

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 24, 2015

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

Maui

Authorize Cancellation of Irrevocable Standby Letter of Credit No. SB000018 from HSH Nordbank for \$1.5 Million and Consent to Issuance of Irrevocable Standby Letter of Credit No. XXXXX226, from Bank of America, for \$1.5 million; General Lease No. S-5731, Kaheawa Wind Power, LLC; Kaheawa, Lahaina, Maui, Tax Map Key (2) 4-8-001:001 por.;

And

Authorize Cancellation of Irrevocable Standby Letter of Credit No. S320635M from UnionBank for \$1.5 Million and Consent to Issuance of Irrevocable Standby Letter of Credit No. 68111616, from Bank of America, for \$1.5 million; General Lease No. S-6003, Kaheawa Wind Power II, LLC; Kaheawa, Lahaina, Maui, Tax Map Key (2) 3-6-001:014 & 4-8-001:001 por.

APPLICANT:

Kaheawa Wind Power, LLC, Lessee of GL S-5731; and
Kaheawa Wind Power II, LLC, Lessee of GL S-6003; c/o
SunEdison, 179 Lincoln Street Suite 500, Boston, MA 02111

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kaheawa, Lahaina, Maui, identified by Tax Map Key: (2) 3-6-001:014 & 4-8-001:001 por., as shown on the attached map labeled Exhibit A.

CHARACTER OF USE:

Wind energy production purposes.

July 24, 2015

REMARKS:

Kaheawa Wind Power, LLC, lessee of GL S-5731, and Kaheawa Wind Power II, LLC, lessee of GL S-6003, operate the wind power production facilities at the subject location. SunEdison, a large renewable energy development company, states that it has obtained the ownership interest and assets of both Kaheawa Wind Power, LLC, and Kaheawa Wind Power II, LLC,

Pursuant to Condition No. 19 of both GL S-5731 and S-6003 the lessee shall, at its own cost and expense, procure and deposit with the lessor and thereafter keep in full force and effect during the term of the lease a good and sufficient surety bond conditioned upon the full and faithful observance and performance by lessee of all the terms, conditions and covenants of said lease, in an amount equal to \$1.5 million for each lease for a total of \$3 million dollars.

On behalf of the lessee applicants, SunEdison has requested that the State authorize the cancelation of the existing irrevocable letters of credit for both leases and to consent to the issuance of the two attached irrevocable standby letters of credit (LOC) No. XXXXX226 and No. 68111616 in the amount of \$1.5 million dollars each subject to the terms and conditions of GL S-5731 and S-6003 (Exhibit B).

Staff notes that the LOC for GL S-5731 shall be "governed by and construed in accordance with the laws of the State of New York" and the LOC for S-6003 shall be "governed by and construed in accordance with the laws of Pennsylvania."

Staff suggested that the applicant be prepared to explain to the Board why they believe New York and/or Pennsylvania law ought to apply to disputes involving the proposed LOC (for example a situation where the State calls upon the LOC to cure a default and for some reason the Bank fails to pay on the LOC) provided in lieu of the bond requirement in the ground lease, and how the LOCs stating they are being governed by New York and Pennsylvania laws would not be inconsistent with the lease provision requiring the Lease itself to be governed by Hawaii law.¹

Staff strongly favors that any letter of credit provided by the Applicant be subject to the laws of the State of Hawaii. Staff is concerned that accepting a letter of credit subject to the laws of another state would compromise the State's interests.

¹ Staff was unable to understand the applicant's attempt to explain how an LOC governed by New York and Pennsylvania law is appropriate or even legal in this case when the LOC is being provided to the State in lieu of the performance bond requirement in the ground lease, and the lease is required to be governed by Hawaii law. However, in an attempt to appease the applicant, staff brings this matter to the Board for its consideration to afford the applicant the opportunity to justify the request and address all concerns of the Board and/or its legal counsel.

July 24, 2015

Unfamiliarity with statutes and case law of a foreign jurisdiction could potentially limit the State's ability to exercise its rights under the letter of credit or extinguish claims altogether. Furthermore, any disputes regarding the letter of credit should be resolved by the appropriate court of the State of Hawaii, rather than potentially subjecting the matter to the jurisdiction of a court of another state.

Upon the applicant satisfactorily answering any questions from the Board and/or its counsel, staff makes the following recommendation:

RECOMMENDATION

That the Board:

Authorize Cancellation of Irrevocable Standby Letter of Credit No. SB000018 from HSH Nordbank for \$1.5 Million and Consent to Issuance of Irrevocable Standby Letter of Credit No. XXXXX226, from Bank of America, for \$1.5 million; General Lease No. S-5731, Kaheawa Wind Power, LLC; Kaheawa, Lahaina, Maui, Tax Map Key (2) 4-8-001:001 por.;

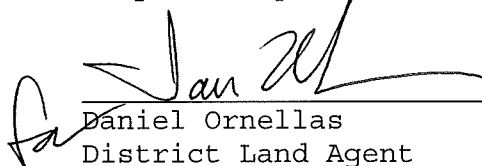
And

Authorize Cancellation of Irrevocable Standby Letter of Credit No. S320635M from UnionBank for \$1.5 Million and Consent to Issuance of Irrevocable Standby Letter of Credit No. 68111616, from Bank of America, for \$1.5 million; General Lease No. S-6003, Kaheawa Wind Power II, LLC; Kaheawa, Lahaina, Maui, Tax Map Key (2) 3-6-001:014 & 4-8-001:001 por.,

subject to the following:

1. Review and approval by the Department of the Attorney General; and
2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Daniel Ornellas
District Land Agent

July 24, 2015

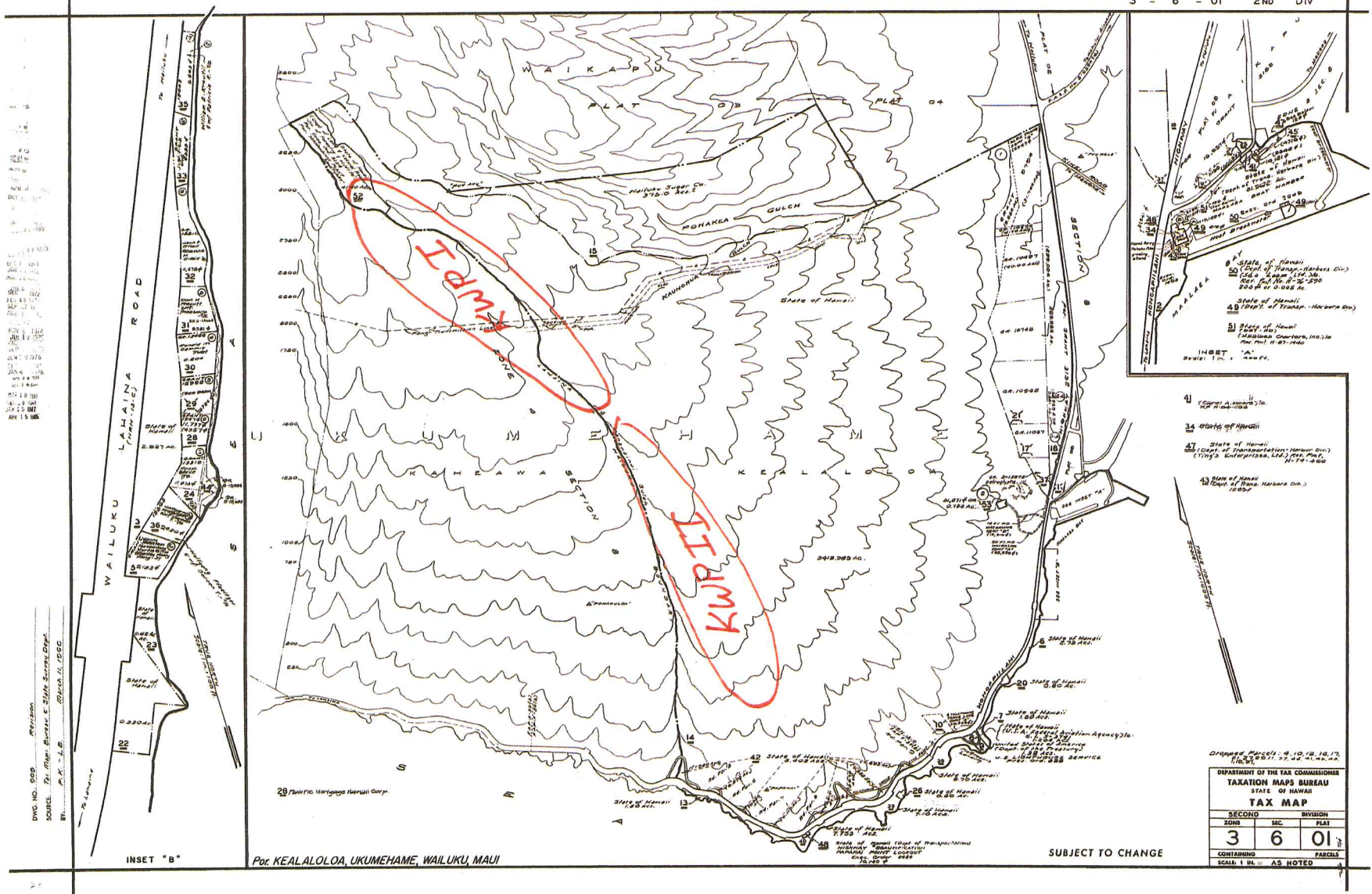
APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



EXHIBIT A



DWG. NO. 909
 SOURCE: T.M. BURNHAM & SONS, Survey Eng.
 BY: C.A. & E.B. BURNHAM, L.L.C.

INSET "B"

FOR KEALALOHA, UKUMEHAME, WAILUKU, MAUI

SUBJECT TO CHANGE

- 41 (Crown A. H. H.)
- 34 State of Hawaii
- 47 State of Hawaii (Dept. of Transportation - Harbor Div.)
- 43 State of Hawaii (Dept. of Transp. - Harbor Div.)

DEPARTMENT OF THE TAX COMMISSION
 TAXATION MAPS BUREAU
 STATE OF HAWAII
TAX MAP

SECOND		DIVISION	
ZONE	SEC.	PLAT	
3	6	01	
CONTAINING		PARCELS	
SCALE: 1 IN. = AS NOTED			



BANK OF AMERICA - CONFIDENTIAL

PAGE: 1

DATE: MAY 14, 2015

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 68111616

ISSUING BANK
BANK OF AMERICA, N.A.
ONE FLEET WAY
PA6-580-02-30
SCRANTON, PA 18507-1999

BENEFICIARY
STATE OF HAWAII, BOARD OF LAND AND
NATURAL RESOURCES,
POST OFFICE BOX 621, 1151 PUNCHBOWL
STREET, HONOLULU, HAWAII 96813

APPLICANT
KAHEAWA WIND POWER II, LLC
179 LINCOLN ST. SUITE 500
BOSTON, MA 02111

AMOUNT
NOT EXCEEDING USD 1,500,000.00
NOT EXCEEDING ONE MILLION FIVE HUNDRED THOUSAND AND 00/100'S US DOLLARS

EXPIRATION
APRIL 30, 2016 AT OUR COUNTERS

AT THE REQUEST OF KAHEAWA WIND POWER II, LLC ("APPLICANT"), WE, BANK OF AMERICA, N.A. HEREBY ISSUE THIS IRREVOCABLE LETTER OF CREDIT NO. 68111616 IN YOUR FAVOR AS BENEFICIARY AVAILABLE AT SIGHT FOR AN AGGREGATE AMOUNT UP TO THE MAXIMUM AMOUNT OF US\$1,500,000.00 (ONE MILLION FIVE HUNDRED THOUSAND UNITED STATES DOLLARS), EFFECTIVE AS OF THE DATE FIRST SET FORTH ABOVE AND EXPIRING AT OUR OFFICE LOCATED AT TRADE SERVICE OPERATIONS, ONE FLEET WAY, SCRANTON PA 18507, AT OUR CLOSE OF BUSINESS ON APRIL 30, 2016 (THE "EXPIRATION DATE"), BUT THE EXPIRATION DATE SHALL BE DEEMED AUTOMATICALLY EXTENDED FOR AN ADDITIONAL PERIOD OF ONE YEAR FROM THE PRESENT OR ANY FUTURE DATE HEREOF UNLESS AT LEAST SIXTY (60) DAYS BEFORE THE THEN-CURRENT EXPIRATION DATE, WE NOTIFY YOU BY REGISTERED MAIL OR COURIER THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT FOR SUCH ADDITIONAL PERIOD.

WE HAVE BEEN INFORMED AND REQUESTED BY THE APPLICANT TO ISSUE THIS LETTER OF CREDIT IN CONNECTION WITH GENERAL LEASE NO. S-6003 DATED NOVEMBER 24, 2010, AS AMENDED BY THAT AMENDMENT OF GENERAL LEASE NO. S-6003, DATED JUNE 8, 2011 AND GRANT OF NON-EXCLUSIVE EASEMENT S-6004 DATED NOVEMBER 24, 2010, AS AMENDED BY THAT AMENDMENT OF GRANT OF NON-EXCLUSIVE EASEMENT NO. S-6004, DATED JUNE 8, 2011 (THE "AGREEMENT"). HOWEVER, OUR UNDERTAKING UNDER THIS LETTER OF CREDIT IS NOT SUBJECT TO OR CONDITIONED UPON THE EXISTENCE, VALIDITY OR ENFORCEABILITY OF SUCH OR ANY OTHER AGREEMENT, AND WE ASSUME NO OBLIGATIONS OTHER THAN THOSE EXPRESSLY SET FORTH HEREIN.

IF ON OR PRIOR TO THE THIRTIETH (30TH) DAY PRIOR TO THE EXPIRATION

ORIGINAL

68111616 05/14/15

EXHIBIT B

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 68111616

DATE, THE BENEFICIARY HAS NOT RECEIVED THE APPLICANT'S NOTICE ELECTING TO EXTEND THIS LETTER OF CREDIT OR PROVIDE A REPLACEMENT LETTER OF CREDIT AS AND TO THE EXTENT REQUIRED BY THE AGREEMENT, THE BENEFICIARY MAY DRAW AGAINST PRESENTATION TO OUR OFFICE AT THE ABOVE ADDRESS A STATEMENT SIGNED BY AN AUTHORIZED OFFICER OF THE BENEFICIARY STATING THAT:

"APPLICANT HAS FAILED TO PROVIDE AN ACCEPTABLE SUBSTITUTE LETTER OF CREDIT AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF BANK OF AMERICA, N.A. IRREVOCABLE STANDBY LETTER OF CREDIT NO. 68111616 WITH RESPECT TO THE APPLICANT'S OBLIGATIONS TO PROVIDE A LETTER OF CREDIT UNDER THE AGREEMENT."

EACH DEMAND FOR PAYMENT MUST BE FOR AN AMOUNT AVAILABLE UNDER THIS LETTER OF CREDIT AND MUST BE PRESENTED TO US BY HAND DELIVERY, MAIL OR OVERNIGHT COURIER AT OUR OFFICE AT TRADE SERVICE OPERATION, 1 FLEET WAY, SCRANTON, PA 18507, ATTENTION STANDBY LETTER OF CREDIT SECTION, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. EASTERN TIME ON A BUSINESS DAY ON OR PRIOR TO THE EXPIRATION DATE.

AS USED IN THIS LETTER OF CREDIT, THE TERM "BUSINESS DAY" SHALL MEAN ANY DAY OTHER THAN A (I) SATURDAY OR SUNDAY OR (II) A DAY ON WHICH BANKS IN SCRANTON, PA 18507, ARE AUTHORIZED OR REQUIRED BY LAW TO CLOSE. DRAWINGS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO YOU AGAINST YOUR SIGHT DRAFT(S) DRAWN ON BANK OF AMERICA, N.A. TRADE SERVICE OPERATIONS, 1 FLEET WAY, SCRANTON, PA 18507, ATTENTION: STANDBY LETTER OF CREDIT SECTION, SIGNED BY YOUR DULY AUTHORIZED SIGNATORY, BEARING THE CLAUSE "DRAWN UNDER BANK OF AMERICA, N.A. LETTER OF CREDIT NO. 68111616" AND ACCOMPANIED BY YOUR SIGNED STATEMENT READING AS FOLLOWS: "THE UNDERSIGNED, AN AUTHORIZED SIGNATORY OF THE STATE OF HAWAII, BOARD OF LAND AND NATURAL RESOURCES HEREBY REPRESENTS AND WARRANTS THAT IT IS PERMITTED PURSUANT TO SECTION 19 OF THE AGREEMENT TO MAKE THE DRAWING UNDER THIS LETTER OF CREDIT"

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED.

EXCEPT AS STATED HEREIN, THIS LETTER OF CREDIT IS NOT SUBJECT TO ANY CONDITION OR QUALIFICATION AND IS OUR INDIVIDUAL OBLIGATION WHICH IS IN NO WAY CONTINGENT UPON REIMBURSEMENT OR ANY RIGHT OF SUBROGATION. WE FURTHER GIVE IRREVOCABLE NOTICE THAT WE ARE NOT NOW AND WILL NOT BE THE SECONDARY OBLIGER OR CO-OBLIGER OF APPLICANT'S OBLIGATIONS AND LIABILITIES TO YOU FOR ANY PURPOSE. OUR OBLIGATIONS TO YOU UNDER THIS LETTER OF CREDIT ARE OUR PRIMARY OBLIGATIONS AND ARE STRICTLY AS STATED HEREIN.

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING TO YOU. SUCH UNDERTAKING TO YOU SHALL NOT IN ANY WAY BE MODIFIED, AMENDED OR AMPLIFIED BY REFERENCE TO ANY DOCUMENT OR INSTRUMENT REFERRED TO HEREIN OR IN WHICH THIS LETTER OF CREDIT IS REFERRED TO

ORIGINAL

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 68111616

OR TO WHICH THIS LETTER OF CREDIT RELATES AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT OR INSTRUMENT.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998, LC.C. PUBLICATION NO. 590 ("ISP98") AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE PENNSYLVANIA IN THE EVENT OF CONFLICT THE ISP98 SHALL GOVERN.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 800-370-7519 OPT 1 .


.....
AUTHORIZED SIGNATURE

THIS DOCUMENT CONSISTS OF 3 PAGE(S).

ORIGINAL

BANK OF AMERICA - CONFIDENTIAL

PAGE: 1

DATE: MAY 2015

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 226

ISSUING BANK
BANK OF AMERICA, N.A.
ONE FLEET WAY
PA6-580-02-30
SCRANTON, PA, 18507-1999

BENEFICIARY
STATE OF HAWAII, BOARD OF LAND AND
NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96813

APPLICANT
KAHEAWA WIND POWER, LLC
C/O UPC WIND MANAGEMENT, LLC
100 WELLS AVENUE, SUITE 201
NEWTON, MA 02459

AMOUNT
USD 1,500,000.00
ONE MILLION FIVE HUNDRED THOUSAND AND 00/100'S US DOLLARS

EXPIRATION
NOVEMBER 30, 2018 AT OUR COUNTERS

DEAR MADAM OR SIR:

WE, BANK OF AMERICA, N.A., HEREBY ESTABLISH FOR THE ACCOUNT OF KAHEAWA WIND POWER, LLC, C/O UPC WIND MANAGEMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY ("APPLICANT"), THIS IRREVOCABLE STANDBY LETTER OF CREDIT ("LETTER OF CREDIT") IN YOUR FAVOR FOR AN AMOUNT OF USD 1,500,000.00 (ONE MILLION FIVE HUNDRED THOUSAND 00/100 UNITED STATES DOLLARS). THIS LETTER OF CREDIT (I) SHALL BECOME EFFECTIVE IMMEDIATELY AND SHALL EXPIRE AT OUR COUNTERS IN BANK OF AMERICA, N.A., 1 FLEET WAY, PA6-580-02-30, SCRANTON, PA 18507 ON NOVEMBER 30, 2018 (THE "EXPIRATION DATE") UNLESS EXTENDED PURSUANT TO CLAUSE 2 HEREOF; AND (II) IS SUBJECT TO THE FOLLOWING:

1. FUNDS UNDER THIS LETTER OF CREDIT SHALL BE MADE AVAILABLE TO BENEFICIARY AGAINST ITS DRAFT DRAWN ON US IN THE FORM OF ANNEX 1 ATTACHED HERETO, DATED THE DATE OF PRESENTATION, ACCOMPANIED BY (A) A CERTIFICATE IN THE FORM OF ANNEX 2 ATTACHED HERETO, APPROPRIATELY COMPLETED AND SIGNED BY AN AUTHORIZED OFFICER OF BENEFICIARY, AND (B) THE ORIGINAL OF THIS LETTER OF CREDIT (THE "ACCOMPANYING DOCUMENTS") AND PRESENTED AT OUR OFFICE LOCATED AT TRADE SERVICE OPERATIONS, 1 FLEET WAY, PA6-580-02-30, SCRANTON, PA 18507, ATTENTION: STANDBY LETTER OF CREDIT DEPARTMENT (OR AT ANY OTHER OFFICE WHICH MAY BE DESIGNATED BY US BY WRITTEN NOTICE DELIVERED TO YOU). A PRESENTATION UNDER THIS LETTER OF CREDIT MAY BE MADE ONLY ON A DAY, AND DURING HOURS OF 8:00 AM AND 5:00PM, SCRANTON TIME IN WHICH SUCH OFFICE IS OPEN FOR BUSINESS (A "BUSINESS DAY"). IF WE RECEIVE YOUR DRAFT AND THE ACCOMPANYING DOCUMENTS AT SUCH OFFICE ON ANY BUSINESS DAY, ALL IN

DRAFT

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: [REDACTED]

STRICT CONFORMITY WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, WE WILL HONOR THE SAME BY MAKING PAYMENT IN ACCORDANCE WITH YOUR PAYMENT INSTRUCTIONS ON THE THIRD SUCCEEDING BUSINESS DAY AFTER PRESENTATION. IF THE AMOUNT OF THE DRAWINGS TOGETHER WITH ALL PREVIOUS DRAWINGS PURSUANT TO THIS LETTER OF CREDIT, IS LESS THAN THE AGGREGATE AMOUNT OF THIS LETTER OF CREDIT, WE WILL RETURN THIS LETTER OF CREDIT TO YOU WITH A NOTATION OF THE REMAINING AMOUNT AVAILABLE HEREUNDER.

2. IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT IS DEEMED TO BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR PERIOD(S) OF ONE YEAR EACH FROM THE CURRENT EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE, WE NOTIFY YOU BY REGISTERED MAIL OR OVERNIGHT COURIER AT THE ABOVE LISTED ADDRESS THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT EXTENDED FOR ANY SUCH ADDITIONAL PERIOD.


3. THIS LETTER OF CREDIT TERMINATES UPON THE EARLIEST TO OCCUR OF (I) OUR RECEIPT OF A NOTICE IN THE FORM OF ANNEX 3 ATTACHED HERETO SIGNED BY AN AUTHORIZED OFFICER OF BENEFICIARY, ACCOMPANIED BY THIS LETTER OF CREDIT FOR CANCELLATION; (II) OUR HONORING OF ONE OR MORE DRAFTS PRESENTED HEREUNDER IN AN AGGREGATE AMOUNT EQUAL TO THE AMOUNT OF THIS LETTER OF CREDIT AND (III) OUR CLOSE OF BUSINESS AT OUR AFORESAID OFFICE ON THE EXPIRATION DATE, OR IF THE EXPIRATION DATE IS NOT A BUSINESS DAY, THEN ON THE NEXT SUCCEEDING BUSINESS DAY. UPON EXPIRY PURSUANT TO THE FOREGOING CLAUSE (II) OR (III) THIS LETTER OF CREDIT SHALL BE SURRENDERED TO US BY BENEFICIARY FOR CANCELLATION TOGETHER WITH A NOTICE IN THE ANNEX 3 ATTACHED HERETO SIGNED BY AN AUTHORIZED OFFICER OF BENEFICIARY.

THIS LETTER OF CREDIT IS NOT TRANSFERABLE AND SHALL BE SUBJECT TO, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNATIONAL STANDBY PRACTICES 1998, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98"), AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. IN THE EVENT OF CONFLICT THE ISP98 SHALL GOVERN.

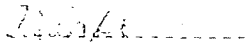
5. THIS LETTER OF CREDIT SETS FORTH IN FULL OUR UNDERTAKING, AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED, OR LIMITED BY REFERENCE TO ANY DOCUMENT, INSTRUMENT, OR AGREEMENT REFERRED TO HEREIN, EXCEPT FOR ANNEXES 1, 2 AND 3 ATTACHED HERETO AND THE NOTICES REFERRED TO HEREIN; AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT, INSTRUMENT, OR AGREEMENT EXCEPT AS PROVIDED IN THIS SECTION 5.

6. COMMUNICATIONS WITH RESPECT TO THIS LETTER OF CREDIT SHALL BE IN WRITING AND ADDRESSED TO US AT THE ADDRESS REFERRED IN TO SECTION 1 ABOVE, AND SHALL SPECIFICALLY REFER TO THIS LETTER OF CREDIT NO. [REDACTED]

DRAFT

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 800-370-7519 OPT 1.


AUTHORIZED SIGNATURE

DRAFT COPY

FOR DISCUSSION AND REVIEW PURPOSES ONLY

PLEASE SIGNIFY YOUR ACCEPTANCE AND APPROVAL TO US ON THIS FORM:

X _____
APPLICANT'S APPROVED SIGNATURE (S) (DATE)

DRAFT

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: [REDACTED]

ANNEX 1
TO LETTER OF CREDIT NO. [REDACTED]

DRAFT UNDER IRREVOCABLE STANDBY LETTER OF CREDIT NO. [REDACTED]
("LETTER OF CREDIT")

DATE: _____

BANK OF AMERICA, N.A.
1 FLEET WAY,
PA6-580-02-30
SCRANTON, PA 18507

ON (THIRD BUSINESS DAY NEXT SUCCEEDING DATE OF PRESENTATION)

PAY TO STATE OF HAWAII, BOARD OF LAND AND NATURAL RESOURCES USD \$
_____ (NOT TO EXCEED AMOUNT AVAILABLE TO BE DRAWN), POST
OFFICE BOX 621
HONOLULU, HAWAII 96809
(INSERT ANY WIRE INSTRUCTIONS)

FOR VALUE RECEIVED AND CHARGE TO ACCOUNT OF LETTER OF CREDIT NO. _____
[REDACTED] OF BANK OF AMERICA, N.A., TRADE OPERATIONS DEPARTMENT, 1
FLEET WAY, PA6-580-02-30, SCRANTON, PA 18507, ATTENTION: STANDBY
LETTER OF CREDIT SECTION.

BY: _____

TITLE: _____

DRAFT

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: [REDACTED]

ANNEX 2
TO LETTER OF CREDIT NO. [REDACTED]

DRAWING UNDER IRREVOCABLE STANDBY LETTER OF CREDIT NO. [REDACTED]

BANK OF AMERICA, N.A.
1 FLEET WAY,
PA6-580-02-30
SCRANTON, PA 18507
ATTENTION: STANDBY LETTER OF CREDIT SECTION

THE UNDERSIGNED, A DULY AUTHORIZED OFFICER OF THE STATE OF HAWAII, BOARD OF LAND AND NATURAL RESOURCES ("BENEFICIARY"), HEREBY CERTIFIES ON BEHALF OF BENEFICIARY TO BANK OF AMERICA, N.A. WITH REFERENCE TO THE IRREVOCABLE STANDBY LETTER OF CREDIT NO. [REDACTED] (THE "LETTER OF CREDIT") ISSUED FOR THE ACCOUNT OF KAHEAWA WIND POWER, LLC ("APPLICANT"), THAT:

1) CHOOSE ONE

(A) BENEFICIARY IS ENTITLED TO DRAW UNDER THE LETTER OF CREDIT PURSUANT TO THE IMPLEMENTING AGREEMENT, KAHEAWA PASTURES WIND ENERGY GENERATION FACILITY, DATED JANUARY 26, 2006 (THE "IA"), AND THE KAHEAWA PASTURES WIND ENERGY FACILITY HABITAT CONSERVATION PLAN, AS APPROVED JANUARY 13, 2006 BY THE BOARD OF LAND AND NATURAL RESOURCES, OR AS SUBSEQUENTLY AMENDED (THE "HCP"), AND THE BENEFICIARY HAS PRESENTED AT LEAST 30 DAYS' PRIOR WRITTEN NOTICE TO KAHEAWA WIND POWER, LLC OF THE REQUESTED DRAW

OR

(B) BENEFICIARY IS ENTITLED TO DRAW UNDER THE LETTER OF CREDIT AS A RESULT OF YOUR ELECTION TO NOT EXTEND THE LETTER OF CREDIT AND APPLICANT'S INABILITY TO PROVIDE A REPLACEMENT LETTER OF CREDIT;

2) BY PRESENTING THIS CERTIFICATE AND THE ACCOMPANYING SIGHT DRAFT, BENEFICIARY IS REQUESTING THAT PAYMENT IN THE AMOUNT OF \$ _____ AS SPECIFIED ON SAID DRAFT, BE MADE UNDER THE LETTER OF CREDIT BY WIRE TRANSFER OR DEPOSIT OF FUNDS INTO THE ACCOUNT SPECIFIED ON SAID DRAFT;

3) THE AMOUNT SPECIFIED ON THE SIGHT DRAFT ACCOMPANYING THIS CERTIFICATE DOES NOT EXCEED THE AMOUNT TO WHICH BENEFICIARY IS ENTITLED TO DRAFT FOR THE PURPOSE OF PAYING OUTSTANDING MITIGATION OBLIGATIONS PURSUANT TO THE IA AND SECTION V AND VI OF THE HCP IN THE EVENT THE APPLICANT EXPERIENCES A REVENUE SHORTFALL OR BANKRUPTCY;

BENEFICIARY, ON OR PRIOR TO THE DATE HEREOF HAS TRANSMITTED BY FACSIMILE (WITH RECEIPT CONFIRMED) A COPY OF THIS CERTIFICATE TO

DRAFT

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: [REDACTED]

APPLICANT, TO THE ATTENTION OF PRESIDENT AT FACSIMILE NUMBER 617-964-3342 OR SUCH NUMBER AS HAS BEEN DESIGNATED BY APPLICANT IN A WRITTEN NOTICE DELIVERED TO US, AND HAS DEPOSITED, POSTAGE-PREPAID, ANOTHER COPY HEREOF WITH A REPUTABLE OVERNIGHT DELIVERY COURIER SERVICE FOR DELIVERY OVERNIGHT TO APPLICANT AT THE FOLLOWING ADDRESS:

KAHEAWA WIND POWER, LLC
C/O UPC WIND MANAGEMENT, LLC
100 WELLS AVENUE, SUITE 201
NEWTON, MA 02459
ATTN: _____

IN WITNESS WHEREOF BENEFICIARY HAS CAUSED THIS CERTIFICATE TO BE DULY EXECUTED AND DELIVERED BY ITS DULY AUTHORIZED OFFICER AS OF THE DATE AND YEAR WRITTEN BELOW.

BY: _____
TITLE _____

DRAFT

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: [REDACTED]

ANNEX 3

TO LETTER OF CREDIT NO. [REDACTED]

NOTICE OF SURRENDER OF IRREVOCABLE STANDBY LETTER OF CREDIT NO
[REDACTED]

DATE: _____

BANK OF AMERICA, N.A.
1 FLEET WAY,
PA6-580-02-30
SCRANTON, PA 18507

ATTENTION: STANDBY LETTER OF CREDIT DEPARTMENT

RE: LETTER OF CREDIT NO. [REDACTED] ISSUED FOR THE ACCOUNT OF KAHEAWA
WIND POWER, LLC ("APPLICANT")

LADIES AND GENTLEMEN:

WE REFER TO YOUR ABOVE-MENTIONED IRREVOCABLE STANDBY LETTER OF CREDIT
(THE "LETTER OF CREDIT"), THE UNDERSIGNED HEREBY SURRENDERS THE
LETTER OF CREDIT TO YOU FOR CANCELLATION AS OF THE DATE HEREOF. NO
PAYMENT IS DEMANDED OF YOU UNDER THIS LETTER OF CREDIT IN CONNECTION
WITH THIS SURRENDER.

VERY TRULY YOURS,

BY: _____
TITLE: _____

DRAFT