

LAND LICENSE BEARING  
GENERAL LEASE NO. 2-3695

KNOW ALL MEN BY THESE PRESENTS:

1. That, the STATE OF HAWAII, hereinafter referred to as the "Licensor", by its Board of Land and Natural Resources acting under the authority in it vested by the laws of the State of Hawaii, by and with said Board's approval given at its meeting held on December 15, 1961, did advertise and offer for sale at public auction (Ad Book 24:62) on February 20, 1962, at the office of its subland agent at the State Office Building, Wailuku, Maui, a land license to be known as "Honomanu License."

2. That, at said auction sale, EAST MAUI IRRIGATION COMPANY, LIMITED, hereinafter called the "Licensee", was then and there the highest bidder therefor having bid the sum of TEN AND 00/100 DOLLARS (\$ 10.00) for the annual fee for said license.

3. That, the Licensee did thereupon pay to the Licensor pursuant to the terms and conditions of such sale: (a) the sum of FIVE AND 00/100 DOLLARS (\$ 5.00) being the first semi-annual payment of said annual fee, (b) the expenses in connection with sale in the sum of TWO HUNDRED SEVENTY-SEVEN AND 87/100 DOLLARS (\$ 247.87) and (c) the sum of SEVEN THOUSAND SEVEN HUNDRED FIFTY AND 00/100 DOLLARS (\$7,750.00), being one-half of an annual estimated rental of FIFTEEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$15,500.00) for water diverted from the licensed premises,

computed upon the basis of an assumed average annual yield of 5,300 million gallons at \$2.92452 per million gallons.

4. NOW, THEREFORE, in consideration of the foregoing and of the terms, conditions, covenants and agreements hereinafter contained and on the part of the Licensee to be observed and performed, the Licensor hereby grants to the Licensee a license for the right, privilege and authority to enter and to go upon government land on the Island of Maui, State of Hawaii, between and including Nuaailua and Haipuena streams and tributaries, in the district of Koolau and extending from the sea on the north to the land of Haiku Uka, Hamakualoa on the south and from the dividing ridge between Haipuena and Puohakamoa Valleys on the west and the crest of the dividing ridge between Nuaailua Valley and Keanae Valley on the East, as shown in yellow on the plan attached hereto and made a part hereof, and hereinafter referred to as the "Licensed Area" and, subject to controlling provisions of existing laws relating to withdrawals, to thereupon:

5. Develop ground water within the Licensed Area by the construction of tunnels, shafts, wells, pumps, etc., at locations approved by the Licensor.

6. Divert by means of aqueducts or aqueduct systems now or hereafter situate on the Licensed Area government-owned surface water from all streams in the Licensed Area and such government-owned ground water as may be developed as aforesaid, except, however, such water as is used for domestic purposes (including the watering of livestock), under the provisions hereinafter contained, or for domestic purposes and the irrigation of kuleanas entitled to the same.

7. Use government-owned water so diverted for the Licensee's own purposes or for sale to others, including use

of such water for the development of electrical energy for its own use or for sale.

8. Use the Licensed Area for sites for hydroelectric power plants and rights-of-way for transmission lines to transport electrical energy, such sites and rights-of-way to be at locations approved by the Licensor.

9. Use, operate and maintain on the Licensed Area, jointly with the Licensor and with others now or hereafter holding under the Licensor as provided in that certain agreement between the Territory of Hawaii and East Maui Irrigation Company, Limited, dated March 18, 1938, recorded at the Division of Conveyances in Honolulu, State of Hawaii, in Liber 1435, Pages 1-12 and corrected by correction agreement, dated March 24, 1938, recorded at the Division of Conveyances aforesaid in Liber 1435, Pages 269-271, hereinafter referred to as the "East Maui Water Agreement", the existing aqueduct system and all extensions thereof which now or hereafter cross government lands situated in East Maui extending from Nahiku to Honopou inclusive, together with the right to construct, at locations approved by the Licensor, any and all such extensions for the conveyance and control of water granted under this license and also of other water now or hereafter owned or controlled by the Licensee.

10. Pass and repass over the Licensed Area, but in a manner such as will interfere as little as practicable with the full use of such area by the Licensor and by present and future lessees and licensees of the Licensor, and will avoid destruction or injury to the forest growth as far as is

practicable; and in furtherance of the proper maintenance of said Licensed Area as a watershed area the Licensee hereby agrees to assist:

(a) The Licensor's Board of Land and Natural Resources, in policing and protecting the Koolau Forest Reserve from estrays and damage from fire and in inspecting and reforesting this reserve.

(b) The Licensor's Department of Health, in preventing the pollution of so much of the Licensed Area as is located above the Koolau-Wailoa Ditch (the ditch furthest mauka in said area).

(c) The Licensor's Division of Water and Land Development, U. S. Geological Survey, and the Federal Weather Bureau in obtaining rainfall, water yields, runoffs, and other similar data.

11. Use, where practicable, with the prior approval of the Licensor's Board of Land and Natural Resources, forest timber situated on the Licensed Area for maintenance and construction work on said aqueduct system and all future extensions thereof.

RESERVING TO THE LICENSOR, however, the following:

12. The right of ingress, egress and regress for its agents and representatives and the representatives of the County of Maui on the Licensed Area at anytime in the performance of their duties and for inspection of said aqueduct system.

13. The right to use the Licensed Area for all purposes and, further, to use all facilities now or hereafter installed

or placed on the Licensed Area for measuring and recording flows of water, even if owned or operated by the Licensee, together with the right to install, operate and maintain, at its own cost and expense, such further and other facilities as it may deem necessary for such purposes; provided, that the Licensor in so doing shall not unreasonably interfere with the operations of the Licensee.

14. The right to issue to others, other and further licenses and leases pertaining to the Licensed Area and the development and diversion of further or additional water therein and to the use of existing and future roads and trails thereon, if jointly maintained by the users of same, so long as the issuance of such other and further licenses and leases does not interfere unreasonably with the then existing operations of the Licensee hereunder.

15. The right at anytime during the term hereof to withdraw for domestic purposes (including the watering of livestock all or such portion of the government-owned surface and ground water situate on the Licensed Area as may now or hereafter be developed and diverted by the Licensee under the provisions hereof; provided, however, that no withdrawal of water in excess of a total amount of one million gallons per day, except in case of a water emergency as defined in paragraph 38 and then only for the period thereof and subject to the provisions of paragraph 16, shall be effected without two years' advance written notice being given to the Licensee specifying the proposed quantity of water to be withdrawn.

16. The right, upon written notice of a water emergency,

as defined in said paragraph 38, to withdraw, during the period of such emergency and solely for domestic purposes (including the watering of livestock), through the Kula water conveyance system of the County of Maui, through the aqueduct system on the Licensed Area, through any system to which the Licensee may be entitled under the East Maui Water Agreement and under the licenses and agreements with the Licensor now or hereafter in effect, and through any private system owned or controlled by or under license to said Licensee and connecting therewith, all or such portion of government-owned surface and ground water as may be necessary or desirable to meet said water emergency. No charge shall be made by the Licensee for the use of such system or systems except for payment of that portion of the fair cost of the operation and maintenance thereof as is properly allocable to the water so withdrawn, and for the period of such emergency, the liability of the Licensee for rental reserved shall be diminished pro tanto.

THE TERMS, RENTALS, COVENANTS, CONDITIONS AND AGREEMENTS under which this license is hereby given are as follows:

17. The term of this license is for twenty-four (24) years, commencing as of July 1, 1962, and ending on June 30, 1986, unless sooner terminated as hereinafter provided, during which term the Licensee shall pay to the Licensor at the office of the Department of Land and Natural Resources, net over and above all taxes, and in addition to such payment or payments as may hereinafter be required, an annual fee of \$10.00 per annum, one-half of which shall be payable semi-annually in advance on the first day of July and January of each license year.

18. In addition to the annual fee to be paid as above required, the Licensee shall pay to the Licensor in the manner hereinafter set forth at the office of the Department of Land and Natural Resources, net over and above all taxes, an annual rental which shall be equal to the product of the quantity of water actually or constructively diverted during each license year (a) from the Licensed Area or (b) to a point within such Licensed Area where the same is used by the Licensee for power, domestic, or agricultural irrigation purposes or delivered for sale to others, times the price per million gallons of water set forth in the following schedule:

(1) When the average price per pound of raw sugar for the annual payment period is 6 cents or less, the price per million gallons of water diverted from the Licensed Area during said payment period shall be \$2.80.

(2) When the average price per pound of raw sugar for the annual payment period is greater than 6 cents and not more than 8.25 cents, the price per million gallons of water diverted from the Licensed Area during said payment period shall be \$2.80 increased at the rate of 2 cents for every 1/10th of a cent the said average price of raw sugar exceeds 6 cents per pound up to and including 8.25 cents per pound.

(3) When the average price per pound of raw sugar for the annual payment period is more than 8.25 cents, the price per million gallons of water diverted from the Licensed Area during said payment period shall be \$3.30. Payment of such rental shall be made semi-annually in advance

on the first day of July and January of each year in installments of \$7,750.00 each, the yearly aggregate of which sum shall be subject to adjustment (supplemental payment or credit against the next semi-annual payment of rental, as the case may be, the Licensor agreeing to set aside all or a portion of the rental for the last year of the term of this license in a special fund and to refund any excess payment which may be due the Licensee at the end of the term hereof) following the expiration of each license year to conform with the known quantity of water diverted and the average price of raw sugar for such year. Anything preceding to the contrary notwithstanding the Licensee shall at the end of the first ten (10) year period and again at the termination of this license, average the annual payments for said periods and should said average be less than FIFTEEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$15,500.00) per annum the Licensee shall pay the difference so as to guarantee to the Licensor a minimum payment of ONE HUNDRED FIFTY-FIVE THOUSAND AND 00/100 DOLLARS (\$155,000.00) for the first ten (10) years and a minimum payment of TWO HUNDRED SEVENTEEN THOUSAND AND 00/100 DOLLARS (\$217,000.00) for the remaining fourteen (14) year period, a total of THREE HUNDRED SEVENTY-TWO THOUSAND AND 00/100 DOLLARS (\$372,000.00) for the term of this license.

19. Notwithstanding the foregoing provisions of paragraph 18 relating to rental:

(a) In the event that more than one-half of the water subject to this license shall be used by the Licensee or by others for purposes other than the



continued irrigation of sugar cane and such new use or uses shall continue for a period in excess of two years, the annual rental for such water as shall be placed to such new use or uses shall be subject to renegotiation between the Licensor and Licensee, and in the event the parties shall be unable to agree upon the new annual rental therefor, the same shall be determined by arbitration in the manner hereinafter provided if the Board of Land and Natural Resources is permitted by law to use arbitration.

(b) Whenever, from time to time, inflation shall have diminished the purchasing power of the dollar by 40%, as evidenced by increases in wholesale commodity prices over the arithmetical mean of wholesale commodity indices for the twelve (12) months of the annual payment period of rental in which the average price per pound of raw sugar is more than 8.25 cents, the rental, upon written notice by the Licensor to the Licensee, shall be renegotiated by the parties to reflect the circumstances then existing, and if they are unable to agree, shall be subject to arbitration in the manner hereinafter provided if the Board of Land and Natural Resources is permitted by law to use arbitration.

(c) Provided, however, that should the parties hereto be unable to come to an agreement as to the rental to be determined by renegotiation, or if arbitration is not available to determine said rental, then the determination of the Board of Land and Natural Resources, based upon an appraisal of the fair market value as to

said rental, shall be final.

(d) Whenever, from time to time, deflation shall have increased the purchasing power of the dollar as evidenced by decreases in wholesale commodity prices, returning the arithmetical mean of wholesale commodity price indices for the twelve (12) months of the annual payment period of rental to that which, under subparagraph (b) next above, would authorize a renegotiation of rental, any rental theretofore renegotiated under said subparagraph (b) during a period of inflation shall cease and determine and the original schedule of rental as reserved in paragraph 18 shall again apply as though said subparagraph (b) had never been written.

20. For purposes of assisting the Licensor in computing rental payments and the adjustments to be made thereto required under paragraphs 18 and 19 above, the Licensee shall, within three months after expiration of each license year (June 30th), except as provided in subparagraph (g) following, submit to the Licensor a statement prepared in duplicate for such license year showing in detail:

(a) The quantity of water diverted and conveyed from the Licensed Area by means of the jointly used aqueduct system, such quantity of water to be determined pursuant to the East Maui Water Agreement.

(b) The quantity of water diverted and conveyed by means of any other aqueduct system, whether the same be diverted and conveyed from the Licensed Area or to a point within such Licensed Area where the same is used

by the Licensee for power or agricultural irrigation purposes or delivered for sale to others.

(c) The average price per pound of raw sugar for said license year.

(d) The computation whereby an adjustment of payment is determined so that the resulting rental paid by the Licensee shall conform with the rental required under paragraphs 18 and 19.

(e) The quantity of water used by the Licensee or by others for purposes other than the continued irrigation of sugar cane.

(f) The arithmetical mean of wholesale commodity price indices for the twelve (12) preceding months at any time the average price per pound of raw sugar is more than 8.25 cents.

(g) The total quantity of water diverted and conveyed from the Licensed Area and to a point within such area for the first ten (10) year period and for the remaining fourteen (14) year period, each such statement to be submitted within three months following the elapse of the applicable period.

Unless the Licensor and Licensee shall disagree with the factual information or computation so submitted, in which event such disagreement shall be determined by arbitration as hereinafter provided if the Board is permitted by law to use arbitration and final adjustment of rental payments shall be

made in accordance with such statement.

21. The Licensee, subject to the qualifications in subparagraphs (a) to (c) inclusive hereof shall, from March 1 to November 30, inclusive, of each license year, take all of the available water to which it has a right by this license up to that portion of the capacity of the aqueduct system to which the Licensor as the owner of the Licensed Area has a right under the East Maui Water Agreement; provided, however:

(a) If the sugar cane area irrigated by the Licensor's water is reduced by governmental restrictions the aforesaid requirement for the taking of water may, at the option of the Licensee, be reduced proportionately.

(b) In the event the sugar cane area served by the water from this license cannot be irrigated because of a work stoppage of more than one (1) week's duration resulting from a labor dispute, the provisions of this license with respect to the permissive taking of water as set forth in paragraph 22 shall become effective, notwithstanding the fact such work stoppage may occur during months other than January, February and December, as of the first day of cessation of irrigation and shall remain in effect until the day the irrigation is again resumed or might reasonably have been resumed for such area.

(c) At such times as all reservoirs and other storage facilities of the Licensee now or hereafter constructed between Honopou and Maliko are filled to maximum safe capacity, the quantity of water diverted and

conveyed under the terms of this license and subject to apportionment as provided in the East Maui Water Agreement shall be whichever is the greater of (1) the actual quantity taken through the water measuring devices of the Licensor on the Honopou boundary or (2) 370 million gallons per day or as close thereto as it is practical to set the various regulating gates; provided, however, that if storm or other unusual conditions occasion excessive water run-off which if diverted and conveyed would cause, in the sole opinion of the Licensor's Division of Water and Land Development dangerous overloading of the aqueduct system, then and in such event and for the period of such storm or other unusual condition the quantity of water otherwise required to be diverted and conveyed under (1) or (2) above, whichever is the greater, shall be diminished by such quantity of water as may be deemed by said Division of Water and Land Development as being appropriate under the circumstances; and provided further, that whenever any section of the aqueduct system, between Honopou and Maliko Gulch, is shut off because of necessary repairs thereto, said figure of 370 million gallons shall be diminished by the reduced capacity of such section under repair.

22. The Licensee may, during January, February, and December of each license year, take from such Licensed Area only such water as it desires; provided, however, if the Licensee for purposes of replenishing the ground water resources of the Central Maui area (and not for the irrigation

of sugar cane or other plant crops) shall desire to take further water therefrom and discharge the same into gulches, reservoirs and other places approved by the Licensor's Division of Water and Land Development, the Licensee may do so without payment of rental therefor, provided, further, however, that the right to take and discharge surplus water upon the Central Maui area shall be limited to that quantity of water as shall be in excess of the needs of the Licensor for public purposes; that if the Licensor shall, during the months of January, February, and December notify the Licensee in writing of a need for surplus water for public purposes the Licensee shall convey through the aqueduct system on the Licensed Area, through any system to which the Licensee may be entitled under the East Maui Water Agreement and under other licenses and agreements with the Licensor now or hereafter in effect, and through any private system owned or controlled by or under license to said Licensee and connecting therewith, such quantity of surplus water as may be required by the Licensor, without charge, except for payment of that portion of the fair cost of the operation and maintenance of such system or systems as is properly allocable to the water required and taken by the Licensor.

23. The Licensor and Licensee agree to furnish each other with all data obtained from any facilities for measuring and recording rainfall and the flows of water diverted from the Licensed Area and will allow each other the privilege of checking the same as well as inspecting the operation and maintenance of said water measuring stations.

24. The Licensee shall keep at all times in good order and repair the whole, or that portion as the case may be of any aqueduct system or systems as shall now or hereafter be operated by the Licensee within the Licensed Area; provided, however, that the cost of the operation and maintenance of any jointly used system or systems shall be borne by the Licensee in direct proportion to the use made thereof as provided in the East Maui Water Agreement, and the cost of any system or systems used exclusively by the Licensee, including all costs for the development of ground water by the Licensee, shall be borne exclusively by the Licensee.

25. The Licensee shall not, without the written consent of the Licensor first obtained, assign or transfer this license or any interest therein or thereunder.

26. The Licensor and Licensee agree that the terms, conditions and agreements contained in the East Maui Water Agreement, a copy of which is attached hereto and made a part hereof, including the special meanings given to the words and phrases appearing therein, shall apply to and be deemed a part of this license so far as applicable and not inconsistent with the provisions of this license.

27. That the Licensee shall, on or before the commencement date of this license, file with the Board of Land and Natural Resources, and thereafter keep in full force and effect during the period of this license, a good and sufficient bond conditioned for the full and faithful observance and performance by said Licensee of all of the terms, covenants, and

conditions of this license and in the sum of THIRTY THOUSAND AND 00/100 DOLLARS (\$30,000.00). Such bond shall be supported by the obligation of a corporate surety or not less than two personal sureties for which justifications shall be filed as provided in Section 7-21, Revised Laws of Hawaii 1955, pro-  
vided, however, the Licensee may furnish a bond in like amount and conditioned as aforesaid executed by it alone, as obligor, if in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Board security in certified checks, certificates of deposit (payable on demand or after such period as the Board may stipulate), bonds, stocks or other negotiable securities or execute and deliver to said Board a deed or deeds of trust of real property, all of such character as shall be satisfactory to said Board and valued in the aggregate of not less than the principal amount of said bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by the Board under the foregoing proviso shall be as determined by said Board, and that the Licensee may, with the approval of the Board, exchange other securities or money for any of the deposited securities if in the judgment of the Board the substitute securities or money shall be at least equal in value to the principal amount of the bond. It is further agreed that substitution of securities or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Licensee, but only upon the written consent of the Board and that until such consent be granted, which shall be discretionary with the Board, no surety shall be released or relieved of its obligation hereunder.



28. In case of the violation or failure to observe or perform any of the terms, conditions, covenants and agreements of this license by the Licensee at any time or times, the Licensor may, after ninety (90) days written notice to the Licensee and if the Licensee has not then remedied such failure or default, and without prejudice to any other right or remedy it may have under this or other agreement for breach of contract, cancel this license and thereupon, as well as upon the termination of this license by elapse of time or for any other cause, all improvements now or hereafter erected upon the Licensed Area, including the whole of such aqueduct system and all extensions thereof and improvements made thereto, but excluding such improvements as are provided for in the next succeeding paragraph, shall revert to and become the sole property of the Licensor; provided, however, that any such cancellation or termination of this license shall in no way affect the rights that the Licensee may have under the provisions of the East Maui Water Agreement and other existing licenses or agreements in full force and effect from or with the Licensor for the conveyance of water over and across said Licensed Area unless said violation or failure shall also constitute a violation or failure to observe or perform the terms, conditions, covenants and agreements of said other licenses or agreements and a separate breach or breaches shall have been declared (see paragraph 29).

29. It is agreed that the Licensee may, however, on or before the termination of this license by elapse of time, or within ninety (90) days or such further reasonable time as the

Licensor may allow following the cancellation or termination of this license for cause, remove any improvements, including power plants, power and telephone lines and all appurtenances thereto which have been or will have been constructed, erected and maintained by the Licensee upon or across the Licensed Area for purposes other than those necessary to operate any aqueduct system or systems, and any such improvements not removed within said time shall forthwith become the property of the State without necessity of any payment or further action.

30. If the Licensor and the Licensee shall be unable to agree upon the rent to be paid by the Licensee to the Licensor during any period for which such rent is to be renegotiated and fixed by mutual agreement as provided in paragraph 19 of the rental provisions, or in case any question, difference or disagreement shall arise at any time between the Licensor and the Licensee concerning any matter herein contained or in relation to the proper construction of any clause or provision herein contained, or the due observance or performance of any covenant of either party, the matter at issue shall, at the desire of either party, be submitted to and determined by three (3) arbitrators in the manner provided for by Chapter 188, Revised Laws of Hawaii 1955, as the same may be amended from time to time, in which case either party may give to the other written notice of a desire to have an arbitration of the matter in dispute and name one of the arbitrators in said written notice, whereupon the other party shall, within ten (10) days after the receipt of such notice, name a second arbitrator, and in case of failure so to do, the party who has already named an arbitrator may have the second arbitrator selected or appointed

by the Chief Justice or any Associate Justice of the Supreme Court of the State of Hawaii, and the two (2) arbitrators so appointed, in either manner, shall select and appoint the third arbitrator, and in the event the first two (2) arbitrators shall fail to appoint a third arbitrator within ten (10) days after the naming of the second arbitrator, either party may apply to a member of the Supreme Court as aforesaid to designate and appoint the third arbitrator, and the three (3) arbitrators so appointed shall thereupon proceed to determine the matter in dispute, difference or question, and the decision and award of any two (2) of them (including the disposition of the costs of arbitration) shall be final, conclusive and binding upon the Licensor and Licensee unless the same shall be vacated, modified or corrected as by said statutes provided. The arbitrators shall have all the powers and duties prescribed by said statutes and judgment may be entered upon such award by the Circuit Court of the Second Judicial Circuit as provided by said statutes. In the event the question, difference or disagreement between the Licensor and Licensee shall involve the determination between the Licensor and Licensee of rent, each arbitrator appointed as aforesaid shall have not less than five (5) years effective experience in Hawaii next preceding his appointment in appraising real property, including surface water rights, and the third arbitrator, selected and appointed by such arbitrators or by a member of the Supreme Court as aforesaid, shall in every event be either a member of the American Institute of Real Estate Appraisers or of the Institute of Real Estate Management or of

the American Society of Real Estate Counselors or possess comparable qualifications. This section shall apply if the Board is permitted by law to use arbitration. If arbitration is not permitted by law, the parties shall have full right of recourse to the courts.

31. That except as provided for herein, the Licensee will not make, suffer or permit any waste, strip or unlawful, improper or offensive use of the demised premises, or any part thereof.

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

33. The Licensee shall at all times with respect to the Licensed area, use due care for public safety, and will defend, protect and indemnify the Licensor and the County of Maui from and against any and all claims for injury, damage or death caused by the Licensee, its servants, agents and employees, in the licensed area or in operating under the authority of this license.

34. That the Licensee shall procure, at its own cost and expense, and keep in force during the entire period of this

license, with an insurance company or companies acceptable to the Licensor in an amount satisfactory to the Licensor, a policy or policies of public liability insurance for any and all personal injuries, deaths or property damages; said policy or policies to cover the entire licensed area, including but not limited to all buildings, improvements and all roadways, by whomever owned, in the licensed area under the use or control of the Licensee. With respect to proof of the Licensee's compliance with the provisions of this paragraph, the Licensee shall furnish the Licensor with a certificate showing such insurance to be initially in force and shall furnish a like certificate to contain or be accompanied by an undertaking of the insurer to notify the Licensor of any intention to cancel any such insurance prior to actual cancellation. The procuring of this insurance shall not release or relieve the Licensee of its responsibility arising out of or under this license.

35. The Licensee shall observe and comply with all rules, regulations, ordinances and laws made by any governmental authority of the municipal, state or federal government applicable to the licensed area.

36. That the Licensee will plug or recase all defective and leaking wells now or hereafter sunk, driven or excavated on the demised premises and otherwise take such action as may reasonably be required to safeguard the public and to conserve all water resources on the licensed area. The Licensee shall also plug or cap all dry wells.

37. "Wholesale commodity price indices" as used herein

means the wholesale commodity price indices for all commodities as computed and published by the United States Department of Labor, Bureau of Labor Statistics, or other federal agency or successor thereto, and, in case the United States Bureau of Labor Statistics or such other agency shall cease to publish indices of wholesale commodity prices representatives of all commodity prices or shall change the base or method thereof, then and thereafter the wholesale commodity prices for any calendar year shall be determined and comparisons thereof shall be made with reference to such other index or indices of commodity prices or of the purchasing power of the dollar or other similar index or indices in such manner as may be mutually agreed upon between the parties and if they are unable to agree then the matter shall be referred to arbitration as hereinabove provided, if the Board of Land and Natural Resources is permitted by law to use arbitration.

38. "Water emergency" as used herein means a situation where, by reason of drought or other unusual and temporary condition, the County of Maui is (a) unable to furnish adequate water from its own sources for domestic purposes (including the watering of livestock) to its residents who could be served by the water covered by this license, and (b) able to accept delivery of said water, render such water potable, and deliver it for domestic purposes (including the watering of livestock) in the area where such emergency exists.

39. "Average price per pound of raw sugar" as used herein means the average price per pound of raw sugar as defined in the East Maui Water Agreement.

40. The terms, conditions and agreements hereof shall be binding upon and run in favor of the Licensor, its legal successors and assigns, and the Licensee, its successors and permitted assigns, or transferees, respectively, as the case may be; words in the singular or plural number signify both the plural and singular number; and each of the terms "or" and "and" has the meaning of the other or of both, where the subject matter, sense and connection require such construction.

41. IN WITNESS WHEREOF, the Licensor has caused its name to be hereunto subscribed by its Board of Land and Natural Resources, under its official seal, by and with the approval of the Governor of the State of Hawaii, this 5<sup>th</sup> day of June, 1962, as of July 1, 1962, and the Licensee has caused its corporate name to be hereunto subscribed by its proper officers thereunto duly authorized by its Board of Directors in acceptance of the conditions herein set forth, this 25<sup>th</sup> day of May, 1962, also as of July 1, 1962.

STATE OF HAWAII  
BOARD OF LAND AND NATURAL RESOURCES

By: Richard L. Summers  
Richard L. Summers, Its Chairman

As authorized to sign by the Board  
of Land and Natural Resources by  
its resolution dated May 19, 1960.

EAST MAUI IRRIGATION COMPANY, LIMITED

By: W.G. Huber  
Its: VICE-PRESIDENT

And By: R. G. Munro  
Its: TREASURER

CORPORATION

STATE OF HAWAII, }  
City and County of Honolulu } ss.

On this 25th day of May, A. D. 1962, before me appeared

W. E. SHEEHAN and R. G. JAMISON

to me personally known, who, being by me duly sworn, did say that they are the  
Vice-President and Treasurer,

respectively of EAST MAUI IRRIGATION COMPANY, LIMITED

and that the seal affixed to the foregoing instrument is the corporate seal of said  
corporation and that said instrument was signed and sealed in behalf of said corpora-  
tion by authority of its Board of Directors, and the said W. E. SHEEHAN and


R. G. JAMISON acknowledged said instrument to be the  
free act and deed of said corporation.

Ab. Kam Young  
Notary Public, First Judicial Circuit,  
State of Hawaii.

My Commission Expires October 16, 1965



APPROVED:

  
ACTING Governor of the State  
of Hawaii

APPROVED AS TO FORM:

  
Attorney General

lyn  
Checked by: mmv

Civil No. 19-1-0019-01 (JPC)

**Defendant A&B/EMI's Exhibit AB-116**

FOR IDENTIFICATION \_\_\_\_\_

RECEIVED IN EVIDENCE \_\_\_\_\_

CLERK \_\_\_\_\_