

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

This Third Amendment and Waiver made and entered into this th 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 10th 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 5th 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 28th 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:

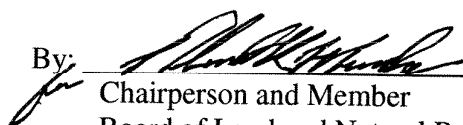
“**3.2.2 Woodchips and Biomass Fuel.** No woodchips or biomass fuel will be manufactured from Merchantable Logs, as defined in 11.13, harvested within the WTMA, except as a by product of a veneer or lumber processing activity. Logs which are not suitable for manufacturing lumber or veneer may be harvested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

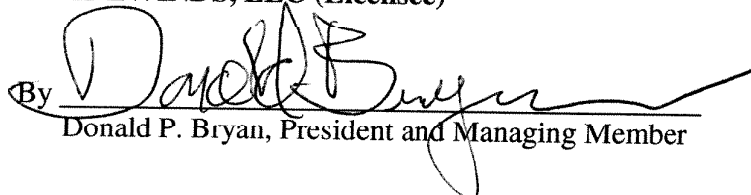
IN WITNESS WHEREOF, the undersigned have caused this Waiver and Amendment of Timber Land to be executed by their duly authorized representatives as of the date first written above.

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

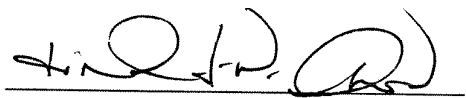
STATE OF HAWAII (Licensor)

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

<u>Name of Phase I Investors</u>	<u>No. of Class A Units Purchased</u>	<u>% of Licensee Owned</u>
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>
TOTAL	1,400	56.82

<u>Name of Existing Unit Holders</u>	<u>No. of Class B Units Held</u>	<u>% of Licensee Owned</u>
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>
TOTAL	1,064.00	43.18

Schedule 2

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

<u>Primary Species</u>	<u>Stand Number</u>	<u>Acres</u>
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
TOTAL		480.6

