

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, HI 96813

August 12, 2011

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Land Board Members:

**SUBJECT:                   TERMINATION OF TIMBER LAND LICENSE NO. H101  
                                  COMMENCEMENT DATE AUGUST 29, 2001 HELD BY  
                                  TRADEWINDS FOREST PRODUCTS, LLC.**

**BACKGROUND:**

At its January 13, 2011 meeting under Item C-3 (Exhibit A), the Board of Land and Natural Resources (Board) approved an amendment of the prior board action of October 9, 2009 Amendment No. 6 of Timber Land License No. H-101 (License) held by Tradewinds Forest Products, LLC (Tradewinds), a Delaware limited liability company (Exhibit B). The components of the January 13, 2011 amendment are as follows:

- a. Amend Recommendation 1.b, to extend deadline for Tradewinds to provide the Chairperson adequate assurances of securing adequate construction financing from December 31, 2009 to August 25, 2011.
- b. Amend Recommendation 1.d, to extend the deadline for mill construction completion from March 31, 2001, to August 25, 2011. In the event Tradewinds provides adequate assurances to the Chairperson by August 25, 2011, the deadline for mill construction completion shall be extended to August 28, 2012.
- c. Added a new Recommendation No. 3: "Amend License Section 3.1.1.c.iii whereby payment for the option to extend the "Drop-Dead" date for completion of mill is due to the Department on or before August 25, 2011."
- d. Added a new Recommendation No. 4: "For the seven (7) month period from June, 2010, through December, 2010, Licensee may withhold pre-paid stumpage payments. All pre-paid stumpage payments due for this period shall be paid on or before August 25, 2011. In addition, Licensee will be required to make an additional pre-paid stumpage payment equivalent to \$5,000 per month for each month that pre-paid stumpage payment was withheld ("forebearance fee"). The forbearance fee shall be due at the same time as the withheld pre-paid stumpage payments. These payments shall be subject to the same terms and conditions as stated in Section 3.1.1.b as if the payments had been made when

- they were due. Failure to make the withheld pre-paid stumpage payments and forbearance fee by the above deadline will constitute a default under the license.”
- e. Added a new Recommendation No. 5: “Amend License Section 3.1.1.b by adding a clause stating that advance stumpage payments shall be required only through and including the month of December, 2010”
  - f. Added a new Recommendation No. 6: “Delegate authority to the Chairperson to extend deadlines for payments of past due amounts for a period not to exceed August 28, 2012.”

These amendments were made in response to a letter from Tradewinds dated November 9, 2010 requesting additional License amendments (deadline extensions) in support of their continuing efforts to secure sufficient financing for veneer mill construction.

To date, the Department has received the following fees and payments relating to the License from Tradewinds, none of which are refundable to Tradewinds:

- \$183,500 in fees for extension of various License deadlines.
- \$575,000 in monthly advance stumpage fees, period of July 2008 through May 2010.

Per the amendments approved at the January 13, 2011 Board meeting, Tradewinds is obligated to pay the following on or before August 25, 2011:

- Payment of \$50,000 for option to extend completion date for veneer plant construction from July 1, 2010 to March 31, 2011.
- Payment totalling \$175,000 for advance monthly stumpage payments for the seven (7) month period of June 2010 through December 2010.
- Payment totalling \$35,000 for additional pre-paid stumpage payment equivalent to \$5,000 per month for each month that the pre-paid stumpage payment was withheld (“forbearance fee”).

In a letter to the Department dated July 7, 2011 (Exhibit C), Tradewinds stated that they have been unable to raise the capital to build a veneer mill to process the timber and they will not meet the milestone deadlines stated in the latest amendment to the License. Therefore in accordance with section 9.3 of the License, Tradewinds is requesting an early termination. They respectfully proposed that the License be terminated without any remaining obligations by either party to the other. The \$758,500 of past extension fees and advance stumpage fees made by Tradewinds will be retained by the State, and Tradewinds will neither have an obligation to make additional payments under the License nor retain any residual rights to harvest any pre-paid timber. Furthermore, any financial obligations of Tradewinds that may be outstanding will be extinguished.

#### DISCUSSION:

After years of development and negotiation, the original License with Tradewinds was executed with a commencement date of August 29, 2001, for a term of 10 years with an option to extend

an additional 10 years (Exhibit D). Since January 1, 2004 there have been six license amendments in which the Department had provided Tradewinds continuous opportunities to secure adequate financing for construction of their veneer mill, which to date is still not completed. The Department has not approved or executed the 10 year extension of the License term because Tradewinds failed to fulfill the conditions imposed by the Board. As Tradewinds is unable at this time to meet the Board's conditions, they have requested a termination of their License "without any remaining obligations by either party to the other."

Under Tradewinds' License section 9.3, early termination is allowed if the Licensee requests termination of the License and the Board agrees to terminate the License. Upon termination the Licensee shall be liable for all damages and debts incurred up to such time. The Licensee shall not be relieved of any claims or demands accrued, including claims for property damage, personal injury, or death, caused by any act or omission of the Licensee, or for any breach of the term and conditions of this License.

As Tradewinds has paid all extension and advance stumpage fees that were previously due as required by prior License amendments, and because Tradewinds has pre-paid advance stumpage fees but never engaged in any significant harvest of trees, the Division is in agreement with Tradewinds' conditions on early termination and recommends that the Board approve the termination of the License held by Tradewinds with good standing and with no outstanding liability, damages or debt. The Division will retain the \$758,500 of past extension and advance stumpage fees made by Tradewinds, for which Tradewinds will not retain any residual rights to harvest any pre-paid timber. The Division will evaluate if the issuance of another timber land license is appropriate for the Waiakea Timber Management Area at this time.

RECOMMENDATION:

That the Board of Land and Natural Resources:

1. Terminate Timber Land License No. H101, as amended, held by Tradewinds Forest Products, LLC with good standing and with no outstanding liability, damages or debt.
2. The State will retain the \$758,500 of past extension fees and advance stumpage fees made by Tradewinds Forest Products, LLC, for which Tradewinds Forest Products, LLC will not retain any residual rights to harvest any pre-paid timber.
3. The State will enter into a mutual release and cancellation agreement for the Timber Land License under the terms and conditions cited above, which are by this reference incorporated herein, and further subject to the following:
  - A. Review and approval by the Department of the Attorney General; and
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,

  
PAUL J. CONRY  
Administrator

Attachments:

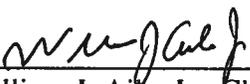
Exhibit A – Board Action of January 13, 2011, Agenda Item C-3

Exhibit B – Board Action of October 9, 2009, Agenda Item C-3

Exhibit C – July 7, 2011 letter from Tradewinds

Exhibit D – Timber Land License No. H-101, as amended, with Tradewinds Forest Products, LLC

APPROVED FOR SUBMITTAL:

  
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William J. Aifa, Jr., Chairperson  
Board of Land and Natural Resources

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawaii

January 13, 2011

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Approved by the Board of  
Land and Natural Resources  
at its meeting held on

1/13/11

Land Board Members:

**SUBJECT:** Amend Prior Board Action of October 9, 2009, Agenda Item C-3:  
Amendment No. 6 of Timber Land License No. H-101 held by  
Tradewinds Forest Products, LLC.

**Background:** At its October 9, 2009 meeting under Item C-3 (Exhibit A), the Board of Land and Natural Resources (Board) approved Amendment No. 6 of Timber Land License No. H-101 (License) held by Tradewinds Forest Products, LLC (Tradewinds), a Delaware limited liability company. At that meeting the Board approved the following recommendations for Amendment No. 6:

- a. Transfer the License in its entirety to Tradewinds Forest Products, LLC, a Delaware limited liability company (TFP) upon the closing of construction financing for the mill.
- b. Delegation of authority to the Chairperson to extend the license term for an additional ten (10) years to August 28, 2021, and to clarify License Section 4.1 relating to timber stumpage pricing. The delegation was conditioned upon the Chairperson being provided adequate assurances by December 31, 2009, that all of the anticipated mill construction financing was secured.
- c. Modification of the veneer mill permit deadlines as set by License Section 3.1.1.d.i whereby the Licensee must obtain a County of Hawaii issued and approved County Plan Approval on or before February 28, 2010.
- d. Modification of the License to change the deadline for mill construction completion from December 31, 2010 to March 31, 2011.
- e. Removal of timber stands labeled as "Replacement" stands comprising approximately 3,450 acres from the License area.
- f. Re-stating the original License and all Amendments in a single consolidated document.

January 13, 2011

Since the Board meeting of October 9, 2009, Tradewinds has faced new challenges in securing the required construction financing. Staff met with Tradewinds on July 29, 2010 to discuss the current status of their efforts to secure financing and the License terms that were in default. At that time, Tradewinds agreed to provide ongoing updates to Staff every three (3) weeks. While those updates have been provided, overall progress by Tradewinds has continued to be modest. Tradewinds is currently in default of the following License terms:

- Did not provide DLNR Chairperson adequate assurances by December 31, 2009 that construction financing had been secured for the veneer mill.
- Payment of \$50,000 for option to extend completion date for veneer plant construction from July 1, 2010 to March 31, 2011 is overdue as of July 1, 2010.
- Payments totaling \$175,000 overdue for advance monthly stumpage payments for the seven (7) month period of June, 2010 through December, 2010.

To date, the Department has received the following fees and payments relating to the License from Tradewinds, none of which are refundable to Tradewinds:

- \$183,500 in fees for extension of various License deadlines.
- \$575,000 in monthly advance stumpage fees, period of July, 2008 through May, 2010.

In a letter to the Department dated November 9, 2010 (Exhibit B; see page 6, 3<sup>rd</sup> paragraph), Tradewinds requested further License amendments in support of their continuing efforts to secure sufficient financing for veneer mill construction, summarized as follows: Modification of the License to change the deadline for mill construction completion from March 31, 2011 to December 31, 2012, with the Board reserving the unilateral right to cancel the License with a six (6) month notice to Tradewinds.

**Discussion:** After years of development and negotiation, the original License to Tradewinds was executed with a commencement date of August 29, 2001, for a term of 10 years and an option to extend an additional 10 years. The Department has not yet approved or executed an extension of the License term.<sup>1</sup>

Since January 1, 2004, and through six license amendments, the Department has provided Tradewinds continuous opportunities to secure adequate financing for construction of their veneer mill. While Tradewinds has made progress in important areas of their business development efforts, their current request occurs while Tradewinds is in default of important License terms, proposes no new milestones, and leaves performance issues relating to their License requirements open-ended.

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<sup>1</sup> The extension of the License provided for in the Board's approval of Amendment No. 6 was never executed as Tradewinds failed to fulfill the conditions imposed by the Board on the extension.

January 13, 2011

Staff notes that without further action by the Chairperson, namely executing a License extension based on proof of construction financing, the License will automatically expire on August 28, 2011. The Department of the Attorney General has advised DOFAW that while Tradewinds continues to face challenges in complying with the License terms, under the terms of the License the Board still has the authority to extend the License beyond August 28, 2011. Despite this option, Staff proposes that the Board provide Tradewinds with a limited opportunity to become operational within the time remaining under the License. Rather than the additional 21 month extension proposed by Tradewinds, Staff proposes use of the August 28, 2011 License expiration date as the final deadline for performance. Should Tradewinds find a new entity fully committed to providing the final balance needed for construction financing in the interim and need more time to achieve financial closing, Tradewinds could be asked to provide appropriate documentation for the Department's consideration in the June, 2011 time frame.

The Board could implement Staff's proposal by amending its prior action of October 9, 2009, Agenda Item C-3, as follows:

1. Amend Recommendation 1.b, to extend the deadline for Tradewinds to provide the Chairperson adequate assurances of securing adequate construction financing from December 31, 2009 to August 25, 2011.
2. Amend Recommendation 1.d, to extend the deadline for mill construction completion from March 31, 2011, to August 25, 2011. In the event Tradewinds provides adequate assurances to the Chairperson by August 25, 2011, the deadline for mill construction completion shall be extended to August 28, 2012.
3. Add a new Recommendation No. 3: "Amend License Section 3.1.1.c.iii whereby payment for the option to extend the "Drop-Dead" date for completion of mill is due to the Department on or before August 25, 2011."
4. Add a new Recommendation No. 4: "For the seven (7) month period from June, 2010, through December, 2010, Licensee may withhold pre-paid stumpage payments. All pre-paid stumpage payments due for this period shall be paid on or before August 25, 2011. In addition, Licensee will be required to make an additional pre-paid stumpage payment equivalent to \$5,000 per month for each month that pre-paid stumpage payment was withheld ("forbearance fee"). The forbearance fee shall be due at the same time as the withheld pre-paid stumpage payments. These payments shall be subject to the same terms and conditions as stated in Section 3.1.1.b as if the payments had been made when they were due. Failure to make the withheld pre-paid stumpage payments and forbearance fee by the above deadline will constitute a default under the license."
5. Add a new Recommendation No. 5: "Amend License Section 3.1.1.b by adding a clause stating that advance stumpage payments shall be required only through and including the month of December, 2010."
6. Add a new Recommendation No. 6: "Delegate authority to the Chairperson to extend deadlines for payments of past due amounts for a period not to exceed August 28, 2012."

If approved, these proposals to the Board collectively preclude the need to establish a six (6) month notice for License cancellation option for the Department.

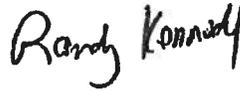
January 13, 2011

**RECOMMENDATIONS:**

That the Board of Land and Natural Resources:

1. Amend its prior action of October 9, 2009, Agenda Item C-3, as stated above.
2. Delegate to the Chairperson the authority to execute the amended and restated License subject to review and approval of the Department of the Attorney General.

Respectfully submitted,



*for* PAUL J. CONRY  
Administrator

**Attachments:**

- Exhibit A – Board Action of October 9, 2009, Agenda Item C-3
- Exhibit B – November 9, 2010 letter from Tradewinds

**APPROVED FOR SUBMITTAL:**

  
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WILLIAM J. AILA, JR., Interim Chairperson  
Board of Land and Natural Resources

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawaii

October 9, 2009

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Land Board Members:

**SUBJECT:** Amendment No. 6 of Timber Land License No. H-101 held by Tradewinds Forest Products, LLC.

**Background:** At its June 12, 2009 meeting under Item C-1, the Board of Land and Natural Resources (Board) approved Amendment No. 5 (Exhibit A) of Timber Land License No. H-101 (License) held by Tradewinds Forest Products, LLC (Tradewinds), a Delaware limited liability company. The principal component of Amendment No. 5 included changing Section 3.1.1 "Penalty Fees and Payments" to allow a forbearance period of seven (7) months in the pre-paid stumpage payments by Tradewinds to the Department for the period of February 2009 to August 2009. The monthly pre-paid stumpage amount of \$25,000 plus a monthly forbearance fee of \$5,000 totaled \$210,000 for the seven (7) month period, with a specified due date of October 10, 2009. The Board also directed staff to report back during October 2009 as to whether this \$210,000 payment was made by Tradewinds, and if not to initiate the process of terminating the License.

In a letter concurrently delivered to the Department (Exhibit B), Tradewinds has requested further amendments to the License to support closing of their financing efforts for veneer mill construction as follows:

1. Assignment of the License in its entirety to Tradewinds Forest Products LLC, a Delaware limited liability company (TFP).
2. Extension of the term of the License an additional ten (10) years to August 28, 2021. Relating to this proposed term extension, Tradewinds also requested technical edits to License Section 4.1 to clarify the framework and timing for timber stumpage price negotiations.
3. Change the mill permit deadlines as set by License Section 3.1.1.d.i whereby the "Licensee must obtain County of Hawaii issued and approved building permits for all major components of veneer plant no later than December 31, 2009." The request is to modify the terms to require proof of Tradewinds receipt of a Hawaii County Plan

Approval on or before February 28, 2010.

4. Change the deadline for completion of the mill from December 31, 2010, to March 31, 2011.
5. Remove timber stands labeled as “Replacement” stands, comprising approximately 3,450 acres, from the License.

**Discussion:** After review and approval by the Department of the Attorney General (“DAG”), License Amendment No. 5 was fully executed on August 31, 2009. The \$210,000 forbearance payment from Tradewinds was received by the Department on September 29, 2009. Tradewinds is current relating to all terms of its License (as amended) with the Department. Each current Tradewinds License amendment request (Background paragraphs 1 through 5) is discussed in the corresponding paragraphs below:

- a. Staff supports the Tradewinds proposal that the License be transferred in its entirety to Tradewinds Forest Products LLC (TFP). Although this is the same name as the existing licensee, the intent is for Tradewinds to change its name. The name Tradewinds Forest Products LLC would then be available for use by TFP. TFP would then become the licensee through an assignment.

At the time that construction funding is secured, equity ownership of TFP will be transferred 40% to Tradewinds and Rockland Capital (Tradewinds' principal investor) and 60% to GMO Renewable Resources, LLC (GMORR). The assignment of the License would occur at the same time that GMORR becomes one of the owners of TFP.

Staff notes that Don Bryan, one of the principals of Tradewinds, will continue to be involved in operations in Hawaii and will remain as a 20% voting member in TFP. Staff also notes that GMORR is the forest investment arm of a Boston based global investment management firm. GMORR has also acquired a 13,000 acre timber plantation on the Hamakua coast that it intends to log and process through TFP's mill. There will still be ample experience and qualifications of the management team to bring this project to completion.

- b. Staff supports Tradewinds' request to exercise the option to extend the License term for an additional ten (10) years to August 28, 2021, and to clarify License Section 4.1 relating to timber stumpage pricing through technical edits. Tradewinds clearly needs the extended license term to close on its mill financing efforts, and the Department remains in the position to achieve the primary objectives of the License should Tradewinds become operational including: economic and employment benefits to Hawaii; growth of the forest products industry; revenue; and other considerations. Staff recommends that approval of the exercise of the option to extend the License term be conditioned on the Licensee providing adequate assurances that all of the anticipated construction

financing has been secured and will be available upon transfer of ownership to GMORR. Staff recommends that authority be delegated to the Chairperson to approve the extension of the License term for an additional ten (10) years condition on the Chairperson being provided adequate assurances that all of the anticipated construction financing has been secured and will be available upon transfer of ownership to GMORR. It shall be in the Chairperson's sole discretion to determine whether adequate assurances have been provided

Relating to clarifications on timber stumpage pricing, the current License (as amended) provides a set framework for pricing through five (5) years after the Tradewinds veneer plant commences commercial operation. This condition was adopted to support Tradewinds financing efforts. Thereafter the Department and Tradewinds are compelled to negotiate new timber stumpage pricing with the intended effect of reflecting actual market conditions five (5) years after the mill's startup. The proposed technical amendments to License Section 4.1 would clarify this framework.

- c. Staff supports the Tradewinds request to amend the License permitting milestone by simplifying the milestone to pertain solely to a County of Hawaii issued and approved County Plan Approval and extending the deadline by approximately two (2) months. The primary milestone relating to Tradewinds development efforts remains their closing on financing to construct the veneer mill, with a deadline of December 31, 2009. Staff is confident that should Tradewinds be successful in financing, that they will build the veneer mill. Furthermore, Tradewinds discussed in their recent letter the fact that the "building permit" is actually a sequence of County of Hawaii permits, and it seems logical that the Department focus the permit milestone on one of the earlier/primary permits in the sequence, i.e. the County Plan Approval.
- d. Staff supports the Tradewinds request to amend the License by changing the deadline for completion of the mill from December 31, 2010, to March 31, 2011. The change is necessitated by the additional time it took for Tradewinds to identify its lead lender. The change would bring the construction schedule in line with the estimated date for closing the financing on November 30, 2009.
- e. Staff supports the Tradewinds request to amend the License by removing timber stands labeled as "Replacement" stands comprising approximately 3,450 acres (as listed in License Exhibit C, as amended). These stands represent acreage that was originally planted by the State with species that were not well suited to the growing conditions in Waiakea, and therefore exhibited very poor growth. These stands were included in the original License with the anticipation that Tradewinds would clear and replant the acreage to timber species known to be productive at Waiakea. Because the potential License term remaining is less than 12 years, Tradewinds indicated that it is no longer viable for them to plant and harvest mature trees on these acres. Tradewinds prefers to drop the acres now and

potentially bid on them again in a future request for proposals from the Department that could be associated with a longer term.

During recent discussions both Tradewinds and Staff have agreed that the original License document and multiple amendments has become unwieldy. As such, Staff also seeks Board approval to revise and restate the License plus all amendments as a single consolidated document.

**RECOMMENDATIONS:**

That the Board of Land and Natural Resources:

1. Approve Amendment No. 6 to Timber Land License No. H-101 to:
  - a. Transfer the License in its entirety to Tradewinds Forest Products LLC, a Delaware limited liability company (TFP) upon the closing of construction financing for the mill.
  - b. Delegate the authority to the Chairperson to extend the license term for an additional ten (10) years to August 28, 2021, and to clarify License Section 4.1 relating to timber stumpage pricing through technical edits as detailed above. The delegation is conditioned upon the Chairperson being provided adequate assurances that all of the anticipated construction financing has been secured and will be available upon transfer of ownership to GMORR. It shall be in the Chairperson's sole discretion to determine whether adequate assurances have been provided.
  - c. Modify the veneer mill permit deadlines as set by License Section 3.1.1.d.i whereby the Licensee must obtain a County of Hawaii issued and approved County Plan Approval on or before February 28, 2010.
  - d. Modify the License to change the deadline for mill construction completion from December 31, 2010 to March 31, 2011.
  - e. Remove timber stands labeled as "Replacement" stands comprising approximately 3,450 acres from the License as listed in License Exhibit C as amended.
  - f. All proposed amendments shall be subject to review and approval by the Department of the Attorney General.
2. Approve consolidating the original License and all Amendments in a single consolidated document subject to review and approval by the Department of the Attorney General.

October 9, 2009

Respectfully submitted,

  
PAUL J. CONRY  
Administrator

**Attachments**

**Exhibit A – Executed Timber License H-101 Amendment No. 5**

**Exhibit B – September 28, 2009 letter from Tradewinds with attachments**

**APPROVED FOR SUBMITTAL:**

  
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LAURA H. THIELEN, Chairperson  
Board of Land and Natural Resources

July 7, 2011

Mr. Paul Conry  
Hawaii Department of Land and Natural Resources  
Kalanimoku Building  
1151 Punchbowl St., Room 325  
Honolulu, HI 96813

RE: Timber License No. H-101 Termination Request

Aloha Paul:

As you know, Tradewinds Forest Products, LLC ("Tradewinds") and its predecessor (which formerly had that same name but was renamed TRR Investments, LLC after the 2009 restructuring with GMO) has been pursuing the development of a veneer mill on the Island of Hawaii for nearly ten years. The project was initiated by Don Bryan who originally signed Timber License No. H-101 (the "License") with State of Hawaii. In 2006, Rockland Capital and several other smaller investors began funding the development activities. TRR Investments (the "old" Tradewinds) experienced a setback stemming from the U.S. housing market collapse and the 2008/09 financial crisis. In the aftermath of these two events, in late 2009 the Tradewinds investors formed a joint venture with GMO Renewable Resources to inject more equity into the project and round out our timber supply. In connection with this joint venture, the original Tradewinds Forest Products, LLC was renamed TRR Investments, LLC in late 2009. At that time the License was assigned from TRR Investments, LLC to the newly formed entity which took on the name Tradewinds Forest Products, LLC. However, although the Board approved an amendment to the License that consented to this transfer, that Amendment was contingent on the newly formed Tradewinds getting financing for plant construction (which unfortunately did not happen) and was never formally executed. Accordingly, this application is made as a matter of form by both TRR Investments LLC (the renamed but approved Licensee) and new Tradewinds (the assignee), which has in practice conducted all the activity with respect to the License and the project site since the transaction with GMO. Unfortunately, Tradewinds continued to have difficulty raising debt capital. In mid-2010, we suspended development activities while we awaited market improvements and investigated other business opportunities for the use of our timber resources. At that point, we terminated the employment of the development team at Tradewinds. ( While Don Bryan was no longer the President of Tradewinds after this point, he remains a minority owner of Tradewinds. )

Following the cessation of Tradewinds development activities, Don and several others on the Tradewinds development team formed a new company called Tradewinds Hawaiian Wood, LLC ("Hawaiian Wood"). Hawaiian Wood continued to seek investors in the veneer mill with an understanding that Tradewinds would sell/transfer the assets needed for the mill construction if and when Don received the funding commitments he needed. Although Don continues to pursue some lead investors, he has not been able to obtain firm commitments from new investors to date.

**Tradewinds Forest Products, LLC**

24 Waterway Avenue, Suite 800  
The Woodlands, TX 77380

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Throughout the process, the Board of the Hawaii Department of Land and Natural Resources ("BLNR") has been patient and cooperative agreeing to several amendments to the License to give us the chance to react to the development and market setbacks. During the term of the License, Tradewinds has paid roughly \$740,000 in fees and pre-paid stumpage to the State of Hawaii in anticipation of developing the veneer mill. Of these payments roughly \$575,000 was in the form of timber prepayments for which Tradewinds has yet to harvest.

Unfortunately, neither Tradewinds nor Hawaiian Wood has been able to raise the capital to build the mill, and with the License expiration approaching, we find ourselves in a situation where it is impossible for Tradewinds to meet the milestones in the latest amendment to the License. Therefore, in accordance with the amended section 3.1.1(b) of the License, Tradewinds is requesting an early termination of the License. We respectfully propose that the License be terminated without any remaining obligations by either party to the other. The \$740,000 of past fees and pre-paid timber payments made by Tradewinds and TRR Investments to the state of Hawaii will be retained by the State, and Tradewinds and TRR Investments will neither have an obligation to make additional payments under the License nor retain any residual rights to harvest any pre-paid timber. Furthermore, any financial obligations of Tradewinds or TRR Investments that may be outstanding will be extinguished. I would also suggest that the termination be accompanied by a mutual release such that it's clear that none of the parties has any outstanding obligations to the others.

I regret that Tradewinds was not able to use the License in a productive fashion. However, Tradewinds has invested a substantial amount of money, time and effort and continues to be active in the Hawaiian forestry and forest products industry. There is certainly a possibility that either Tradewinds Forest Products or Tradewinds Hawaiian Wood can find a way to work with the BLNR in the future or utilize some of the timber you have cultivated.

Mahalo,



W. Scott Harlan  
Authorized Representative  
TRR Management, LLC  
Manager of Tradewinds Forest Products, LLC

Cc: Bob Saul – GMO Renewable Resources  
Don Bryan – Tradewinds Hawaiian Wood

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

**TIMBER LAND LICENSE, NO. H-101**

**KNOW ALL MEN BY THESE PRESENTS:**

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

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

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

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

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

**1.0            LOCATION AND PRODUCTS**

- 1.1            Sale Area and Species.** The Licensee shall be permitted to harvest and remove trees from the WTMA as designated by an approved Forest Operations Plan and conditions within this License. The species and acres harvested will be recorded by stand numbers within the following six strata: Eucalyptus Harvest, Queensland Maple Harvest, Toona Harvest, Eucalyptus Replacement, Queensland Maple Replacement, Toona Replacement listed in Exhibit C. Additional stands within the WTMA may be added to this License upon mutual agreement.
- 1.2            Set Asides.** No harvesting will be allowed in those areas set aside for timber research, experimental planting, education, protective buffer zones for threatened and endangered species and government projects without the written consent of the Division of Forestry

& Wildlife, hereinafter referred to as "DOFAW", Administrator or designee. These areas are designated on the attached map as Exhibit B, except for protective buffer zones for threatened and endangered species which may be added as harvest units are identified and surveys are conducted. Additional set asides may be added at a later date upon mutual consent between the Licensor and the Licensee.

**1.3 Non-timber Forest Products.** The Licensor reserves all rights to non-timber forest products within the WTMA. All lands not currently being harvested and all roads not currently in use will remain available to the Licensor and its non-timber forest products gatherers and customers. The Licensee will provide DOFAW, at a minimum, ninety (90) days for DOFAW to harvest non-timber forest products from all areas or units that are scheduled for timber harvesting. All non-timber forest products harvesting activities within a planned harvest unit will cease two weeks prior to Licensee's harvest operations.

## **2.0. LICENSE TERM**

**2.1 Term of License.** The Licensee shall have the exclusive right and privilege for a term of ten (10) YEARS, commencing on 08/29/01 and ending on 08/28/11, both dates inclusive, or such shorter time as is necessary, within which to enter upon the WTMA to harvest the tree species in accordance with this License. At year eight (8), the Licensee shall have an option to extend for up to an additional ten (10) years at the end of this license subject to mutual agreement of stumpage prices and other issues as determined by both parties. The Licensor will not unreasonably withhold the extension of the License if the Licensee has satisfactorily met the conditions of the License and is offering a fair market stumpage price for trees that the Licensee established under the terms of the License for a second rotation harvest. PB  
JAB

**2.2 Commencement of Harvesting.** The Licensee shall commence harvest operations within 60 calendar days after the completion of the facility (See 3.0). If no tree harvesting is conducted within 60 calendar days after the facility is completed, the Board shall be entitled to terminate this License.

**2.3 Right of Licensor.** The Licensor reserves the right to sell or grant to others similar rights or privileges; provided, however, that the rights reserved shall not be exercised by the Licensor, or by any other licensee(s) of the Licensor in such a manner as to interfere unreasonably with the Licensee in the free use of said License Area for the purpose specified.

**3.0 VALUE-ADDED PROCESSING.** The Licensor's objective for the timber within the WTMA is to encourage the domestic processing within the State of Hawaii to ensure the highest number and quality of jobs for the residents of the State. The Licensee proposes to utilize the timber within the WTMA as the catalyst for developing

a world class veneer and plywood plant manufacturing facility (herein after referred to as "facility") on the island of Hawaii.

**3.1 Veneer/Plywood.** The Licensee will begin construction of the facility between the year 2001 and 2003. The Licensor recognizes that the final decision to construct the facility will be dependent on other factors not influenced by this License (e.g. additional private timber, construction of power plant). The Licensor reserves the right to restrict harvesting of certain strata of timber until the facility is completed (See 3.2.1). The Licensor reserves the right to terminate this License if the facility is not substantially completed by January 1, 2004. The Licensor agrees to not unreasonably terminate this License if the Licensee is making good faith efforts to complete the facility, obvious progress has been made, and the completion date is expected in the 2005 calendar year.

**3.2 Restrictions.**

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

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

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

**4.0. METHOD AND RATE OF PAYMENT**

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

- |  |                           |
|--|---------------------------|
| a. <i>Eucalyptus saligna, grandis, deglupta and pilularis:</i> | \$ 10.00 per cubic meter. |
| b. <i>Eucalyptus robusta:</i>                                  | \$ 8.00 per cubic meter.  |
| c. <i>Flindersia brayleyana, Toona ciliata var. australis:</i> | \$ 25.00 per cubic meter. |
| d. <i>Alder nepalensis:</i>                                    | \$ 10.00 per cubic meter. |
| e. <i>Cryptomaria japonica:</i>                                | \$ 10.00 per cubic meter. |

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

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

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

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

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

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

**4.6 Insurance.** The Licensee shall procure, at its own cost and expense and keep in full force and effect throughout the term of this License, commercial general liability insurance with an insurance company or companies acceptable to the Board and licensed to do business in the State of Hawaii, in an amount of at least \$500,000.00 for each occurrence (combined single limit) and \$1,000,000.00 aggregate. The policy or policies of insurance shall name the State of Hawaii [and the Lessee] additional insured. The insurance shall cover the entire License Area. The Licensee, prior to entry and use of the License Area or within fifteen (15) calendar days after the effective date of this Land License, whichever is sooner, shall furnish the Licensor with a certificate(s) showing the policy(s) to be initially in force, and keep the certificate(s) on deposit during the entire

License term, and furnish a like certificate(s) upon each renewal of the policy(s). The insurance shall not be canceled, limited in scope of coverage, or non-renewed until after thirty- (30) calendar days written notice has been given to the Licensor.

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

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

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

## **5.0 EASEMENTS, ROADS AND ACCESSES**

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

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

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

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

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

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

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

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

**5.3.3 Closing road audit.** The Licensee will be released of any road maintenance obligations not detailed in the Forest Operations Plan after completion of harvesting operations upon inspection and signing of a closing road audit by the Licensor and Licensee. The closing road audit will be held no longer than 60 days after notification of completion of a harvesting unit by the Licensee and final approval of the audit will not be unreasonably withheld by the Licensor.

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

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

## 5.5 Access.

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

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

## 6.0 CONDUCT OF HARVEST OPERATIONS

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

**6.2 Forest Operations Plan.** The Licensee will submit to the Licensor a Forest Operations Plan which shall include a section on Harvesting Operations, Fire Prevention and Control (See 6.10) and Reforestation (See 6.0), which must be approved by DOFAW Administrator or designee, before harvesting operations can begin within the WTMA. The Forest Operations Plan will follow the conditions and management practices prescribed in the WTMA Forest Management Plan, approved by the Board on September 11, 1998, and the Final Environmental Assessment for Commercial Harvesting of Forest Products and Subsequent Reforestation of the Waiakea Timber Management Area, Island of Hawaii, dated May 12, 1999.

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

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

- 6.3 Utilization Practices.** All merchantable logs will be harvested and utilized to their respective minimum top diameters as defined in 11.13. All stumps shall be cut so as to cause the least waste practicable and shall not exceed, on the side adjacent to the highest ground, a height of 12 inches. Branches and tree tops less than four inches in diameter may be harvested or treated as logging debris.
- 6.4 Treatment of Logging Debris.**  
The Licensee shall treat all logging debris by one of the following methods as designated in the approved Forest Operations Plan.
- a. Lop all logging debris to cause it to lie within 36 inches of the ground surface and away from stumps;
  - b. Smashing in place of all logging debris;
  - c. Piling of all logging debris in designated windrows or piles;
  - d. Scattering of logging debris with a bulldozer; or
  - e. Other methods mutually agreeable to the Licensor and Licensee.
- 6.5 Damage to Residual Stands.** All harvest and logging debris treatment operations of the Licensee shall be so conducted as to minimize damage to residual stands.
- 6.6 Damage to Intermittent Stream Courses.** All operations of the Licensee under this License shall be so conducted as to minimize damage to intermittent stream courses within the WTMA. Intermittent stream courses in the WTMA shall be cleared of all logs, chunks, and logging debris resulting from operations under this License which may affect the natural flow of the stream. Licensee will be responsible for all costs and repairs for remedial actions under 6.6.
- 6.7 Construction, Improvement and Use of Roads and Other Installations.** The Licensee may construct and will maintain in the WTMA, for the purpose of ingress and egress, all roads and other transportation facilities needed for the harvesting of the forest products included in this License. As used throughout this section, "construct" also means "reconstruct." All construction and maintenance shall be in accordance with Best Management Practices and the approved Forest Operations Plan.
- 6.8 Soil Erosion and Damage to Soil** The Licensee shall take all practical precautions to minimize soil erosion and damage to the soil during harvest operations including, but not limited to:
- 6.8.1 Prevention of Gullyng.** Prevent the gullyng of roads, ditches, skid trails, and landings.

**6.8.2 Suspension of Operations to Avoid Damage.** Cease operating any of its equipment when ground conditions are such that excessive damage will result to the soil. To avoid such damage the Administrator may suspend operations in whole or in part for such period or periods as are necessary, without liability for any loss of damage.

**6.8.3** The Licensee shall perform the following soil erosion control work following harvest operations within the WTMA:

1. Maintain all roads as required by this License.
2. Grade and construct cross drainage and water spreading ditches on all landings and skid trails as necessary to prevent soil erosion.
3. Soil erosion control work should be completed approximately 2 weeks following harvesting operations.

**6.9 Waste Disposal.** No waste oil, other waste liquids, chemicals, litter, scrap, and abandoned equipment will be disposed within the WTMA.

**6.10 Fire prevention and control**

**6.10.1 Fire plan.** The Licensee will set forth in detail in the Forest Operations Plan needed actions and responsibilities for fire prevention, control, and extinguishment of fires in the WTMA and immediate vicinity to be approved by the Administrator before commencing any harvesting or road construction activities.

**6.10.2 Fire suppression.** The Licensee will take all reasonable precautions to prevent fires by its operations, employees, sub-contractors and their employees. During the period of this License, the Licensee shall, both independently and in cooperation with the Division of Forestry and Wildlife, take all reasonable and practicable actions to suppress fires caused by its operations, employees, sub-contractors and their employees. Independent initial fire suppression action by the Licensee on such fires shall be immediate and shall include the use of all manpower and suitable equipment at its disposal. Such action shall continue until the fire is brought under control or the Licensee and its manpower and equipment are released by the Administrator. All roads and trails, designated by the Administrator as needed for fire protection or other purposes, shall be kept free of logs or logging debris resulting from operations under this License. All such roads and trails damaged by such operations shall be promptly restored or repaired.

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

**6.12 Protection of Existing Improvements.** In all phases of construction and other operations under this License, the Licensee shall take precautions to protect, insofar as

practicable, all utility lines, ditches, fences and other improvements; and, if any such improvements are damaged by its operations, it shall restore or repair them or cause them to be restored or repaired, promptly and at the Licensee's expense.

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

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

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

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

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

## **7.0      REFORESTATION OF HARVESTED AREAS**

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

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

**7.2 Stand Conversion** When eucalyptus stands are converted to other species, the Licensors may require the Licensee, at the Licensee's expense, to apply a herbicide on all or a portion of the remaining stumps. Approximately 20 percent of the harvested stands under this License will be converted or remain in Queensland Maple.

**7.3 Reforestation closing audit.** The Licensee will be released of all reforestation obligations after an inspection and signing of a reforestation closing audit has determined that a minimum stocking level of seventy-five (75) percent has been achieved after two years.

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

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

## 9.0

### SUSPENSION OR TERMINATION

- 9.1 Suspension of Contract.** All or any part of the harvesting operations under this License may be suspended by the Administrator, by notice in writing, for violation of any of the terms, conditions and covenant herein contained, provided that written notice was given the Licensee and 15 calendar days were given to correct such violation.
- 9.2 Breach.** In the event that the Licensee shall fail to make the said payment or any part thereof at the times and in the manner aforesaid; if any violation, breach or default shall be committed or made by the Licensee of any term, covenant, restriction or condition herein; if the Licensee shall become bankrupt, or shall abandon the premises, and if any such violation, breach or default is not cured or remedied within thirty (30) calendar days after written notice by personal service, registered or certified mail to Licensee and to all holders of security interest in the License, then in any such case, the Board shall be entitled to terminate said License without demand and without legal process and without prejudice to any other remedy or action.

Time is of the essence in this License and if the Licensee fails to pay the royalty rate, or any part thereof, at the times and in the manner provided within thirty (30) days after delivery by the Licensor of a written notice of breach or default, or if the Licensee becomes bankrupt, or abandons the License Area, or if this License and License Area are attached or taken by operation of law, or if Licensee fails to observe and perform any of the covenants, terms, and conditions contained in this License and on its part to be observed and performed, and this failure continues for a period of more than sixty (60) days after delivery by the Licensor of a written notice of breach or default, by personal service, registered mail, or certified mail to the Licensee at its last known address and to each mortgagee or holder of record having a security, interest in the License Area, the Licensor may, subject to the provisions of section 171-21, HRS, at once re-enter the License Area, or any part of it, and upon or without the entry, at its option, terminate this License without prejudice to any other remedy or right of action for arrearage of royalty or for any preceding or other breach of contract; furthermore Licensor shall retain all royalty paid in advance to be applied to any damages

- 9.3 Termination at Licensee Request.** Should at any time during the term of this License, the Licensee request termination of the License and the Board agrees to terminate the License, the Licensee shall be liable for all damages and debts incurred up to such time. Upon termination, abandonment, or expiration of this License, the Licensee shall not be relieved of any claims or demands accrued, including claims for property damage, personal injury, or death, caused by any act or omission of the Licensee, or for any breach of the terms and conditions of this License.
- 9.4 Excuse for abnormal interruption.** Licensee shall not be in default by reason of any failure in performance of this License in accordance with its terms and conditions, including any failure by the Licensee to make progress in the performance hereunder which endangers such performance, if the Licensee has notified the Administrator of DOFAW within fifteen (15) days after the cause of the delay and the failure arises out of abnormal interruptions. Upon request of the Licensee, DOFAW shall ascertain the facts and extent of such failure, and, if the Administrator determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for

the excusable cause, the Licensee's progress and performance would have met the terms and conditions of the License, the License shall be revised accordingly, subject to Board approval. .

- 9.5 Disputes.** In the event of impasse or an adverse final decision concerning a claim or any matter in dispute under the License, the Chairperson shall resolve the dispute. If the Chairperson cannot resolve the dispute to the satisfaction of either party, then either party may submit the matter to mediation by written notice to the other party. The notice shall briefly summarize the matters in dispute, state the last position taken by each party, name the principal persons with knowledge of the matter and identify the License provisions, statutes, or regulations believed to be pertinent. Notice shall be given as soon as practicable after impasse or an adverse final decision, but not later than 10 days after impasse, mailing or delivery of a final decision. The mediator shall be mutually selected and the costs of mediation shall be shared equally. Each party shall otherwise bear its own costs.

## **10.0 ADDITIONAL LICENSE PROVISIONS**

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

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

- 10.2 Covenant Against Discrimination.** The use and enjoyment of the License Area shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immuno-deficiency virus) infection.
- 10.3 Indemnity.** The Licensee shall indemnify, defend, and hold the Licensor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part, of Licensee relating to Licensee's use, occupancy, maintenance, or enjoyment of the License Area; 2) any failure on the part of the Licensee to maintain the License Area, and including any accident, fire, or nuisance growing out of or caused by any failure on the part of Licensee to maintain any of Licensee's equipment within the License Area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Licensee's non-observance or non-performance of any of the terms, covenants, and conditions of this License or the

rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

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

- 10.4 Assignment.** If the Licensee is a partnership, joint venture or corporation, the sale or transfer of 20 % or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed a transfer for purposes of this paragraph and subject to the right of the Licensor to terminate this License effective of the date of sale or transfer.
- 10.5 Entire Agreement.** This written agreement constitutes the entire agreement of the parties and all covenant, promises, representations and agreements existing are contained herein, and shall be binding upon, apply and inure to the benefit of the successors and assigns respectively of the Licensee and the Licensor.
- 10.6 Representations.** Licensee agrees that it has executed this Agreement as a result of its own inspection of the forest products the subject hereof, and the WTMA herein described and not as a result of any representation made by the Licensor or its employees or agents, as to absolute quantity, quality, value or accessibility of timber or logging conditions on any of the areas covered by this Agreement or the commercial feasibility of such timber cutting operations or otherwise.
- 10.7 Community Liaison and Advisory Board.** Licensee will designate a community liaison within 90 calendar days of License signing to meet with local community members and respond to their questions and concerns for the term of this license. Additionally, a community advisory board will be created to advise the Licensee on community related issues.
- 10.8 Local log sales.** Licensee will maintain an open log yard, using logs from the WTMA that are representative of areas recently harvested, as well as logs purchased from local landowners and then selling logs to local sawmills, craftspeople and artisans. The log yard will be equipped to deal in small quantities appropriate to the scale of existing local businesses. At least 300 cubic meters of wood will be made available each month.
- 10.9 Speaker Pool and Scholarship Fund.** Licensee will maintain a pool of speakers who will be available to local schools and community organizations. Speakers will address such topics as general forestry, engineering, accounting, shipping, international business, and forest products marketing. Licensee will also fund a Waiakea Forest Scholarship program for college tuition scholarships for the children of its employees and contractors. The scholarship fund will start at \$25,000.
- 11.0 DEFINITIONS** The words and terms as used in this License shall be defined and

interpreted, unless a different meaning clearly appears from the context, as follows:

**11.1 Administrator** - The Administrator of the Division of Forestry and Wildlife, Department of Land and Natural Resources, State of Hawaii, or successor, including those designated to act on the Administrator's behalf.

**11.2 Abnormal Interruption** - Delays caused by acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods, epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

**11.3 Agreement** - Same as Timber Land License or License.

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

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

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

**11.7 DOFAW** - Division of Forestry and Wildlife.

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

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

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

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

**11.12 Licensor** - The State of Hawaii.

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

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

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

**11.16 Replacement Stands** - Stands which have not achieved desirable growth levels

and are identified as Replacement Strata in Exhibit C.

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

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

**11.19 Tree Volume** - Total main stem and bark volume for merchantable logs as defined in 11.13.

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

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

**Proposed Exhibits**

A - WTMA Base Map

B - Excluded Areas (set asides)

C - Harvest and Replacement Strata

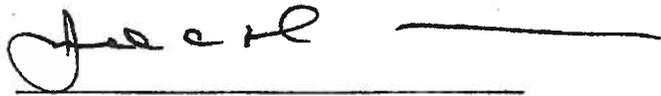
D - Best Management Practices (BMPs)

IN WITNESS WHEREOF, the STATE OF HAWAII, the Licensor herein, 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 these present to be duly executed this 24th day of August, 2001, the Licensee herein, has caused these presents to be duly executed this 29th day of August, 2001.

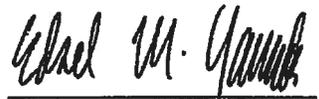
STATE OF HAWAII

By   
Chairperson and Member  
Board of Land and Natural Resources  
LICENSOR

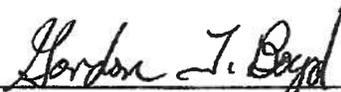
Approved by the Board of Land and Natural Resources at its meeting held on 8 June 2001.

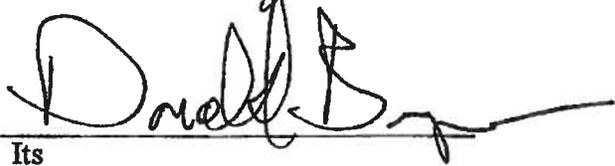


APPROVED AS TO FORM:

  
Deputy Attorney General

Dated: 8/13/01

By   
Its

And By   
Its  
LICENSEE

AMENDMENT OF TIMBER LAND LICENSE NO. H-101

THIS AGREEMENT, made and entered into this 30<sup>th</sup> day of MARCH, 2005, by and between the State of Hawaii, by its Board of Land and Natural Resources, hereinafter referred to as the "Licensor," and Tradewinds Forest Products, LLC, a Washington limited liability company, whose address is 2574 Northwest Thurman Street, Portland, Oregon 97210-2524, hereinafter referred to as the "Licensee";

WITNESSETH:

WHEREAS, Tradewinds Forest Products, LLC, a Washington corporation, is the present Licensee under Timber Land License No. H-101 ("TLL") dated August 8, 2001, covering timber harvest and replanting activities in the Waiakea area of the island of Hawaii; and

WHEREAS, the Licensee desires that the TLL be amended; and

WHEREAS, the Board of Land and Natural Resources, at its meeting held on January 28, 2005, has approved the amendment to allow for the continued partnership with Licensee;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree to amend the TLL as provided hereunder.

1. Section 3.1 of the TLL is deleted in its entirety and replaced with the following:

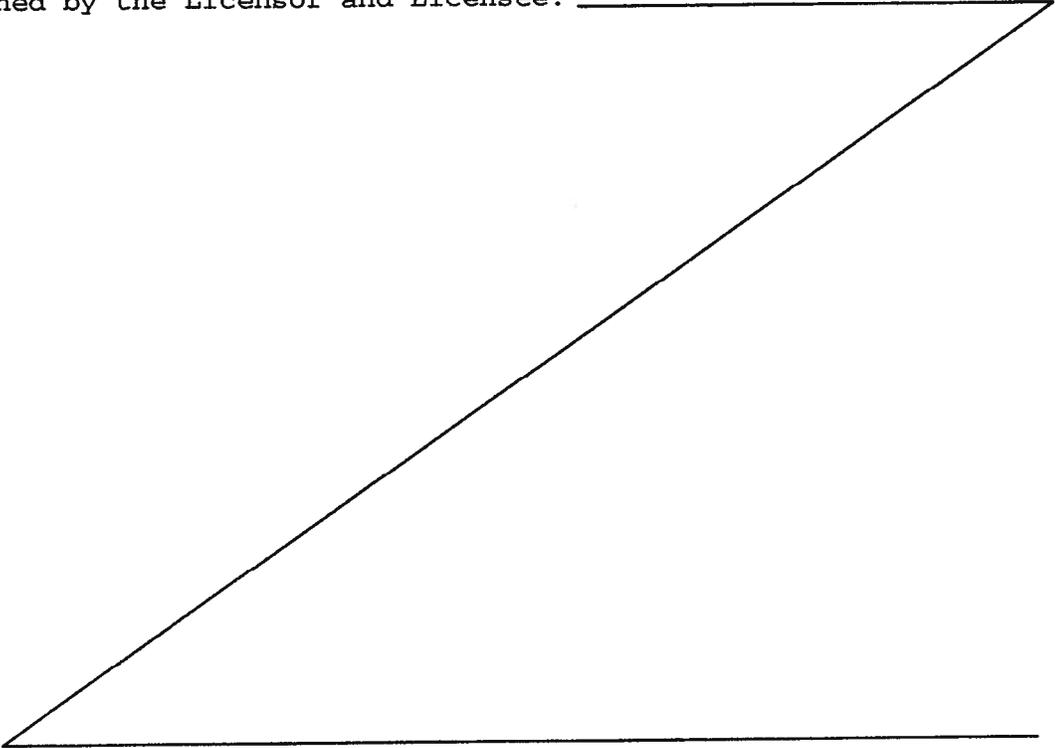
**Section 3.1. Startup investments, time frame and consumer price index.** The Licensee will provide documentation of securing \$1,000,000 in startup funding by March 31, 2005 and that failure to do so will be grounds for issuing a notice of default of the terms of the license. The Licensee will apply for state and federal permits by September 1, 2005. The Licensee will provide documentation of securing required construction funding by October 31, 2005 and that failure to do so will be grounds for issuing a notice of default of the terms of the license. The

Licensee will begin construction of the mill facility prior to July 1, 2006. The Licensor reserves the right to terminate the TLL if the facility is not substantially completed by January 1, 2007. The Licensor agrees to not unreasonably terminate the TLL if the Licensee is making good faith efforts to complete the facility in accordance with the schedule herein and the mill completion date is expected by January 1, 2008.

The price schedule for stumpage payments for tree species harvested under this License will be indexed to the consumer price index based on 2001, with annual adjustments.

IN CONSIDERATION THEREOF, the Licensor and Licensee further agree that this Amendment is subject to all the covenants and conditions in the TLL, except as herein provided.

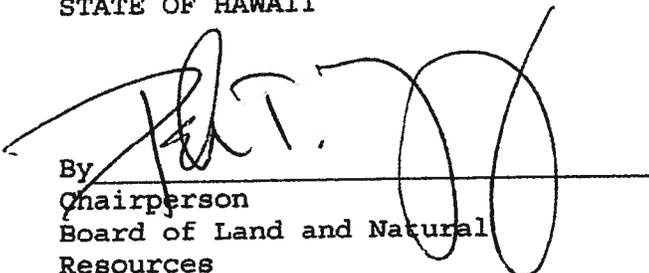
This Amendment, read in conjunction with the TLL sets forth the entire agreement between the Licensor and Licensee; and the TLL as amended and modified hereby shall not be altered or modified in any particular except by a memorandum in writing signed by the Licensor and Licensee. \_\_\_\_\_



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(s) held on January 28, 2005.

  
By \_\_\_\_\_  
Chairperson  
Board of Land and Natural Resources

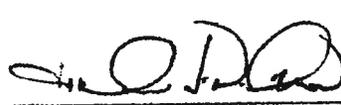
LICENSOR

TRADEWINDS FOREST PRODUCTS, LLC, a Washington limited liability company

By   
Its: Managing member

LICENSEE

APPROVED AS TO FORM:

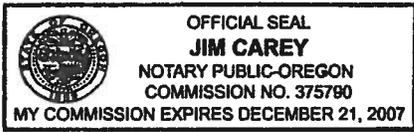
  
\_\_\_\_\_  
Deputy Attorney General

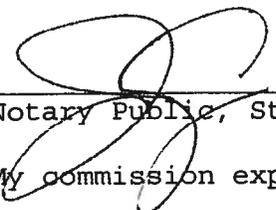
Dated: 3/17/05

ACKNOWLEDGEMENT

STATE OF OREGON )  
 ) SS.  
COUNTY OF Multnomah )

On this 24 day of March, 2005,  
before me personally appeared Donald P. Bryan, to  
me personally known, who, being by me duly sworn or affirmed,  
did say that such person(s) executed the foregoing instrument as  
the free act and deed of such person(s), and if applicable in  
the capacity shown, having been duly authorized to execute such  
instrument in such capacity.



  
\_\_\_\_\_  
Notary Public, State of Oregon  
My commission expires: 12/21/07

SECOND AMENDMENT OF TIMBER LAND LICENSE NO. H-101

THIS AGREEMENT, made and entered into this 8<sup>th</sup> day of July, 2005, by and between the State of Hawaii, by its Board of Land and Natural Resources, hereinafter referred to as the "Licensor," and Tradewinds Forest Products, LLC, a Washington limited liability company, whose address is 2574 Northwest Thurman Street, Portland, Oregon 97210-2524, hereinafter referred to as the "Licensee";

WITNESSETH:

WHEREAS, Tradewinds Forest Products, LLC, a Washington corporation, is the present Licensee under Timber Land License No. H-101 ("TLL") dated August 8, 2001, covering timber harvest and replanting activities in the Waiakea area of the island of Hawaii; and

WHEREAS, the Licensee desires that the TLL be amended; and

WHEREAS, the Board of Land and Natural Resources, at its meeting held on May 13, 2005, has approved the amendment to allow for the continued partnership with Licensee;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree to amend the TLL as provided hereunder.

1. Section 10.4 of the TLL is deleted in its entirety and replaced with the following:

Section 10.4 **Assignment**. Licensee shall not assign this Agreement without the written consent of Licensor, which consent will not be unreasonably withheld. Licensee shall provide Licensor written notice of any requested assignment, along with such additional information or material as Licensor may reasonably request to evaluate the assignee (the "Information Notice"). For purposes of this Section 10.4, an "assignment" by Licensee shall include, without limitation, if Licensee is a corporation, partnership, limited liability company or other like entity, a change in the beneficial ownership of Licensee of greater than twenty percent (20%), whether

by merger, sale of all or substantially all of Licensee's assets, or the acquisition of voting securities of Licensee (whether in a single transaction or a series of transactions).

2. The name of Licensee in the first paragraph of the TLL, Tradewinds Forest Products LLC, shall be amended to reflect the correct name of Licensee, Tradewinds LLC.

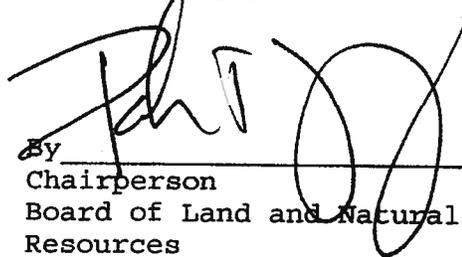
IN CONSIDERATION THEREOF, the Licensor and Licensee further agree that this Amendment is subject to all the covenants and conditions in the TLL, except as herein provided.

This Amendment, read in conjunction with the TLL sets forth the entire agreement between the Licensor and Licensee; and the TLL as amended and modified hereby shall not be altered or modified in any particular except by a memorandum in writing signed by the Licensor and Licensee.

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.

Approved by the Board of  
Land and Natural Resources  
at its meeting(s) held on  
May 13, 2005.

STATE OF HAWAII

  
By \_\_\_\_\_  
Chairperson  
Board of Land and Natural  
Resources

LICENSOR



**THIRD AMENDMENT AND WAIVER  
OF  
TIMBER LAND LICENSE NO. H-101**

This Third Amendment and Waiver made and entered into this <sup>th</sup> 10 day of October, 2005, by and between the State of Hawaii, by its Board of Land and Natural Resources ("Licensor") and Tradewinds LLC, a Washington limited liability company located at 2574 NW Thurman Street, Portland, Oregon 97210-25224 ("Licensee") relates to that certain Timber Land License No. H-101 between Licensor and Licensee dated August 29, 2001, covering timber harvest and replanting activities in the Waiakea area of the island of Hawaii (the "TLL"). Capitalized terms used herein and not otherwise defined herein shall have the meaning given to such terms in the TLL.

**RECITALS**

WHEREAS, this TLL was amended in part by the parties on [January 28], 2005, by way of the Amendment of Timber Land License No. H-101 ("Amendment No. 1"); and

WHEREAS, this TLL was amended in part a second time on [May 13], 2005, by way of the Second Amendment of Timber Land License No. H-101 ("Amendment No. 2"); and

WHEREAS, Licensee desires to amend in part for a third time and waive in part certain provisions of the TLL; and

WHEREAS, the State of Hawaii, Board of Land and Natural Resources, at its meeting held on September 23, 2005, has approved certain amendments and waivers to the TLL to allow for the continued partnership between Licensor and Licensee.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee hereby agree to amend and waive the TLL as provided hereunder.

1. **Change of Domicile of Licensee.** Rockland Tradewinds LLC, the principal investor in Licensee's Phase I financing, has requested that its investment be made in a Delaware limited liability company as opposed to a Washington limited liability company, the domicile of Licensee. To accommodate this request, simultaneously with the closing of the soon-to-be completed Phase I financing necessary for the development of the Facility, Licensee proposes to transfer substantially all of its assets, including the TLL, to Tradewinds Forest Products LLC, a newly formed Delaware limited liability company. Upon such transfer, Tradewinds Forest Products LLC, a Delaware limited liability company, will become the "licensee" for purposes of the TLL. In connection with such transfer, Licensor hereby agrees to allow an assignment of the

TLL from Tradewinds LLC, a Washington limited liability company to Tradewinds Forest Products LLC, a Delaware limited liability company. The ownership interests in Tradewinds Forest Products LLC, a Delaware limited liability company, will be as described in Section 2 below and as set forth on Schedule 1 attached hereto.

2. **Waiver of Right to Terminate TLL under Section 10.4.** Section 10.4 of the TLL provides that Licensor may terminate the TLL upon the transfer of “20% or more of ownership interest” in Licensee. The closing of the Phase I financing involves the issuance by Licensee (Tradewinds Forest Products LLC, a Delaware limited liability company) of membership interests to (A) Phase I investors in exchange for capital contributions in cash and (B) to existing members of Tradewinds LLC, a Washington limited liability company, in exchange for its contribution of assets as more fully described in Section 1 above. The Introduction of the Phase I investors effectively results in a transfer of more than a 20% ownership interest in Licensee (Tradewinds Forest Products LLC, a Delaware limited liability company) to the parties listed on Schedule 1 hereto. Specifically, following closing of the Phase I financing, the Phase I investors will collectively own 56.82% of the ownership interest in Licensee and their proposed individual respective percentage ownership interests in Licensee are as set forth on Schedule 1. To enable closing of the Phase I financing without a possible termination of the TLL, Licensor hereby waives its right to terminate the TLL pursuant to Section 10.4 to permit the transfer of ownership interests in Licensee to the Phase I investors in the amounts set forth in Schedule 1.

3. **Development Milestones and Deadlines.** Section 3.1 of the TLL and Amendment No. 1 to the TLL set forth certain development milestones and deadlines for the facility (as defined in Section 8.b.ii, below) to be constructed by Licensee. Section 3.1 of the TLL is hereby deleted in its entirety and replaced with the following:

“3.1 **Facility Development.** The Facility shall be developed by Licensee in accordance with the following milestones (“Milestones”) and deadlines (“Deadlines”):

<u>Milestone</u>	<u>Description</u>	<u>Deadline</u>
1.	Commence the filing of all applications for all major state and federal permits associated with the project	January 15, 2006
2.	Commence plant construction	February 1, 2007
3.	Complete plant construction (construction is deemed complete when Licensee has received occupancy permits for both the veneer and power plants)	July 1, 2008

Licensor reserves the right to restrict harvesting of certain strata of timber until the Facility is completed (See 3.3.1).”

The above milestones ("Milestones") and deadlines ("Deadlines") will replace all other milestones and deadlines in the TLL and its amendments. The previous milestone requiring substantial completion of the plant by January 1, 2007, has been eliminated.

4. **Payment for Option to Extend Milestone 3 Deadline.** Section 3.1 of the TLL originally anticipated completion of facility construction sometime in calendar year 2005. Amendment No. 1 to the TLL amended Section 3.1, and established a January 1, 2008 Deadline for completion of construction. In recognition of a further extension of the Milestone 3 construction completion deadline to July 1, 2008, Licensee hereby agrees to pay the Department of Land and Natural Resources, Division of Forestry and Wildlife ("Department") an "extension fee" in the amount of \$90,000 for the 2.5 year extension period. Such extension fee shall be payable by Licensee as follows:

- a. \$45,000 within 90 days of the date Licensor signs this Amendment and Waiver (the "Initial Payment").
- b. \$22,500 one year from the date of the Initial Payment.
- c. \$22,500 two years from the date of the Initial Payment.
- d. \$18,000 on or before January 1, 2009, if completion of the plant is extended to the "Drop-Dead" date of January 1, 2009 per Section 5.c, below.

5. **Penalties and Payments for Missing Milestones.** In the event Licensee fails to achieve one or more Milestones on or before their respective Deadlines, Licensee shall pay the Department certain penalty fees and payments. Such penalty fees and payments shall be reflected by adding the following Section 3.1.1 to the TLL:

**3.1.1. Penalty Fees and Payments.** In the event Licensee fails to achieve one or more Milestones on or before their respective Deadlines, Licensee shall pay the Department penalty fees and payments as follows:

a. *Milestones 1 and 2.* If Licensee fails to achieve Milestone 1 (permit application) or Milestone 2 (construction commencement) on or before their respective Deadlines, then it will incur a penalty of \$200 per day for every day that the Milestone remains unmet following the respective Deadline. The \$200 per day penalty will be doubled to \$400 per day for those days in which both Milestones 1 and 2 remain simultaneously unmet. All accrued penalties will be paid on or before the 10th day of the month following each month in which a Milestone remains unmet.

b. *Milestone 3.* If Licensee fails to achieve Milestone 3 (construction completion) on or before its Deadline, then it will pre-pay for stumpage to be purchased under the TLL at the rate of \$25,000 per month for each full month in which the Milestone remains unmet. This monthly stumpage pre-payment will be paid on or before the 10<sup>th</sup> day of the month following each month in which Milestone 3 remains unmet. All pre-paid stumpage payments will be credited to Licensee on subsequent purchases of stumpage under the TLL as follows: The total amount of the credit will be amortized evenly over a 60-

month period commencing in the month in which Licensee first purchases stumpage under the TLL. For example, if Licensee is 12 months late in achieving Milestone 3, it will incur pre-paid stumpage payments totaling \$300,000, and repayment of such amount in the form of credits against subsequent purchases of stumpage will be spread over 60 months, i.e. \$5,000 per month. Any unused credit from one month will be carried over to the next month.

c. *“Drop-Dead” Date for Completion of Plant.* In the event that construction of the plant is not completed by January 1, 2009, Licensor may declare the TLL in default in accordance with the default provisions of the TLL, in which case Licensee will have 60 days to remedy the default. In any case, should Licensee elect to extend the plant construction completion date from July 1, 2008 to January 1, 2009, it shall pay the extension fee as provided in Section 4.d, above.

All amounts paid by Licensee for failing to meet Milestone 1, 2, and 3 Deadlines will be paid to the Department.”

6. **Timber Pricing Extension.** Licensee believes that in order to obtain the debt financing component for Phase II of its financing plan it must have relatively fixed pricing for its timber supply under the TLL for a period of five years after commencement of its veneer production operations. To accommodate this need, Licensor and Licensee hereby agree that pricing for timber harvested under the TLL (as provided in Section 4.1 of the TLL) will be fixed at the rates set forth in Section 4.1 of the TLL for a 5-year period beginning with commencement of veneer production, subject only to an adjustment based on the increases and decreases in the Producer Price Index for Lumber and Wood Products. Previously, the parties had agreed, in Amendment No. 1 to the TLL, to adjust the pricing from the commencement of the TLL (as opposed to the commencement of Licensee’s veneer operations) based on increases and decreases in the Consumer Price Index (as opposed to the Producer Price Index for Lumber and Wood Products). To reflect such change in the pricing adjustment, the following provision shall be added as Section 4.1.1 to the TLL:

**”4.1.1 Stumpage price adjustments.** Stumpage prices shall be adjusted beginning August of 2003 and running through the 5<sup>th</sup> anniversary of the start-up of the plant (the “Pricing Extension Period”). For purposes of this provision, the term “start-up of the plant” shall mean the date on which the plant first commences commercial production of veneer. Price adjustment shall be determined using the following guidelines:

- a. Base stumpage selling prices shall be defined as those established for various species as detailed in Section 4.1 above, with a reference base date of August 2003.
- b. The base selling price shall be adjusted by an amount equal to the percentage increase or decrease in the U.S. Department of Labor, Bureau of Labor Statistics Producer Price Index for Lumber and Wood Products, index number WPU08, *provided, however, that*

the amounts to be paid shall never fall below the prices provided in Section 4.1.

- c. Price adjustment calculations shall be made quarterly (not annually) on the 28<sup>th</sup> day of August, November, February and May of any given year, and shall be based on the first-published version of the previous month's index (i.e. the July, October, January, or April index, as the case may be) as compared to the index from the previous quarter.

If, prior to August 28, 2011, the License is extended for an additional 10-year period pursuant to section 2.1, the stumpage pricing set forth in 4.1, as adjusted by the above guidelines, shall be extended through the Pricing Extension Period. The pricing for the period after the Pricing Extension Period shall be set pursuant to section 2.1."

The previously agreed pricing adjustment set forth in the second paragraph of Section 1 of Amendment No. 1 to the TLL is hereby deleted.

7. **Proposal to Expedite Start-up of a Sawmill.** To encourage the development of a sawmill utilizing timber from the WTMA the Licensor believes it is in the best interests of the state of Hawaii to withdraw from the TLL approximately seven million board feet (or approximately 6.8% of the total timber subject to the TLL) and offer such timber for sale to the public under a new request for proposal ("RFP") process to be conducted by Licensor. Accordingly, Licensor and Licensee hereby amend Exhibit B (Excluded Stands) to the TLL to include the timber stands set forth on Schedule 2 hereto, which stands will be offered for sale to the public under a new RFP, the purpose of which is to provide timber supply to a to-be-developed sawmill.

8. **Miscellaneous other Amendments to the TLL.** Licensor and Licensee hereby amend the TLL as follows:

- a. *Cure Periods.* Section 9.1 is amended to read as follows:

**"9.1 Suspension of Contract.** All or any part of the harvesting operations under this License may be suspended by the Administrator, by notice in writing, for violation of any of the terms, conditions and covenants herein contained, provided that written notice was first given to the Licensee and 30 calendar days from such notice were given to correct such violation; *provided, further, that* Licensee's 30-day cure period may be extended to such number of additional days as are determined by the Administrator if a delay in the cure has occurred through no fault of Licensee, such as delays due to inclement weather or other causes outside Licensee's control."

b. *Clarification in Scope of Facility to be Constructed.* Currently, sections 3.0 and 11.8 of the TLL contain two different definitions for the term "Facility". Accordingly, each of these sections shall be amended as follows:

i. The second sentence of Section 3.0 of the TLL is amended to read as follows:

"The Licensee proposes to utilize the timber within the WTMA for supplying the Facility to be developed on the island of Hawaii.

ii. Section 11.8 shall be amended to read as follows:

**"11.8 Facility** - A world class veneer plant capable of ultimately processing at least 200,000 cubic meters of logs annually together with a cogeneration power or boiler facility as determined solely by Licensee."

c. *Termination upon a Change of Ownership of Licensee.* Section 10.4 is amended to read as follows:

**"10.4 Assignment.** If the Licensee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of the ownership interest in Licensee whether by sale, dissolution, merger or any other means shall be deemed a transfer for purposes of this paragraph and subject to the right of the Licensor to terminate this License effective of the date of sale or transfer; *provided, however, that* any sale or transfer of an ownership interest to an existing equity holder of Licensee previously approved by Licensor, or an affiliate of such existing equity holder, shall not be deemed a sale or transfer for purposes of this Section 10.4. For purposes of this Section 10.4 the term "affiliate" means a party who controls, is controlled by, or is under common control with the existing equity holder."

d. *Clarification that Merchantable Logs will not be used as Biomass Fuel.* Section 3.2.2 is amended to read as follows:

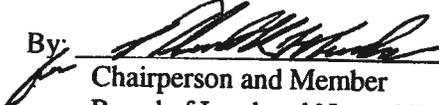
**"3.2.2 Woodchips and Biomass Fuel.** No woodchips or biomass fuel will be manufactured from Merchantable Logs, as defined in 11.13, harvested within the WTMA, except as a by product of a veneer or lumber processing activity. Logs which are not suitable for manufacturing lumber or veneer may be harvested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

9. **General.** Except as set forth in this Third Amendment and Waiver, the TLL, as previously amended, shall remain in full force and effect. This Third Amendment and Waiver may be executed in two or more counterparts, which together shall constitute one instrument.

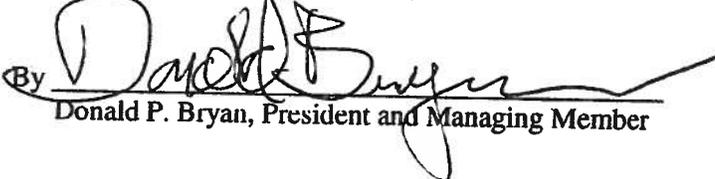
IN WITNESS WHEREOF, the undersigned have caused this Waiver and Amendment of Timber Land to be executed by their duly authorized representatives as of the date first written above.

Approved by the Board of  
Land and Natural Resources  
at its meeting held  
September 23, 2005

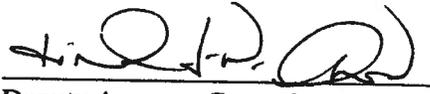
STATE OF HAWAII (Licensor)

By:   
Chairperson and Member  
Board of Land and Natural Resources

TRADEWINDS, LLC (Licensee)

By:   
Donald P. Bryan, President and Managing Member

Approved as to form:

  
Deputy Attorney General  
Dated: 10/08/05

**Schedule 1**

<b><u>Name of Phase I Investors</u></b>	<b><u>No. of Class A Units Purchased</u></b>	<b><u>% of Licensee Owned</u></b>
Rockland Tradewinds, LLC	775	31.45
Saybrook L.P. (Al Jubitz)	200	8.12
Robert C. Alexander III & Linda C. Niedermayer (JTWROS)	50	2.03
Richard M. Clark	100	4.06
Peter Murphy	200	8.12
Siam LLC (Nick Stanley)	25	1.01
Gayle L. Veber	45	1.83
Rodger P. Adams	<u>5</u>	<u>0.20</u>
<b>TOTAL</b>	1,400	56.82

<b><u>Name of Existing Unit Holders</u></b>	<b><u>No. of Class B Units Held</u></b>	<b><u>% of Licensee Owned</u></b>
Donald P. Bryan	978.88	39.73
Paula V. Nicholls	21.28	0.86
Michael E. Volk	53.20	2.16
Robert C. Hansen and Julie Ann Hansen	<u>10.64</u>	<u>0.43</u>
<b>TOTAL</b>	1,064.00	43.18

**Schedule 2**

Exhibit B (Excluded Stands) to the TLL is amended to include the following timber stands:

<b>Primary Species</b>	<b>Stand Number</b>	<b>Acres</b>
Robusta	10290	30.4
	8138	57.1
	8134	38.7
Toon	10070	70.9
	10303	7.5
	10401	26.7
	10452	33.8
	10560	191.3
Nepal alder	10463	24.2
<b>TOTAL</b>		<b>480.6</b>

**FOURTH AMENDMENT  
OF  
TIMBER LAND LICENSE NO. H-101**

This Fourth Amendment and Waiver made and entered into this 20<sup>TH</sup> day of MARCH, 2009, by and between the State of Hawaii, by its Board of Land and Natural Resources ("Licensor") and Tradewinds LLC, a Washington limited liability company located at 2574 NW Thurman Street, Portland, Oregon 97210-25224 ("Licensee") relates to that certain Timber Land License No. H-101 between Licensor and Licensee dated August 29, 2001, covering timber harvest and replanting activities in the Waiakea area of the island of Hawaii (the "TLL"). Capitalized terms used herein and not otherwise defined herein shall have the meaning given to such terms in the TLL.

**RECITALS**

WHEREAS, this TLL was amended in part by the parties on March 30, 2005, by way of the Amendment of Timber Land License No. H-101 ("Amendment No. 1"); and

WHEREAS, this TLL was amended in part a second time on July 8, 2005, by way of the Second Amendment of Timber Land License No. H-101 ("Amendment No. 2"); and

WHEREAS, this TLL was amended in part a third time on October 10, 2005, by way of the Third Amendment and Waiver of Timber Land License No. H-101 ("Amendment No. 3"); and

WHEREAS, Licensee desires to amend in part for a fourth time certain provisions of the TLL; and

WHEREAS, the State of Hawaii, Board of Land and Natural Resources, at its meeting held on December 12, 2008, has approved certain amendments to the TLL to allow for the continued partnership between Licensor and Licensee.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee hereby agree to amend the TLL as provided hereunder.

**A. Section 3.1.1 Penalty Fees and Payments.** The parties wish to clarify Section 3.1.1.b., to extend the deadline for completion of the mill in Section 3.1.1.c., and to impose additional progress deadlines. Sections 3.1.1.b. and 3.1.1.c. will be amended by deleting them in their entirety and replacing them and a new section 3.1.1.d. will be inserted as follows:

b. *Milestone 3.* If Licensee fails to achieve Milestone 3 (construction completion) on or before its Deadline, then it will pre-pay

for stumpage to be purchased under the TLL at the rate of \$25,000 per month for each full month in which the Milestone remains unmet. This monthly stumpage pre-payment will be paid on or before the 10<sup>th</sup> day of the month following each month in which Milestone 3 remains unmet. All pre-paid stumpage payments will be credited to Licensee on subsequent purchases of stumpage under the TLL as follows: The total amount of the credit will be amortized evenly over a 60-month period commencing in the month in which Licensee first purchases stumpage under the TLL. For example, if Licensee is 12 months late in achieving Milestone 3, it will incur pre-paid stumpage payments totaling \$300,000, and repayment of such amount in the form of credits against subsequent purchases of stumpage will be spread over 60 months, i.e. \$5,000 per month. Any unused credit from one month will be carried over to the next month. Any and all stumpage pre-payments made to the Department, which have not been applied as credit towards harvested timber stumpage, are non-refundable upon termination of the License due to breach by Licensee, License cancellation request by Licensee, or expiration of the License.

c. *"Drop-Dead" Date for Completion of Veneer Plant.* In the event that construction of the plant is not completed by January 1, 2009, Licensor may declare the TLL in default in accordance with the default provisions of the TLL, in which case Licensee will have 60 days to remedy the default. In any case, should Licensee elect to extend the plant construction completion date indicated as Milestone 3 in Section 3.1 from July 1, 2008, it shall pay the following extension fees:

- i. \$22,500 upon execution of this amendment if completion of the veneer plant is extended beyond January 1, 2009, for the 12-month period representing calendar year 2009.
- ii. \$18,000 on or before January 1, 2010 if completion of the veneer plant is extended beyond January 1, 2010, for the 6-month period from January 1, 2010 to June 30, 2010.
- iii. \$50,000 on or before July 1, 2010 if completion of the veneer plant is extended beyond July 1, 2010, for the 6-month period from July 1, 2010 to December 31, 2010.

d. *Progress Deadlines.* The extensions stated in section c. above may be exercised provided that Licensee is in compliance with the following conditions:

- i. Licensee must obtain County of Hawaii issued and approved building permits for all major components of veneer plant no later than December 31, 2009. Licensee shall provide the Department copies of all approved County of Hawaii Permits; and
- ii. Licensee must secure all financing needed for construction of the veneer mill no later than December 31, 2009. Licensee shall provide the Department proof of attaining such additional financing.

Failure to comply with either of the above new deadlines shall constitute breach of the terms of Timber Land License No. H-101 by Licensee.

**B. Section 6.3 Utilization Practices.** The parties agree that the TLL shall be amended by deleting the last sentence and replacing it so that this section shall read as follows:

**6.3 Utilization Practices.** All merchantable logs will be harvested and utilized to their respective minimum top diameters as defined in 11.13. All stumps shall be cut so as to cause the least waste practicable and shall not exceed, on the side adjacent to the highest ground, a height of 12 inches. For the purposes of maintaining site soil nutrient cycling and productivity, branches and tree tops less than four (4) inches in diameter shall be treated as logging debris pursuant to Section 6.4.

**C. Section 6.2.3. Allowable Harvest.** The parties agree to insert a new section in the TLL as follows:

**6.2.3 Allowable Harvest.** Eucalyptus Harvest stands may be harvested by Licensee at a rate not to exceed 500 acres per year, unless otherwise approved in writing in advance by the Division of Forestry and Wildlife.

**D. Section 7.1 Reforestation.** Additional clarity regarding reforestation time frames of Harvest Stands is required. The License shall be amended by appending a provision to Section 7.1 Reforestation so that it reads in its entirety as follows:

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

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

According to the Department-approved Forest Operations Plan, Licensee shall completely replant any timber stand or portion thereof (defined as "Harvest Stands" in Exhibit C) that is harvested via clearcut operations, within six (6) months of completion of harvesting operations in that stand unless otherwise approved in writing in advance by the Division of Forestry and Wildlife. Failure to comply with this replanting condition or to obtain advance approval for non-compliance will be a breach of the terms of this License.

E. **Section 7.2 Stand Conversion.** Section 7.2 of the TLL shall be deleted in its entirety.

F. **Sections 7.5 Right to Harvest Second Rotation from "Harvest Stands" and 7.6 Final Harvest Stand Condition.** Licensor and Licensee hereby amend the TLL to insert the follow sections:

**7.5 Right to Harvest Second Rotation from "Harvest Stands".** Licensee shall have the right to harvest a second rotation from any Harvest Stand acreage previously planted by Licensee within the term of this License. Licensee shall pay Licensor according to the established License fee schedule for second rotation stumpage. Any such harvest shall not be constrained by License Section 11.13, but must be utilized for a commercial forest industry purpose.

**7.6 Final Harvest Stand Condition.** Upon early termination by Licensee, or upon expiration of this Licensee, all Harvest Stand acreage must exist in a fully stocked/forested condition pursuant to License Section 7.3, whether as recently replanted seedlings, by and at the sole expense of Licensee, or previously planted pre-merchantable commercial trees, by and at the sole expense of Licensee, according to the Department-approved Forest Operations Plan..

G. **Section 8. Replacement Stands.** Licensor and Licensee hereby amend the TLL by deleting Section 8 in its entirety and replacing it with the following:

## **8.0 REPLACEMENT STANDS**

It is the desire of the Licensor to have Licensee reforest stands that have not achieved desirable growth levels which are designated as replacement stands ("Replacement Stands"). Replacement Stands numbers and acreage are indicated in Exhibit C.

**8.1 Replacement Stand Rental.** Licensee shall have the right to rent and utilize acreage identified as "Replacement Stands" only for the purposes of growing commercial timber species, pursuant to rights of the Licensor relating to non-timber forest products as detailed in Section 1.3, and reforestation terms as detailed in Section 7.1. Licensee shall compensate Licensor for this right in the form of a land rental payment of \$3.00 per acre per year, via annual payments due in advance. The parties acknowledge that this rate is not necessarily reflective of the fair market rental rate for this land but that it is instead an agreed upon rate. The first payment shall be due to the Department on January 1, 2010 for calendar year 2010, and on January 1<sup>st</sup> of each subsequent year that this License remains valid. Should the License remain valid through 2021, the last year of rent shall be pro-rated for the period of January 1, 2021 to August 28, 2021.

**8.1.1. Replacement Stand Reforestation.** All of the Replacement Stands acreage within this License must be replanted within five (5) years of January 1, 2009, by and at the sole expense of Licensee according to the following schedule:

- a. At least one-third of all Replacement Stands acreage replanted within three (3) years.
- b. At least two-thirds all Replacement Stands acreage replanted within four (4) years.
- c. All Replacement Stands acreage replanted within five (5) years.

If Licensee fails to meet any of these three Replacement Stands replanting benchmarks, any unplanted Replacement Stands acreage shall immediately revert to the Licensor. Upon reversion, Licensor may seek to enter into direct negotiations or other disposition method with any other party for the reverted acreage. Licensee must replant any Replacement Stands acreage cleared of existing vegetation. Any woody biomass existing within Replacement Stands areas prior to initial reforestation efforts may be disposed of by and at the discretion of Licensee, at no fee to the Licensor, with the exceptions of any live ohia (*Metrosideros polymorpha*) tree, koa (*Acacia koa*) tree, or listed threatened and endangered species which shall not be damaged or disturbed. Furthermore,

for initial land clearing operations conducted in Replacement Stands only, Section 6.3 as amended shall not apply.

**8.1.2. Right to Harvest Replacement Stands.** Licensee shall have the right to harvest any Replacement Stands previously planted by Licensee within the term of this License, at no fee to the Licensor. Licensee may harvest no more than 50% of re-planted Replacement Stands acreage in any given year. Any such harvest shall not be constrained by License Section 11.13, but must be utilized for a commercial forest industry purpose.

**8.1.3. Final Replacement Stand Condition.** Upon early termination by Licensee after January 1, 2014, or upon expiration of this License, all Replacement Stands acreage must exist in a fully stocked/forested condition pursuant to License Section 7.3, whether as recently replanted seedlings by and at the sole expense of Licensee, or previously planted pre-merchantable commercial trees by and at the sole expense of Licensee, according to the Department-approved Forest Operations Plan.

**H. Exhibits A, B, and C.** Licensor and Licensee hereby amend the TLL by deleting Exhibits A, B (map), B (Excluded Stands), and C in their entirety and inserting Exhibits A, B, and C attached to this Fourth Amendment and Waiver.

**I. General.** Except as set forth in this Fourth Amendment and Waiver, the TLL, as previously amended, shall remain in full force and effect. This Fourth Amendment and Waiver may be executed in two or more counterparts, which together shall constitute one instrument.

**IN WITNESS WHEREOF,** the undersigned have caused this Waiver and Amendment of Timber Land to be executed by their duly authorized representatives as of the date first written above.

Approved by the Board of  
Land and Natural Resources  
at its meeting held  
December 12, 2008

**STATE OF HAWAII (Licensor)**

By: \_\_\_\_\_

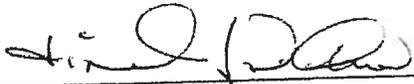
  
Chairperson and Member  
Board of Land and Natural Resources

**TRADEWINDS, LLG (Licensee)**

By: \_\_\_\_\_

  
Donald P. Bryan, President and Managing Member  


Approved as to form:



Deputy Attorney General

Dated: 3/17/09

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FOURTH AMENDMENT OF TIMBER LAND LICENSE NO. H-101, STATE OF HAWAII/TRADEWINDS,  
LLC, A WASHINGTON LIMITED LIABILITY COMPANY

**FIFTH AMENDMENT  
OF  
TIMBER LAND LICENSE NO. H-101**

This Fifth Amendment made and entered into this 31<sup>ST</sup> day of AUGUST, 2009, by and between the State of Hawaii, by its Board of Land and Natural Resources ("Licensor") and Tradewinds Forest Products, LLC, a Delaware limited liability company located at P.O. Box 43, Ookala, Hawaii, 96774 ("Licensee") relates to that certain Timber Land License No. H-101 between Licensor and Licensee dated August 29, 2001, covering timber harvest and replanting activities in the Waiakea area of the island of Hawaii (the "TLL"). Capitalized terms used herein and not otherwise defined herein shall have the meaning given to such terms in the TLL.

**RECITALS**

WHEREAS, this TLL was amended in part by the parties on March 30, 2005, by way of the Amendment of Timber Land License No. H-101 ("Amendment No. 1"); and

WHEREAS, this TLL was amended in part a second time on July 8, 2005, by way of the Second Amendment of Timber Land License No. H-101 ("Amendment No. 2"); and

WHEREAS, this TLL was amended in part a third time on October 10, 2005, by way of the Third Amendment and Waiver of Timber Land License No. H-101 ("Amendment No. 3"); and

WHEREAS, this TLL was amended in part a fourth time on March 20, 2009, by way of the Fourth Amendment of Timber Land License No. H-101; and

WHEREAS, Licensee desires to amend in part for a fifth time certain provisions of the TLL; and

WHEREAS, the State of Hawaii, Board of Land and Natural Resources, at its meeting held on June 12, 2009, has approved certain amendments to the TLL to allow for the continued partnership between Licensor and Licensee.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee hereby agree to amend the TLL as provided hereunder.

**A. Section 3.1.1 Penalty Fees and Payments.** The parties wish to modify Section 3.1.1.b., to allow for a forbearance period of seven (7) months in the pre-paid stumpage payments. Sections 3.1.1.b. will be amended by deleting it in its entirety and replacing it as follows:

b. *Milestone 3.* If Licensee fails to achieve Milestone 3

(construction completion) on or before its Deadline, then it will pre-pay for stumpage to be purchased under the TLL at the rate of \$25,000 per month for each full month in which the Milestone remains unmet. This monthly stumpage pre-payment will be paid on or before the 10<sup>th</sup> day of the month following each month in which Milestone 3 remains unmet. All pre-paid stumpage payments will be credited to Licensee on subsequent purchases of stumpage under the TLL as follows: The total amount of the credit will be amortized evenly over a 60-month period commencing in the month in which Licensee first purchases stumpage under the TLL. For example, if Licensee is 12 months late in achieving Milestone 3, it will incur pre-paid stumpage payments totaling \$300,000, and repayment of such amount in the form of credits against subsequent purchases of stumpage will be spread over 60 months, i.e. \$5,000 per month. Any unused credit from one month will be carried over to the next month. Any and all stumpage pre-payments made to the Department, which have not been applied as credit towards harvested timber stumpage, are non-refundable upon termination of the License due to breach by Licensee, License cancellation request by Licensee, or expiration of the License.

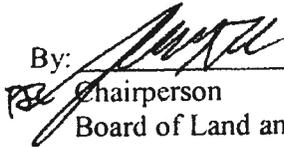
For the period of February, 2009, through August, 2009, Licensee may withhold pre-paid stumpage payments. All pre-paid stumpage payments due for this period shall be paid no later than October 10, 2009. In addition, Licensee will be required to make an additional pre-paid stumpage payment equivalent to \$5,000 per month for each month that pre-paid stumpage payment was withheld ("forbearance fee"). The forbearance fee shall be due at the same time as the withheld pre-paid stumpage payments. These payments shall be subject to the same terms and conditions as stated above as if the payments had been made when they were due. Failure to make the withheld pre-paid stumpage payments and forbearance fee by the above deadline will constitute a default under the license.

**B. General.** Except as set forth in this Fifth Amendment, the TLL, as previously amended, shall remain in full force and effect. This Fifth Amendment may be executed in two or more counterparts, which together shall constitute one instrument.

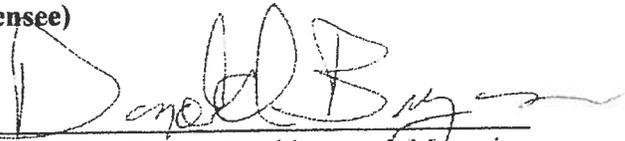
**IN WITNESS WHEREOF**, the undersigned have caused this Amendment to be executed by their duly authorized representatives as of the date first written above.

Approved by the Board of  
Land and Natural Resources  
at its meeting held  
June 12, 2009

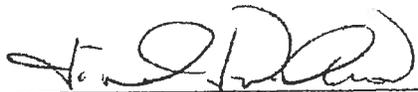
**STATE OF HAWAII (Licensor)**

By:   
Chairperson  
Board of Land and Natural Resources

**TRADEWINDS FOREST PRODUCTS, LLC  
(Licensee)**

By   
Donald P. Bryan, President and Managing  
Member CEO

Approved as to form:

  
Deputy Attorney General  
Dated: Aug. 7, 2009

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Fifth Amendment of Timber Land License No. H-101, State of Hawaii/Tradewinds Forest Products, LLC, a Delaware limited liability company