ 212,063</u>

