

AGREEMENT FOR WATER DELIVERY (WELL WATER)

THIS AGREEMENT (“Agreement”) is made and entered into on this 1st day of May, 2021 (“Effective Date”), by and between **MAUI LAND & PINEAPPLE COMPANY, INC.**, a Hawaii corporation, whose address is 200 Village Road, Lahaina, Hawaii 96761, hereinafter called “MLP”, and **HAWAII WATER SERVICE COMPANY, INC.**, a Hawaii corporation, whose address is 68-1845 Waikoloa Rd #216, Waikoloa Village, HI 96738, hereinafter called “Water Company”.

R E C I T A L S:

A. MLP is the owner and operator of the Kapalua No. 1 and 2 wells and related facilities and equipment necessary to provide water to Water Company at the delivery points all as shown on the map attached hereto as Exhibit A (“Wells”).

B. Water Company is a regulated public utility company.

C. Concurrently herewith, Water Company has acquired from Kapalua Water Company, Ltd. a potable water distribution system (the “Potable System”) that Water Company will use to serve consumers within (i) its Hawaii Public Utilities Commission (“HPUC”) approved service area at or near the Kapalua Resort at Kapalua, Maui, Hawaii, (ii) the “Kapalua Mauka” future expansion area (TMK 4-2-001-042 and TMK 4-3-001-006) that is more particularly described in the County of Maui’s zoning code as “West Maui Project District 2 -- Kapalua Mauka subject to HPUC approval (collectively, the “Initial Service Area”) and any additional service areas as contemplated by Section 1 below.

D. The parties desire to enter into this Agreement to formalize and set forth the terms and conditions upon which MLP will provide water from its Wells for Water Company’s use and distribution via the Potable System.

NOW, THEREFORE, in consideration of the above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Delivery of Water; Delivery Points; Additional Wells.

(a) Subject to the terms and conditions herein, MLP does hereby undertake and agree to deliver water from the Wells to Water Company. MLP shall deliver water to the Water Company at the delivery points shown on the map attached as Exhibit A, or such other locations as the parties may mutually agree to from time to time (each a “Delivery Point”) at all times such amounts Water Company may require to meet its service obligations in effect from time to time; provided, however, that (a) Water Company shall not without MLP’s prior approval draw more than a calendar year average of 1.0 million gallons per day (“MGD”) of water from the Wells in the aggregate, and (b) Water Company shall use water from the Wells only to service

(1) the Water Company's Initial Service Area and (2) expansions of the Initial Service Area to Seller's future developments in Kapalua, as approved by the HPUC (collectively the "Service Area").

(b) Such 1.0 MGD limit shall be increased from time to time by mutual agreement of the parties if, when and to the extent that actual or reasonably projected potable water demand in the Service Area exceeds an annual average of 1.0 MGD, but only to the extent that available capacity of the Wells exists at such time (nothing contained herein obligating MLP to reserve any such capacity). Use of water from the Wells for emergencies shall not be deemed to violate such 1.0 MGD limit.

(c) If the capacity of the existing Wells is reasonably determined by Water Company to be insufficient to meet the existing or forecast demand for potable water in the Service Area, MLP shall, upon Water Company's request and at no charge to Water Company, make available one or more sites on lands owned by MLP for such additional Well(s) and related improvements, equipment, connections and other related facilities (collectively, the "Facilities") to the Potable System as are reasonably needed to meet the potable water demand of the Service Area. MLP shall cooperate reasonably in Water Company's efforts to develop and construct such additional Well(s) and integrate them into the Potable System. Any such additional Well(s) shall be subject to all of the terms and conditions of this Agreement. MLP shall be responsible and liable for all of the costs of the development and construction by Water Company of any such additional Well(s) and Facilities that Water Company incurs in accordance with a budget prepared by Water Company and approved by MLP (which approval shall not be unreasonably withheld, conditioned or delayed), as well as cost of repairs for all existing and additional Wells and Facilities. Water Company may elect to extend credit to MLP consisting of a term loan to finance said costs of construction and development of such additional Wells upon terms mutually acceptable to Water Company and MLP. In consideration of MLP's commitments herein to at MLP's expense assure continued availability of sufficient water, Water Company agrees to issue such service commitments (including "will serve letters" or County of Maui "show me the water" certifications) as MLP may reasonably request from time to time provided the issuance complies with all laws and will not adversely impact the safety or reliability of the Potable System.

2. Water Delivery Charges. Water Company will pay to MLP for all water delivered to Water Company from the Wells at the initial rate of \$2.59 per thousand gallons plus the Hawaii general excise thereon, payable monthly in arrears (or such other time periods as may be mutually agreed upon by the parties in writing). Payments for each calendar month, or portion thereof, shall be due and payable no later than 30 days after receipt of invoice from MLP. On the first anniversary of the date of this Agreement, and each subsequent anniversary, the rates then in effect shall be increased by the lesser of (a) three percent (3%), or (b) the greater of (i) two percent (2%) or (ii) a percentage equal to the percentage increase over the preceding twelve months in the Consumer Price Index for All Urban Consumers (CPI-U) for Honolulu published by the U.S. Department of Labor – Bureau of Labor Statistics (1982-84=100) ("CPI"); provided that if such CPI index is discontinued MLP shall have the right to reasonably designate an alternative index of

inflation. In addition, MLP reserves the right, no more frequently than once per year at the anniversary of the Effective Date, to adjust the rate in effect to be commensurate with any material increase in MLP's costs in operating, maintaining and repairing the Wells (including material increases in the amounts payable for "Additional Services" under the Kapalua Wells Maintenance and Services Agreement between Water Company and MLP), but not including the cost of any capital improvements or replacements to the Wells, provided that such an increase shall be permitted only to the extent that the increases in MLP's costs in operating, maintaining and repairing the Wells exceed the increases in the rate as provided in the preceding sentence. MLP shall provide Water Company with no less than thirty (30) days' notice of such rate adjustment which notice shall include reasonably detailed information supporting such increase; Water Company may request additional documentation and shall be reasonably satisfied that such increase was calculated in accordance with this Section 2 before such increased rate is paid. Water Company shall pay to MLP together with each payment required hereunder which is subject to the State of Hawaii general excise tax on gross income, as it may be amended from time to time, or any successor or similar tax, an amount which, when added to such payment (currently 4.166% of each such payment), shall yield to MLP, after deduction of all such tax payable by MLP with respect to all such payments, a net amount equal to that which MLP would have realized from such payments had no such tax been imposed.

3. **Water Meters.** Water Company shall, at its own expense, install and maintain suitable meters or gauges at accessible locations at each Delivery Point to assure an accurate and documented measurement of all water delivered to the Water Company under this Agreement. Together with each monthly payment under this Agreement, Water Company shall provide to MLP and to the best of its ability accurate and complete written report of all water delivered at each Delivery Point under this Agreement. Provided that Water Company diligently repairs or replaces meters known to be defective, Water Company shall have no liability for malfunctioning or inaccurate meters. Representatives of MLP shall have access to such meters and all records of meter readings at all reasonable times upon not less than forty-eight (48) hours' notice for the purpose of checking the same and verifying Water Company's reports. In the event access is not available, Water Company shall make a good faith estimate of meter readings, but shall not be liable for inaccuracies of the same.

4. **Term.** The term of this Agreement commences on the date of this Agreement and shall automatically renew on the 20th anniversary of such date, thereafter this Agreement shall automatically renew for successive 10-year terms unless terminated by mutual agreement of the parties, subject to 24 months' prior notice to the HPUC. Notwithstanding the foregoing, MLP's obligation to deliver water pursuant to this Agreement shall terminate if Water Company (or its successor and assigns) acquires the Wells from MLP, permanently ceases operation of the Potable System, dedicates the Potable System to the County of Maui or other governmental entity, or develops new water supplies adequate to meet Water Company's service obligations.

5. **Limits on Use.** Water delivered pursuant to this Agreement shall be used only within the Service Area as the same may be modified from time to time with the approval of the HPUC and may not be transmitted to or used at any lands outside of the Service Area.

6. Seller's Warranties, Representations & Covenants. Except as set forth in Schedule 6 attached hereto MLP warrants, represents and covenants to Water Company:

- (a) that MLP is the owner of the Wells and the owner in fee simple or holds recorded easements for all of the lands underlying the portions of the Wells necessary to deliver water to the Delivery Point;
- (b) that MLP currently holds, and will exercise commercially reasonable efforts to maintain, all permits and approvals required by law for the operation of the Wells, including those required by the Commission on Water Resource Management of the State of Hawaii and the County of Maui;
- (c) there are presently no citations, summons, complaints, penalties, actions, suits, investigations or other proceedings pending or threatened against MLP in connection with the operation or maintenance of the Wells that may adversely affect MLP's or Water Company's ability to perform its obligations under this Agreement; and
- (c) MLP acknowledges that Water Company is regulated by the HPUC and MLP shall cooperate with Water Company, at no material expense to MLP, in Water Company's efforts to obtain approvals and to comply with all laws and HPUC related requirements applicable to the Wells and the supply of water to the Potable System, including but not limited to the provision and confirmation of documents and information as required by the HPUC;

Except as set forth in this Agreement, MLP makes no warranties, express or implied, as to the Wells, the quality of Wells water available to Water Company, or any other matters. Water Company accepts the water delivered under this agreement "as is" and Water Company shall be solely responsible for any treatment necessary to render such water useable for Water Company's intended uses.

7. Reciprocal Representations and Warranties. Each of MLP and Water Company, with respect to itself, does hereby represent, warrant and covenant to the best of their knowledge, information and belief, with such representations, warranties and covenants being true as of the date hereof, as follows:

- (a) it has the legal authority to enter into this Agreement;
- (b) is authorized to do business and in good standing under the laws of the State of Hawaii;
- (c) the persons signing this Agreement on its behalf have the power and authority to execute and deliver this Agreement pursuant to the Party's respective governing documents, and the execution, delivery and performance of this Agreement have been duly authorized and approved by all requisite action;
- (d) the execution and delivery of this Agreement and the performance of such Party's obligations hereunder: (i) will not conflict with or result in a violation of its

governing documents, (ii) shall not violate or result in a default, immediately or with the passage of time, under any agreement contract or instrument to which such Party is a party or by which it is, or may be, bound; and (iii) shall not conflict with or violate any order, writ, judgment, or decree, issued by a governmental agency having jurisdiction, to which such Party is subject;

(e) no additional approval, authorization or other action by, or filing with, any governmental authority is required in connection with such Party's execution and delivery of this Agreement by such Party; and

(f) each of the provisions, covenants, and obligations contained in this Agreement is enforceable against such Party under applicable law.

8. Wells Maintenance. MLP will at all times exercise commercially reasonable efforts to manage, repair and maintain the Wells, their pumps, and the transmission lines from the Wells to the Delivery Points in condition adequate for the reliable delivery of water without degrading of the quality of the ground water in its natural state to the Potable System in accordance with demands of the Potable System.

9. Force Majeure. Water Company and MLP agree and understand that the ability of MLP and Water Company to perform their respective obligations under this Agreement are made expressly subject to earthquake, hurricanes, drought, landslides, casualty to the Wells, or other natural disasters or events which render the Wells temporarily or permanently inoperable, actions of the federal, state and county governments or agencies thereof, including without limitation enactment or enforcement of laws or governmental regulations, strikes, lock-outs, unavailability of labor or materials, wars, insurrections, rebellions, civil disorder, declaration of national emergencies, acts of God, pandemics, epidemics, and other reasons beyond the reasonable control of the party. Neither party shall have any liability for failure or inability to perform its obligations hereunder to the extent such failure or inability is caused by any such cause or event, and delays in performance shall be excused only for such period of delay as proximately caused by such cause or event.

10. Condemnation. If the Wells or any part thereof shall be taken or condemned by any authority having the power of eminent domain, MLP shall be solely entitled to all compensation and damages payable with respect to the taking of the Wells, but Water Company shall be entitled to seek compensation and damages from the condemning authority for the loss of Water Company's rights and interests under this Agreement, including inverse condemnation damages arising from the diminution in value of the Potable System from the loss of rights to obtain water from the Wells.

11. Defaults and Remedies. If a party fails to perform any of the terms, covenants and agreements contained herein, if such failure continues for a period of thirty (30) days after written notice, then the non-defaulting party shall be entitled to all remedies available to it at law or equity, including by way of example and not in limitation thereof, the right to sue such person for specific performance, injunctive relief and/or monetary damages, including without limitation, reasonable attorneys' fees, costs and expenses. Amounts due hereunder shall bear interest from the date due until the date paid at the rate of 1% per month. If MLP fails to maintain

and repair the Wells and related water facilities to the Delivery Point in accordance with the requirements of this Agreement and such failure is not the result of the breach by Water Company (or any affiliate or subsidiary of Water Company) of its obligations under any applicable operations and maintenance agreement regarding the Wells, then upon such written notice and expiration of such 30-day period, Water Company shall have the right to enter such land and facilities as is necessary to do what MLP should have done, and in such event MLP shall promptly pay Water Company for the actual documented fully-allocated direct and indirect costs (including overhead) reasonably incurred by Water Company to do so plus an administrative fee of 15% of such costs.

12. Indemnity. Water Company agrees to indemnify, defend and hold MLP and its officers, directors, agents and employees harmless from and against any and all claims, losses, liabilities, damages attorneys' fees and costs arising from or related to Water Company's negligence, willful misconduct or breach of this Agreement. MLP agrees to indemnify, defend and hold Water Company and its officers, directors, agents and employees harmless from and against any and all claims, losses, liabilities, damages attorneys' fees and costs arising from or related to MLP's negligence, willful misconduct or breach of this Agreement.

13. Dispute Resolution; Submission to Jurisdiction; Attorney's Fees.

(a) The parties shall first seek to negotiate, in good faith and in timely fashion, a resolution of any dispute. If the Parties are unable to resolve the dispute with negotiations within thirty (30) days, the Parties agree to mediate any dispute with non-binding mediation conducted in Honolulu, Hawaii. The Parties may agree that a mediated resolution is binding. If the Parties cannot agree upon a mediator, each shall select one name from a list of mediators maintained by Dispute Prevention and Resolution, Inc., the two selected shall then choose a third person who will serve as mediator. The Parties shall have twenty (21) days within which to commence the first mediation session following the conclusion of their good faith negotiations. The Parties shall each fund half the cost of the mediator(s) and shall bear their own costs incurred in connection with any such mediation unless agreed otherwise as a result of the mediation.

(b) If the mediation does not result in resolution of the dispute within forty-five (45) days after any Party's request for mediation, or sooner if reasonably necessary to prevent irreparable or substantial ongoing damage or losses, then the Parties may pursue other remedies available at law or in equity in the Second Circuit Court of the State of Hawaii and the Parties consent to the venue and jurisdiction of such courts. In addition to any other right or remedy to which a Party may be entitled, at law or in equity, any Party shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

(c) Should any party hereto employ an attorney for the purpose of enforcing or construing, because of disagreement with the other party, this Agreement, or any judgment based on this Agreement, in any legal proceeding whatsoever, including

insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all reasonable attorneys' fees and all costs, whether incurred at the trial or appellate level, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees and the cost of any bonds, whether taxable or not, and such reimbursement shall be included in any judgment, decree or final order issued in that proceeding.

14. Notices. All notices or other communications required hereunder to be given shall be in writing and shall be (i) delivered personally, (ii) deposited with the U.S. Postal Service, duly certified or registered, postage prepaid, or (iii) delivered by a nationally recognized overnight courier, or (iv) transmitted by electronic mail ("e-mail"), if a copy of such electronic mail transmission is also delivered pursuant to one of the other transmission methods prescribed above. All notices / communications hereunder shall be addressed as set forth below:

To MLP: Maui Land & Pineapple Company, Inc.
200 Village Road
Lahaina, Hawaii 96761
Attention: Paul Subrata

E-Mail Address: psubrata@kapalua.com

To Water Company: Hawaii Water Service Company, Inc.
P.O. Box 384809
Waikoloa, Hawaii 96738
Attention: General Manager

E-Mail Address: acarrasco@hawaiiwaterservice.com

With a Copy to:
California Water Service Company
1720 N. First Street
San Jose, CA 95112
Attn: Associate General Counsel
E-mail Address: jkelsey@calwater.com

15. Assignment. Except for an assignment made by Water Company in connection with the transfer of the Potable System, subject to the terms and conditions of this Agreement, or to an affiliate or subsidiary of Water Company, Water Company may not assign any rights hereunder without the prior written consent of MLP, which consent may not be unreasonably withheld by MLP. Except for an assignment made by MLP in connection with the transfer of the Wells, subject to the terms and conditions of this Agreement, MLP may not assign any rights hereunder without the prior written consent of Water Company, which consent may not be unreasonably withheld by Water Company.

16. No Rights or Interests in the Wells. Nothing contained herein or in any other agreement between MLP and Water Company gives Water Company any interest in or right to acquire the Wells or the land on which the Wells are located. _

17. Binding Effect, Recordation. This Agreement shall be binding on, and shall inure to the benefit of, the parties and their successors and permitted assigns. The parties agree to record a short form of this Agreement in the Bureau of Conveyances as an encumbrance on the real property upon which the Wells are located.

18. Entire Agreement. This Agreement is the entire agreement between the parties with respect to the delivery of Well water to Water Company and supersedes all prior agreements, correspondence and negotiations, except for that certain Asset Purchase Agreement dated December 20, 2019 between MLP, Water Company, Kapalua Water Company, Ltd. and Kapalua Waste Treatment Company, Ltd., as amended by that certain First Amendment to Asset Purchase Agreement dated May 18, 2020 which is hereby incorporated by reference.

19. Counterparts. This Agreement may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute one instrument. A signature in any form or medium (including without limitation any electronic or digital signature or symbol) shall have the same legal effect, validity and enforceability as a manually handwritten original signature. The Parties agree that if this Agreement is transmitted electronically, the electronic transmittal of the original execution signatures shall be treated as original signatures and given the same legal effect as an original signature.

20. Amendment. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

21. Governing Law. This Agreement and its interpretation shall be governed by the laws of the State of Hawaii without regard to conflicts of laws principles.

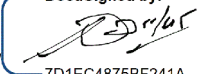
22. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction or any governmental body, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

23. HPUC Commitments. This Agreement shall be effective upon approval by the HPUC. The Parties acknowledge that their respective obligations herein may be amended or may change from time to time by order or approval of the HPUC. If the obligations of any Party herein are at any time determined by the HPUC to require modification, then the Parties shall use reasonable best efforts and diligence to implement said modification or to obtain other authorization from the HPUC. Notwithstanding the foregoing, MLP's agrees, unless otherwise ordered by the HPUC or court order, that MLP will continue to provide water to Water Company in the amounts specified in this Agreement and under all other terms and conditions of this Agreement.

[SIGNATURES FOLLOW]

DATED: May 1, 2021.

**MAUI LAND & PINEAPPLE COMPANY,
INC.**

DocuSigned by:

By 7D1EC4875BF241A...
Name: Paulus Subrata
Its: Vice President

MLP

**HAWAII WATER SERVICE COMPANY,
INC.**

By _____
Name:
Its:

By _____
Name:
Its:

Water Company

DATED: May 1, 2021.

**MAUI LAND & PINEAPPLE COMPANY,
INC.**

By _____
Name:
Its:

MLP

**HAWAII WATER SERVICE COMPANY,
INC.**

By Thomas Smegal
Name: Thomas Smegal
Its: VP, CFO & Treasurer

By Michelle Mortensen
Name: Michelle Mortensen
Its: VP, Corporate Secretary

Water Company

EXHIBIT A

Map of the Wells and Delivery Points to the Water Company's Potable System

