

general contractor and the parties to correct all material deficiencies. Upon the Director receiving notice that such deficiencies are corrected, the Director will promptly reinspect the Well with the objective of completing the process and the Board's acceptance efficiently and within the shortest reasonable time.

Upon the Board's acceptance, the Developer will provide a written warranty and bond against all defects in workmanship and materials which shall run in favor of and be enforceable by the Board from and after the Board's acceptance, for a period of one year from the date of the Board's acceptance of the general contractor's work.

From and after the Board's acceptance, the Board will own, operate and maintain the Well for its own use and at its own expense.

4. Form of Dedication: Title. The Board will accept the dedication of the Well Site in the form of an assignment of an easement granted by A&B-Hawaii, Inc., in the form attached as Exhibit F. Title to the easement and easement area shall be free and clear of liens and encumbrances (except the terms of the easement itself and any other matters which would not have any adverse effect on the Board's operation, use and enjoyment of the Well and its output).

5. Allocation and Reservation of Source Capacity. In consideration of the foregoing, the Developer will receive an allocation and reservation of source capacity from the Board's sources serving the Upcountry area (called the "Source Credit") for the exclusive use of Developer and its affiliates, assignees, and future developments on the Kulamalu Parcels or other land which may be acquired by the Developer which shall be served by the Board's Haiku or Upcountry water systems. The use by the Developer of the Source Credit to be allocated under this paragraph will not require the payment of any impact fee or assessment under Chapter 8 of the Board's Rules and Regulations or otherwise chargeable by the Board in the nature of a source development fee, reimbursement of similar charge (over and above payments and dedications required by this Agreement). The amount of Source Credit shall be determined and provided as set forth in the following subparagraphs:

- (a) The final amount of Source Credit will be determined when the Well is completed, fully tested and operational.
- (b) If the water is potable (according to State of Hawaii Department of Health standards), the Board will use the water for the Board's Haiku or upcountry water system; and the amount of Source Credit shall be the amount, expressed in gallons, equal to 0.45 times the installed pump capacity. This formula conforms to the Board's operational standard now in general use.
- (c) If the water is non-potable and may be pumped into the Wailoa Ditch system for use by the Board for customers of non-potable water or for the Kamole treatment plant, the amount of Source Credits will be determined by

computing the credit under (b) above and then reducing it (but not increasing it) to reflect the difference in capital cost between the non-potable water and the Board's potable water produced by the Kamole treatment plant. More specifically, the amount determined by the formula in (b) above will be multiplied by a fraction, the numerator of which will be the "per gallon non-potable cost" (defined below) of the water from the Well and the denominator will be 2.26 (which is the estimated capital cost per average daily gallon of production of the Kamole treatment plant including upgrades presently pending plus an allocated portion of the cost of increasing the Board's upcountry reservoir capacity). The "per gallon non-potable cost" shall be determined by dividing the total actual Well Costs by the estimated average daily production capacity of the Well (i.e., 0.45 times the installed pump capacity).

- (d) Notwithstanding the foregoing, the minimum Source Credit allocated to Developer shall be 290,000 gallons (average daily use); and said allocation shall become effective at the time the Developer provides to the Board the Well Bond. If the actual Source Credits determined under subparagraph (a) through (c) above shall exceed said 290,000 gallons, then the total allocation of Source Credits shall be increased accordingly, effective at the time of dedication. If, however, the actual credits computed under said subparagraphs (a) through (c) shall, for any reason, be less than said 290,000 gallons (if, for example, the tested chlorides in the water are too high to permit the reasonable use of the water in either the Board's Haiku domestic water system or the Wailoa Ditch or if other causes occur beyond Developer's control) the Source Credits will not be reduced, but the Developer will compensate the Board for the amount of shortfall in one or more of the following ways:
- (i) If the Developer has unused Source Credits (relating to sources in the upcountry or Haiku systems) from any other development or agreement with the Board which are not then designated for use, the Developer will apply those credits to the shortfall.
 - (ii) If the Developer has insufficient unused credits under (a), the Developer will make up the difference by a cash payment to the Board equal to the Board's normal water system development fee (source component) in effect at that time in an amount sufficient to make up the shortfall.
 - (iii) In the Board's discretion, the Board may accept compensation which the Developer may offer in some other form, consistent with the Board's rules and regulations, such as the Developer's acquisition or development of other source capacity for the Board's use in the Board's Haiku or Upcountry water systems.