

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

February 22, 2019

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

Hawaii

After-the-Fact Consent to Subleases and Consent to Extension of Same under Harbor Lease No. H-72-1 (GLS-5700), Kealakehe Freight, LLC, Lessee, to: Phoenix V LLC dba BEI Hawaii; Island Equipment, Inc. dba American Machinery; D & M Hydraulic Sales & Service, Inc.; Brian Kelly dba Kelly's Tree Service; Dennis Florer; Atlas Recycling Centers, LLC; HHB & Associates, LLC and Kama Aina Bail Bonds, Inc., Sublessees, Kealakehe, North Kona, Hawaii, Tax Map Keys: (3) 7-4-020:018 & 020.

APPLICANT:

Kealakehe Freight, LLC, a Hawaii corporation, as Sublessor, to:
Phoenix V LLC dba BEI Hawaii, a Hawaii corporation;
Island Equipment, Inc. dba American Machinery, a foreign corporation;
D & M Hydraulic Sales & Service, Inc., a Hawaii corporation;
Brian Kelly dba Kelly's Tree Service, an individual;
Dennis Florer, an individual;
Atlas Recycling Centers, LLC, a Hawaii corporation;
HHB & Associates, LLC, a Hawaii corporation; and
Kama Aina Bail Bonds, Inc., a Hawaii corporation, as Sublessees.

LEGAL REFERENCE:

Section 171-36(a)(6), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kealakehe, North Kona, Hawaii, identified by Tax Map Keys: (3) 7-4-020:018 & 020, as shown on the attached map labeled Exhibit A.

AREA:

4.015 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Industrial, commercial and transportation purposes and uses accessory thereto.

TERM OF LEASE:

55 years, commencing on February 16, 1972 and expiring on February 15, 2027. Last rental reopening occurred on February 16, 2017¹.

TERM OF SUBLEASE and EXTENSION:

Phoenix V LLC:	5 years, commencing on 03/01/2013 and expiring on 02/28/2018; Extension from 03/01/2018 through 02/15/2023.
Island Equipment:	5 years, commencing on 07/01/2010 and expiring on 06/30/2015; Extension from 07/01/2015 through 06/30/2021.
D & M Hydraulic:	3 years, commencing on 03/01/2013 and expiring on 02/29/2016; Extension from 03/01/2016 through 02/15/2021.
Brian Kelly:	3 years, commencing on 08/01/2013 and expiring on 07/31/2016; Extension from 08/01/2016 through 12/31/2018.
Dennis Florer:	3 years, commencing on 03/01/2013 and expiring on 02/29/2016; Extension from 03/01/2016 through 12/31/2018.
Atlas Recycling:	5 years, commencing on 01/01/2013 and expiring on 12/31/2017; Extension from 01/01/2018 through 02/15/2027.
HHB & Associates:	3 years, commencing on 07/01/2013 and expiring on 06/30/2016; Extension from 07/01/2016 through 02/15/2027.
Kama Aina:	3 years, commencing on 08/01/2012 and expiring on 07/31/2015; Extension from 08/01/2015 through 02/15/2027.

ANNUAL RENTAL:

\$160,000.00¹. Payable in quarterly installments of \$40,000.00 due on the 1st day of January, April, July and October. At a prior Lessee's request, lease rent is billed at \$13,333.33 per month.

¹ The reopening appraisal determined the annual rental amount for the final 10 years to be \$252,000 per year. The lessee rejected the appraisal amount and mediation is pending. Until the reopening negotiations are complete, the annual rental amount will be billed at the current \$160,000.

ANNUAL SUBLEASE RENTAL:

2015 = \$131,905.80 (July-December)

2016 = \$265,406.40

2017 = \$268,455.60

2018 = \$257,958.10

Plus Common Area Maintenance (CAM) and additional rents totaling \$50,148.00 annually as of January 2019. Plus General Excise Tax. Refer to Exhibit B for further analysis and information.

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

\$ 30,000.00. (Refer to attached Exhibit B for analysis of sublease rental income.)

DCCA VERIFICATION:

SUBLESSOR:

Kealakehe Freight, LLC:

Place of business registration confirmed: YES

Registered business name confirmed: YES

Good standing confirmed: NO – Business Registration not filed 2017

SUBLESSEES:

Phoenix V LLC dba BEI Hawaii; Island Equipment, Inc. dba American Machinery; D & M Hydraulic Sales & Service, Inc.; Atlas Recycling Centers, LLC; and HHB & Associates, LLC & Kama Aina Bail Bonds, Inc.:

Place of business registration confirmed: YES

Registered business name confirmed: YES

Good standing confirmed: YES

Brian Kelly and Dennis Florer as individuals are not required to register with the DCCA. Brian Kelly has registered Kelly's Tree Service as a tradename.

BACKGROUND:

In 1970, the Department of Transportation, Harbors Division (DOT HAR), in order to relocate its terminal freight shed from the Kailua-Kona Wharf, requested the set aside of the subject property.

At its meeting of August 14, 1970, agenda item F-4, the Board approved a set aside to DOT HAR for its freight terminal site. Approximately 4.015 acres (subject site), together with two non-exclusive easements for access purposes were set aside by Governor's Executive Order No. 2565 (EO2565) and executed June 14, 1971.

At the BLNR meeting of July 9, 1971, agenda item J-3, DOTHAR requested approval to put the subject property out for lease via public auction. The lessee would be required to build a 20,000 square foot warehouse and then sublease the property back to DOTHAR for use as their freight terminal shed. The Board approved and DOTHAR issued Lease No. H-72-1 (Harbor Lease) to American Factors (AMFAC) as the sole and successful bidder. The lease was for a period of 45 years commencing on February 16, 1972 and expiring on February 15, 2027 for industrial, commercial and transportation purposes and uses accessory thereto.

The sublease to DOTHAR was executed January 15, 1974 for the same purpose as the lease and was to be coterminous with the master ground lease.

By 1980, DOTHAR had determined that the subject property was "in excess of their needs" and requested cancellation of EO2565, which could not be done immediately due to the existing 45 year lease between DOTHAR and AMFAC.

At its meeting of April 23, 1982, agenda item J-8, the BLNR approved an amendment to the Harbor Lease. The amendment acknowledged the mutual cancellation of the sublease between AMFAC and DOTHAR effective July 5, 1981, a new sublease between AMFAC and George Tamashiro effective July 6, 1981 and an increase to the annual rent also effective July 6, 1981.

At its meeting of February 11, 1983, agenda item J-11, the BLNR consented to the assignment of the Harbor Lease from AMFAC to AMFAC Property Development Corp. The assignment was due to a reorganization of the corporation.

At its meeting of October 21, 1983, agenda item J-22, the BLNR consented to the assignment of the Harbor Lease from AMFAC Property Development Corp to Richard Minoru Jitchaku and George Y. Tamashiro.

At its meeting of December 5, 1986, agenda item J-3, the BLNR consented to the assignment of the Harbor Lease from Richard Minoru Jitchaku and George Y. Tamashiro to George Y. Tamashiro and Suzuko Tamashiro.

Pursuant to Act 272, Session Laws of Hawaii 1991, the Department of Land and Natural Resources (DLNR) was designated as the agency responsible for overseeing and administering the boating and coastal areas programs under the Division of Boating and Ocean Recreation (DOBOR). The DLNR was to provide for the orderly transitions of the jurisdictional responsibilities for the boating and coastal areas program from DOT to DOBOR. As a result of the Act, EO2565 and the Harbor Lease were transferred to DOBOR.

During the transition, the Director of Transportation confirmed the need to cancel EO2565 to DOTHAR for a freight terminal site. The subject property no longer benefitted DOTHAR or DOBOR as originally intended due to its distance from the nearest commercial harbor.

At its meeting of December 13, 2002, agenda item D-46, the BLNR approved the cancellation of EO2565. On May 3, 2004, Executive Order No. 4048 was executed cancelling EO2565. The Land Management Division of DLNR would be administering the Harbor Lease which was randomly assigned GLS-5700 as an identifier.

At its meeting of December 1, 2010, agenda item D-2, the BLNR consented to the assignment of GLS-5700 from George Y. Tamashiro and Suzuko Tamashiro to Hiram Rivera. The lease was purchased with \$500,000.00 in seller financing. At the time of the assignment, consent for the private mortgage funding was not done. The term of the mortgage was 3 years.

In 2013, when the mortgage was due and payable, Mr. Rivera was unable to pay the balance due and defaulted on the mortgage.

On August 6, 2014, George Y. Tamashiro and Suzuko Tamashiro filed a motion for Summary Judgment and Interlocutory Decree of Foreclosure. The motion was granted on March 25, 2015 and Frederick Giannini was appointed Commissioner to sell the leasehold interest in the subject property.

The Commissioner held a public auction on June 9, 2015. Conen Nakamura was the high bidder at \$795,000.00 and on July 20, 2015 the court approved and confirmed the sale of the subject property. The Commissioner, as assignor, was ordered to make good and sufficient conveyance of the subject property.

At its meeting of January 22, 2016, item D-17, the Board consented to assignment of the lease from the Commissioner to Conen Nakamura and from Conen Nakamura to his newly formed company, Kealakehe Freight, LLC (Applicant).

Kealakehe Freight, LLC, as the current Lessee, uses the leased premises for operations related to its transportation/freight business.

DISCUSSION:

At its meeting of November 12, 2010, item D-2, the Board consented to 10 subleases on the premises with George Tamashiro as sublessor. Of the current 8 subleases, 6 are the same entities (Phoenix V LLC dba BEI Hawaii; Island Equipment, Inc. dba American Machinery; D & M Hydraulic Sales & Service, Inc.; Brian Kelly dba Kelly's Tree Service; Dennis Florer and Atlas Recycling Centers, LLC). Those subleases, which expired in 2013 & 2015, are the predecessors of the subject subleases.

The prior lessee, Hiram Rivera, entered into the subject subleases without prior consent from the Board. Staff was pursuing the information required to obtain consent from the Board when Mr. Tamashiro filed his motion for foreclosure, which put a stop on the process. Henceforth, when the Applicant acquired the lease, the subleases were already in force without prior consent. Staff provided all information gathered on the subleases to the Applicant at time of possession. All of the subleases are now expired and the Applicant has executed sublease extensions to continue the subleases (representative sublease and extension attached as Exhibit C).

The final rental reopening for the lease prior to expiration occurred February 16, 2017. The new annual rent was determined by appraisal to be \$252,000. The lessee rejected the new rent and contracted with an appraiser who provided their opinion of the market rent to be \$150,000. Mediation is currently pending.

During the period July 2015 through December 2018 the Lessee's average net annual sublease income was \$33,907.93. This amount is in excess of expenses except the Lessee's own operating costs. Refer to attached Exhibit B for the full analysis.

Staff is recommending that the Board increase the annual lease rent by \$30,000, retroactive to July 2015, due to the excess income derived from the subleases.

All sublease extensions contain a provision that in the event the BLNR increases the lease rent, the Lessee can increase the sublease rents by a pro rata portion of the increase. Therefore, staff is recommending that if the sublease rents are increased due to this provision, the Lessee must return to the Board for approval of the amended sublease rents.

The Lessee is in compliance with all other lease terms and conditions.

RECOMMENDATION:

That the Board:

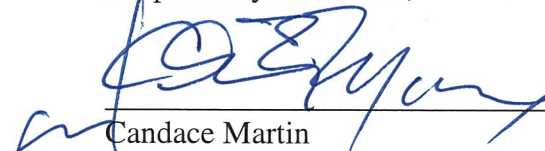
Approve After-the-Fact Consent to Subleases and Consent to Extension of Same under Harbor Lease No. H-72-1 (GL S-5700), between Kealakehe Freight , as Sublessor, and Phoenix V LLC dba BEI Hawaii; Island Equipment, Inc. dba American Machinery; D & M Hydraulic Sales & Service, Inc.; Brian Kelly dba Kelly's Tree Service; Dennis Florer; Atlas Recycling Centers, LLC; HHB & Associates, LLC and Kama Aina Bail Bonds, Inc., as Sublessees, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:

1. The Lessee shall submit construction plans of the Sublessee's improvements to the Land Division for the Chairperson's approval prior to constructing any

additional improvements on the demised premises;

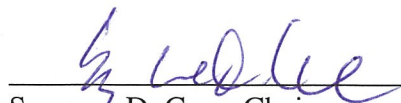
2. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
3. The annual lease rent is increased by \$30,000 retroactive to July 2015;
4. If the Lessee increases any sublease rent, the Lessee will return to the Board seeking approval of the increase. The Board may revise the Lessee's annual ground rent based on analysis of the sublease rent increase;
5. Review and approval by the Department of the Attorney General; and
6. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:

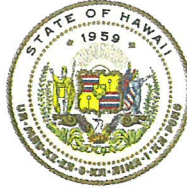


Suzanne D. Case, Chairperson

7 - 4 - 2 3RD DIST.



FOR PROPERTY ASSESSMENT PURPOSES - SUBJECT TO CHANGE



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 30, 2019

MEMORANDUM

TO: Suzanne D. Case, Chairperson

THROUGH: Russell Y. Tsuji, Division Administrator

FROM: Candace Martin, Land Agent

SUBJECT: In-House Recommendation – Lease Rent Adjustment Calculation

GL No.:	GLS-5700
Lessee/Sublessor:	Kealakehe Freight, LLC
Sublessees:	Phoenix V LLC dba BEI Hawaii; Island Equipment, Inc. dba American Machinery; D & M Hydraulic Sales & Service, Inc.; Brian Kelly dba Kelly's Tree Service; Dennis Florer; Atlas Recycling Centers, LLC; HHB & Associates, LLC and Kama Aina Bail Bonds, Inc.
Location:	Kealakehe, North Kona, Hawai'i
Lease area:	4.015 acres (174,893 sf)
Sublease Area:	43,695 sf. more or less
Tax Map Key:	(3) 7-4-020:018 & 020
Character of Use:	Industrial, commercial and transportation purposes and uses accessory thereto.

We have been requested to provide an in-house evaluation of a ground rent increase due to the subleasing of portions of GLS-5700, Kealakehe Freight, LLC, Lessee/Sublessor to multiple Sublessees as listed above. The sublease documents and information provided by Lessee were analyzed and staff was guided by the formula approved by the Land Board on January 26, 2001, agenda item D-8, and modified by the Board at its meeting on August 24, 2012, agenda item D-14, comprising of the Rent Participation Policy.

In 2015, the lease was the subject of a foreclosure action which resulted in its sale to Conen Nakamura, owner of Kealakehe Freight, LLC for \$795,000. Due to the lessee acquiring the lease in mid-2015, our analysis only considers the income generated by the subleases since July 2015. Our analysis allows for the amortization expense of \$70,000.00 providing full amortization of the Lessee's initial purchase price over the 11.5 years that remained on the lease at the time of purchase.

The final lease reopening occurred in February 2017 with new annual rent determined to be \$252,000. The Lessee rejected the new rent amount and provided an appraisal that determined the new annual market rent to be \$150,000. Mediation is pending. Until the negotiations are settled, rent will continue to be billed at the current rate of \$160,000 annually and we use this amount as ground rent in our analysis.

All eight subleases existed at the time of foreclosure, but had not been consented to by the Board. All the subleases have expired; however, the Lessee is honoring the subleases and has obtained extensions for them as listed in the synopsis below.

Improvements to the property include a 29,176 sf warehouse/office building and an 8,000 sf open-side warehouse building. Property perimeter is fenced and gated with chainlink. Approximately 60% of the property is paved including driveways and parking areas. Water, electric and sewer service the property. Improvements are owned by the lessee until expiration of the lease in 2027.

The subleases encumber 17,055 sf of the warehouse/office building and 27,140 sf of uncovered exterior yard space. This conservatively allows for 10,000 sf of warehouse/office space, 8,000 sf open-sided warehouse space and 40,000 sf of uncovered exterior yard space available for the Lessee to use for its freight business, which is located on the premises. Beginning in January 2019, an additional 555sf of warehouse/office space and 2,340sf of exterior yard space became available for the lessee as two of the sublease extensions expired on 12/31/2018.

Each Sublessee is charged a CAM (costs and maintenance) fee currently totaling \$50,148.00 in annual additional income to the Lessee. The CAM is adjustable and equal to a percentage share of all property maintenance and operating expenses. The CAM includes water, electricity, sewer, insurance, real property taxes, landscaping, light bulbs, paving, repairs and any other costs or expenses the sublessor deems reasonable and necessary for maintaining and operating the premises. Considering the real property taxes for 2018 were \$26,694.36, staff believes the additional income derived from the CAM is expensed out by the costs associated with it. Therefore, our analysis does not include the CAM as additional income.

General Excise Tax is charged to the Sublessees in addition to the base rent and CAM. Therefore, our analysis does not include General Excise Tax as an expense.

The lease allows the Board to review and approve the sublease rent and, if necessary, to revise the rent of the demised premises based on the rent charged to the sublessee; provided that the rent may not be revised downward. However, the lease does not provide a method for calculating the rent revision.

Synopsis of subleases:

Phoenix V LLC dba BEI Hawaii:

Rent area: 9,500sf office/whse; 300sf loading ramp; 10,000sf exterior yard area
Sublease term: 03/01/2013 – 02/28/2018 Extension term: 03/01/2018 – 02/15/2023
Sublease rent rate: \$8,800/mth base plus \$1,176/mth CAM plus electric
Extension rent rate: \$8,000/mth base plus \$1,176/mth CAM plus electric

Island Equipment, Inc. dba American Machinery:

Rent area: 2,850sf office/whse; 10,500sf exterior yard area
Lease term: 07/01/2010 – 06/30/2015 Extension term: 07/01/2015 – 06/30/2021
Sublease rent rate: \$5,640.45*/mth base as of 07/01/2015 plus \$1,095/mth CAM
Extension rent rate: \$5,116.50/mth beginning 07/01/2018 base plus \$1,596.00/mth CAM
*Rent increases \$0.01/sf (\$133.50) annually.

D & M Hydraulic Sales & Service, Inc.:

Rent area: 2,850sf office/whse
Sublease term: 03/01/2013 – 02/29/2016 Extension term: 03/01/2016 – 02/15/2021
Sublease rent rate: \$3,306/mth base plus \$912/mth CAM
Extension rent rate and CAM remain the same

Brian Kelly dba Kelly's Tree Service:

Rent area: 2,340sf exterior yard area
Sublease term: 08/01/2013 – 07/31/2016 Extension term: 08/01/2016 – 12/31/2018
Sublease rent rate: \$912.60*/mth base as of 08/01/2015 plus \$115/mth CAM
Extension rent rate: \$982.80*/mth base plus \$115/mth CAM
*Rent increases \$0.03/sf (\$70.20) annually.

Dennis Florer:

Rent area: 555sf office/whse
Sublease term: 03/01/2013 – 02/29/2016 Extension term: 03/01/2016 - 12/31/2018
Sublease rent rate: \$360.75/mth base plus \$119.25/mth CAM
Extension rent rate and CAM remain the same

Atlas Recycling Centers, LLC:

Rent area: 4,000sf exterior paved yard area
Sublease term: 01/01/2013 – 12/31/2017 Extension term: 01/01/2018 – 02/15/2027
Sublease rent rate: \$1200/mth base plus \$120/mth CAM
Extension rent rate and CAM remain the same

HHB & Associates, LLC:

Rent area: 840sf office/whse
Sublease term: 07/01/2013 – 06/30/2016 Extension term: 07/01/2016 – 02/15/2027
Sublease rent rate: \$1,201.20*/mth base as of 07/01/2015 plus \$200/mth CAM
Extension rent rate: \$1,251.60*/mth base plus \$200/mth CAM
*Rent increases \$0.06/sf (\$50.40) annually.

Kama Aina Bail Bonds, Inc.:

Rent area: 460sf office/whse

Sublease term: 08/01/2012 – 07/31/2015 Extension term: 08/01/2015 – 02/15/2027

Sublease rent rate: \$575/mth base plus \$175/mth CAM

Extension rent rate and CAM remain the same

AGGREGATE ANNUAL CALCULATIONS: GL No. S-5700

	<u>½ 2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Annual Sublease Income	\$ 131,905.80	\$ 265,406.40	\$ 268,455.60	\$ 257,958.10
LESS Annual Amortization	<u>35,000.00</u>	<u>70,000.00</u>	<u>70,000.00</u>	<u>70,000.00</u>
	\$ 96,905.80	\$ 195,406.40	\$ 198,455.60	\$ 187,958.10
LESS Annual Ground Rent	<u>80,000.00</u>	<u>160,000.00</u>	<u>160,000.00</u>	<u>160,000.00</u>
Annual Net Sublease Income:	\$ 16,905.80	\$ 35,406.40	\$ 38,455.60	\$ 27,958.10

Average Annual Net Sublease Income: \$ 33,907.93

Staff was guided by the approved Rent Participation Policy item 1(c)(ii) for lessees paying fair market rent which states:

“If the lessee subleases improvements not owned by the State, the Board shall not receive any portion of sublease rents from subleasing improved space unless: (i) that right and method of calculation are specifically stated in the lease, or (ii) participation in sublease rents is warranted considering the age of the improvements (including but not limited to the extent to which the improvements have been depreciated or amortized), lessee’s expenditures to maintain the same in relation to sublease revenues, and the extent to which the lessee actually occupies and uses the lease premises for its own business.”

The Lessee purchased the lease at foreclosure in July 2015 for \$795,000 and therefore will need to amortize its initial investment over the remaining 11.5 years of the lease. The above calculation allows for full amortization of the Lessee's initial investment.

It is estimated that the expenditures for utilities, repairs, maintenance, property taxes and insurance are equal to the monthly CAM received from the subleases. The Lessee occupies the property for its own business and it is expected that the Lessee would bear some expenses for rent and grounds maintenance costs for its own business.

Further, the sublease extensions contain a provision that in the event DLNR increases the lease rent, the Lessee can increase the sublessee rents by a pro rata portion of that increase.

As illustrated in the above calculations, for the period July 2015 through December 2018 the Lessee's average net annual sublease income was \$33,907.93. This amount is in excess to all expenses except the Lessee's own operating costs.

Based on the analysis above, staff is recommending that the Board increase the annual lease rent by \$30,000 due to the excess income derived from the subleases.

Annual Lease Rent Adjustment for GLS-5700	\$	+30,000.00
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EXHIBIT C

Lease Term Sheet

Date of Lease: March 1, 2013

Name/Address of Sub lessor: Hiram Rivera

Kailua-Kona, HI 96745

Telephone:

Fax:

Name/Address of Sub lessee:

Phoenix V LLC

DBA BEI Hawaii

Marlene Adams-Chavez

311 Pacific Street

Honolulu, HI 96817

Telephone: (808) 532-7401

Fax: (808) 532-7500

Approx. Gross Square Feet:

10,000 sq. ft. of outside yard area

500 sq. ft./8500 sq. ft. office/warehouse

500 sq. ft. mezzanine/300 sq. ft. loading ramp

Term of Lease:

Five (5) years, commencing March 1, 2013 and terminating on February 28, 2018

Base Rent:

\$8800.00 per month plus general excise tax

Additional Rent

\$1176.00 per month plus general excise tax

Common Area Maintenance:

Plus electricity usage to be invoiced separately

TOTAL RENT:

\$10391.60

Security Deposit:

None

Agreed to, acknowledged and accepted by:

Sub Lessor

By: Hiram Rivera

Hiram Rivera

Date: 11/24/14

Sub Lessee:

By: Marlene Adams-Chavez

its CEO

Marlene Adams-Chavez

Date: 12/8/14

Base Rent and CAM are subject to change with a prior 30 days notice

SUBLEASE AGREEMENT

THIS INDENTURE OF SUBLEASE is dated and made and entered into as of the date set forth on the attached Lease Term Sheet by and between the Sublessor and the Sublessee.

THE PARTIES HERETO COVENANT AND AGREE AS FOLLOWS:

1. Premises.

Sublessor hereby leases to Sublessee, and Sublessee hereby leases from Sublessor, upon the terms and conditions set forth herein and in the attached Lease Term Sheet the space in Sublessor's building situated at Kealakehe in North Kona, Hawaii, bearing Tax Map Key Nos. (3) 7-4-20-18 and 20 and described and defined in the Master Lease. The area so leased herein is called the "Premises" and is shown in Exhibit "A" attached hereto and made a part hereof.

Sublessee acknowledges that the square footage of the Premises set forth on the attached Lease Term Sheet is merely an approximation of the actual area of the Premises. Notwithstanding that the square footage set forth on the attached Lease Term Sheet is an approximation, Sublessee agrees that the stated figure shall govern in any question relating to the area of the Premises, whether or not the actual square footage of the Premises is the same as the approximate square footage set forth on the attached Lease Term Sheet.

2. Term.

The term of this Sublease shall commence and terminate on the dates stated on the attached Lease Term Sheet and is contingent upon the approval of the Department of Land and Natural Resources.

3. Base Rent/Additional Rent.

Sublessee shall pay as rental for the demised premises, on or before the 1st day of each month in lawful currency of the United States to Sublessor, without notice, demand or deduction, at Sublessor's mailing address set forth in the attached Lease Term Sheet, or as Sublessor shall designate in writing, the base rent, together with applicable General Excise Tax.

In addition to the base rent, Sublessee agrees to pay, as additional rent, a percentage share of all property maintenance and operating expense. All additional rent will be due and payable each month together with the base rent. The additional rent figure on the attached Lease Term Sheet is based upon the Sublessee's percentage of the property's maintenance and operating expenses as of the date of commencement of the sublease term. Maintenance and operating expenses shall include the (i) Sublessor's overhead expenses pertaining to the common areas, (ii) costs of roof repairs, any other non-structural repairs, line painting, landscaping and irrigation, water, electricity, maintenance of utility meters, bulb replacement, cleaning up, sweeping and janitorial service, (iii) liability, fire, business interruption, property damage and other insurance, including any deductibles payable by the Sublessor, (iv) real property taxes and any and all other taxes, including any ground rent assessments or charges made under any betterment or improvement law, attributable to the property or the land on which it is located, (v) and any other costs which the Sublessor shall conclude, in its sole discretion, are reasonable and necessary for maintaining and operating the

Premises and/or property.

The undersigned as owner of PHOENIX V LLC DBA BEI HAWAII, the Sublessee herein, do hereby agree and promise to be personally liable and to guarantee the above described payment obligations of the Sublessee.

There shall be a late fee of 5% of the amount then due if any monthly rent is made ten (10) days after the due date. Sublessee shall pay an additional 5% for each payment the Sublessor does not receive by the 20th day of the month in which payment is due. Sublessee shall also pay Sublessor a charge of \$30.00 for any check received by the Sublessor from Sublessee, which is dishonored for any reason whatsoever.

In the event of an increase in rent charged to Sublessor under the Master Lease, the monthly rental shall be revised to reflect a pro rata increase.

4. Security Deposit.

Sublessee, with the execution of this Sublease, shall deposit with Sublessor the security deposit set forth on the attached Lease Term Sheet, to secure the faithful performance by Sublessee of the provisions of this Sublease. If Sublessee fails, during the term of this Sublease to observe and perform any of the provisions of this Sublease to be observed and performed by Sublessee, including, but not limited to, the provisions relating to the payment of any rent, Sublessor can use the security deposit, or any portion of it, to cure such defaults or to compensate Sublessor for all damages sustained by Sublessor resulting from Sublessee's default. Sublessee shall immediately, on demand, pay to Sublessor a sum equal to the portion of the security deposit expended from the sum deposited with Sublessor. Anytime the Base Rent increases during the term of this Sublease, Sublessee shall, upon written request from Sublessor, deposit additional monies with Sublessor as an addition to the security deposit so that the total amount of the security deposit shall at all times bear the same proportion to the then current Rent. Application of the security deposit, or any portion of it, by Sublessor as provided in this paragraph shall not cure the Sublessee's default nor preclude Sublessor from pursuing any of the Sublessor's other rights upon Sublessee's default. Upon the termination of this Sublease and the peaceable surrender of the premises in good condition, as herein provided, Sublessor shall refund to Sublessee the balance of the security deposit, if any, then remaining in Sublessor's hand, provided Sublessee has paid all of the rent and other charges due hereunder and has otherwise performed all of Sublessee's obligations hereunder. Sublessor shall not be required to keep this security deposit separate from its general funds, and Sublessee shall not be entitled to interest on such deposit.

5. New Tax or Payment.

If any governmental entity or other person or party, including the Master Lessor, shall impose upon or require the Sublessor to pay any tax, charge, expense, fee, license or any other charge or cost not provided in this Lease on account of or as a result of the tenancy by Sublessee, then Sublessee understands, agrees and promises to pay its proportionate share of such new tax, charge, expense, fee, license or any other charge or cost as an item of operating expense. It is understood and agreed that the intent of this provision is to permit the Sublessor to realize an amount which, when added to such new tax, charge, expense, fee, license or any other charge or cost, shall yield to the Sublessor a net amount equal to that the Sublessor would have realized if there had been no such new tax, charge, expense, fee license or any other charge or cost. Provided, however, that no taxes attributable to Sublessor's income shall be so assessable.

6. Fire Insurance.

Sublessor agrees to maintain on the Building a policy of standard fire and "All Risk" extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of the full insurable value thereof; provided, that such insurance shall not cover the improvements, fixtures, personal property or contents of or located in the Premises.

7. Repairs and Maintenance.

a. Condition of Premises. Sublessee accepts the premises in its present "AS IS, WHERE IS" condition and releases Sublessor from all obligations to repair, modify or alter the premises and from all claims that may arise from any and all known defective (or alleged defective) conditions, other than latent defects and latent defective conditions which cannot be discovered upon reasonable inspection.

b. Sublessee's Obligations. In accordance with the terms of the Master Lease, and except as otherwise provided in subparagraph c. below, Sublessee will, at its own expense, at all times during the effective term hereof, well and substantially keep and maintain the demised premises and all fixtures and improvements (other than the building exterior) in or on said premises in good condition, order and repair, reasonable wear and tear excepted. Sublessee shall not damage or deface the walls, floors or ceilings, nor damage or obstruct hallways or other common areas, nor commit an act, which may damage the structural parts of the building of which the Premises are a part. All damage or injury done to the Premises by Sublessee, or by any persons who may be in or upon the Premises with the express or implied consent of Sublessee, shall be paid for by Sublessee and Sublessee shall pay for all damage to the building of which the Premises are a part caused by Sublessee's misuse of the Premises or the appurtenances there to. Sublessee shall pay for the replacement of doors or windows of the Premises, which are cracked or broken by Sublessee, its employees, agents or invitees. Sublessee is also responsible for the replacement and maintenance of air conditioning units of the Premises.

c. Sublessor's Obligations. Sublessor, at its own cost and expense, shall maintain, repair and replace, as necessary, all structural and load bearing walls, the foundation and/or slab, the roof (including the roof trusses and roof membrane), and all utility lines and conduits located under the ground, under the foundation of the Building or outside the perimeter of the Building. Notwithstanding any contrary provision contained herein, none of the foregoing shall be included in Operating Expenses.

8. Use of Premises.

Sublessee shall use and occupy the Premises for the purpose of carrying on the business described on the attached Lease Term Sheet and for no other purpose or purposes. All operations by the Sublessee in the conduct of its business shall be performed within the demised Premises and in no other areas of the property without the written consent of the Sublessor. Sublessee specifically agrees and covenants that Sublessee shall not cause or allow any spillage or seepage of hazardous materials on the premises, including, but not limited to, oil and fuel. Sublessee will during the effective term of this Agreement keep said premises in a strictly clean and sanitary condition, and will also comply with all rules, regulations, ordinances and/or laws made by the Board of Health and/or other proper authority of the municipal, county, state or federal government applicable to said premises and will indemnify and hold harmless Sublessor against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of said rules, regulations, ordinances and/or laws or of this covenant, unless such nonobservance or nonperformance is caused by acts or

omissions of Sublessor or its employees, agents or contractors. Sublessee shall not knowingly use or occupy the Premises for the purpose of storing junk, scrap or other offensive materials and shall not make or suffer any strip or waste or unlawful, improper or offensive use of the Premises, nor shall Sublessee knowingly use or permit the Premises or any part thereof to be used in any manner or for any purpose which will increase the then existing rate of insurance upon the building of which the Premises are a part, or cause a cancellation of any insurance policy covering said building of any part thereof, nor shall Sublessee knowingly sell, store or permit to be kept, used or sold in or about the Premises any article which may be prohibited by any policy or policies of fire insurance applicable to the Premises and to the activities of Sublessee therein permitted. Any increase in premiums or surcharges or damages resulting from any such prohibited use shall be paid by Sublessee to Sublessor; provided, however, that the foregoing shall not apply to increases in premiums which are attributable to inflation or other premium increases unrelated to the activities of Sublessee therein.

Sublessee agrees to abide by Sublessor's Rules and Regulations, which are attached hereto, marked Exhibit "B", and incorporated herein by this reference.

9. Improvements.

a. Sublessee shall be solely responsible for the cost of all alterations, improvements or modifications to the demised premises. Any and all such alterations, modifications or improvements shall be in accordance with plans and specifications submitted to Sublessor in accordance with the terms of the Master Lease for approval in advance of construction. Sublessee shall submit lien releases from all labor and material suppliers to Sublessor and Sublessee shall indemnify and hold Sublessor and Lessor harmless for the cost of any and all such improvements, modifications or alterations, and the indemnifications and hold harmless shall include but not be limited to the cost of installation, removal, repair, reasonable attorneys' fees and costs.

b. Any and all structural alterations and interior improvements, including but not limited to, electrical installations, interior walls and partitions, shall be done in accordance with the terms of the Master Lease, and shall immediately become the property of Sublessor. Sublessee shall remove upon termination of this Sublease, or after extensions thereof, all trade fixtures and equipment that has been installed and such other non-structural improvements (other than the partitions and doorways approved by Sublessor) as Sublessor may require to be removed, subject, however, to the rights, requirements and conditions set forth herein. In any event, all alterations, additions and installations shall be made in full compliance with all applicable regulations and codes, and only after obtaining all required governmental permits and approvals.

c. Sublessee shall maintain the existing wall for security, which will separate and preserve Sublessee's premises from those of other tenants.

10. Master Lease: Subordination.

a. This Sublease is subject to the terms, provisions and conditions of that certain Harbor Lease No. H-72-1 dated February 24, 1972 by and between State of Hawaii, Department of Transportation, as Lessor, and AMFAC, INC., also known as General Lease S-5700 administered by the State of Hawaii, Department of Land and Natural Resources, assigned to HIRAM RIVERA by mesne assignments, as Lessee, a copy of which has been made available to Sublessee, hereinafter called the "Master Lease".

b. Sublessee shall observe, perform and abide by all the applicable covenants and conditions with respect to the demised premises imposed upon or required to be observed by Sublessor herein under the aforesaid Master Lease, and will indemnify Sublessor and Ground

Lessor (State of Hawaii) against all actions, expenses, claims, demands and liability on account of any breach of said covenants, conditions, provisions and restrictions or any of them, except as may be expressly provided in this Sublease. Nothing contained in this Sublease shall be construed to give Sublessee any greater rights than Sublessor may have under the Master Lease.

c. Sublessor warrants and represents that it has the authority to enter into this Sublease and sublet the Premises to Sublessee, that the Master Lease is in full force and effect, and that this Sublease will not cause or constitute a default under the Master Lease. If by reason of breach on the part of Sublessor as Lessee under the Master Lease in the performance of any of the terms or provisions of the Master Lease, the Master Lease and the leasehold estate of Sublessor as Lessee thereunder is terminated or threatened to be terminated by summary possession or otherwise, Sublessee may, at its option, pay the rents of Sublessor under said Master Lease and receive credit therefor against the rents payable by Sublessee to Sublessor hereunder.

d. In the event the Master Lessor shall disapprove this Sublease, this Sublease shall be terminable upon thirty (30) days notice by either party.

11. Inspection.

Sublessee will at all reasonable times during the effective term hereof permit Sublessor or its agent to enter the demised premises upon twenty-four (24) hours notice and examine the state of repair and condition thereof in order to determine whether the covenants herein contained on the part of Sublessee are being fully observed and performed. Sublessee will repair and make good at its own expense all defects of which Sublessor or its agent shall give notice and for which Sublessee is responsible hereunder, within thirty (30) days after the giving of such notice. If Sublessee refuses or neglects to commence such repairs and complete the same within the said period, Sublessor may make or cause such repairs to be made and shall not be responsible to Sublessee for any loss or damage that may accrue to the property or business of Sublessee by reason thereof. If Sublessor makes or causes such repairs to be made, Sublessee hereby agrees to pay forthwith on demand to Sublessor the cost thereof, together with interest thereon at the rate of twelve percent (12%) per annum.

12. Sublessor's-Sublessee's Expenses.

Sublessee will pay to Sublessor on demand all costs and expenses including reasonable attorneys' fees incurred by Sublessor in enforcing any of the covenants herein contained, in remedying any breach by Sublessee thereof, in recovering possession of said premises, in collecting any delinquent rent, taxes or other charges hereunder payable by Sublessee, or in connection with any litigation commenced by or against Sublessee (other than condemnation proceedings) to which Sublessor, without any fault on its part, shall be made a party. Sublessor will pay to Sublessee, on demand, all costs and expenses, including reasonable attorneys' fees incurred by Sublessee in enforcing any of the covenants herein contained in remedying any breach by Sublessor, or in connection with any litigation commenced by or against Sublessor (other than condemnation proceedings) to which Sublessee, without any fault on its part, shall be made a party.

13. Indemnity.

Sublessee and the personal guarantors, if any, shall indemnify and hold Sublessor and Ground Lessor as harmless from and against all claims for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the use

or occupancy of said demised premises by Sublessee or any other person claiming by, through or under Sublessee, or any accident or any nuisance made or suffered thereon, or any fire thereon, or any failure by Sublessee to keep said demised premises in a safe condition, and will reimburse Sublessor and Ground Lessor for all its costs and expenses, including reasonable attorneys' fees incurred in connection with the defense of any such claims; provided the foregoing indemnification shall not apply to any claim caused by the negligent act or omission or intentional tort of Sublandlord or Landlord or any of their employees, agents, contractors, or invites.

Sublessee acknowledges that Sublessor does not provide any form of security or surveillance services.

Sublessor shall indemnify and hold Sublessee harmless from and against all claims for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the breach by Sublessor of any covenant of this Sublease or of any accident or negligence caused in whole or in part by Sublessor, his agents, guests, employees or his independent contractors, and will reimburse Sublessee for all of its costs and expenses, including reasonable attorneys' fees incurred in connection with the defense of any such claims.

14. Liability Insurance.

In accordance with the terms of the Master Lease, Sublessee will obtain at its own cost and expense and keep in force during the effective term of this Sublease a policy or policies of comprehensive general liability insurance in a form consistent with and as required by the Master Lease, and satisfactory to Sublessor and with an insurance company qualified to do business in the State of Hawaii, naming Sublessor and Lessors under the Master Lease and the State of Hawaii as additional insureds and a policy or policies of comprehensive general liability insurance in a combined single limited amount of not less than \$2,000,000.00 for bodily injury and property damage per occurrence; that said policy or policies shall cover the demised premises, including all buildings, improvements and grounds and all roadways and sidewalks on or adjacent to the demised premises in the control of Sublessee. Such policy or policies (or certificates evidencing the same) shall be deposited with Sublessor, together with a commitment from the insurance company endorsed thereon providing that said policy shall not be cancelled or changed without giving Sublessor thirty (30) days prior written notice.

15. Termination and Surrender.

At the end of the term hereof, or upon sooner termination of this Sublease, Sublessee will peaceably deliver up to Sublessor possession of the demised premises and all improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition, reasonable wear and tear excepted. Sublessee may remove all trade fixtures and equipment placed upon said premises by it after the commencement of this Sublease, and in such event shall replace and repair all damages to said premises caused by or resulting from such removal and shall leave said premises in a clean and orderly condition, all at its own expense. In the event Sublessee shall fail to perform such removal or restoration in accordance with the provisions of this paragraph and/or Paragraph 6 hereof, Sublessor may do so, and Sublessee within thirty (30) days after demand, accompanied by reasonably detailed documentation of the nature and cost of such removal and restoration, will pay to Sublessor the cost thereof, plus interest thereon at the rate of Twelve percent (12%) per annum and shall also reimburse Sublessor for any loss of rent occasioned by such removal and repair by Sublessor or by Sublessee's delay in so surrendering the premises, including without limitation any claim made by a succeeding tenant based on such delay; provided, however, that if Sublessee shall fail to

remove all of its goods, trade fixtures and equipment within thirty (30) days after the termination of this Sublease, such goods, trade fixtures and equipment may, at Sublessor's sole option, be deemed conclusively to have been abandoned by Sublessee and shall thereupon become the property of Sublessor.

16. Related Insurance Coverage.

At all times during the effective term of this Sublease and in accordance with the terms of the Master Lease, Sublessee will cause to have maintained in full force and effect a fire insurance policy in the full replacement value of all contents and leasehold improvements with extended coverage, vandalism and malicious mischief endorsements and in the event said demised premises shall be damaged by any risk covered by such insurance, Sublessee will cause to have such damage promptly repaired, provided, however, that if such damage shall render the demised premises partially or wholly untenantable, and it reasonably appears that such damage cannot be repaired by Sublessee within a reasonable time or in any event within ninety (90) days, either party hereto may elect to terminate this Sublease forthwith by giving the other party written notice of such termination. In the absence of any such election, there shall be an abatement of the basic monthly rental in proportion to the extent the usability of the premises is impaired, commencing on the date of the casualty and terminating on completion of the repairs. Notwithstanding the foregoing provisions of this paragraph, either party shall have the right to terminate this Sublease forthwith upon written notice to the other party in the event the premises are destroyed from any cause by more than fifty percent (50%), in which event rent paid in advance shall be apportioned as of the date of the damage.

17. Assigning and Subletting.

Sublessee may assign or sublease this Sublease with the prior written consent of Sublessor, which consent shall not be unreasonably withheld or delayed. In the event Sublessor denies consent, Sublessor must explain its reason for denial. All responses from Sublessor must be submitted to Sublessee within ten business days of receipt of Sublessor of Sublessee's request. Notwithstanding the foregoing, however, Sublessee may assign this Lease, or sublet all or any portion of the Premises, without Sublessor's prior written consent, to any corporation which is directly or indirectly controlled by or under common control with Sublessee or to any corporation or other business entity which acquires all or substantially all the assets of Sublessee; provided, however, that such controlled affiliated entity, or such acquiror, shall have a net worth greater than or equal to that of Sublessee, unless Sublessee continues to guarantee the rental to be paid. Except as permitted by the preceding sentence, Sublessee shall not sublet all or any part of the Premises, without the prior written consent of Sublessor, which consent shall not be unreasonably withheld. For any sublease, Sublessee agrees to remit to Sublessor, on a monthly basis as additional rent, 50% of the excess sublease rent collected under the sublease in excess of the pro rata share of the rent charged to Sublessee under this Sublease. Among other things, Sublessor may consider the following in making its determination whether to consent to the proposed sale, assignment, transfer, mortgage or sublease: (a) Sublessee shall act as guarantor of this Sublease for the remainder of the term hereof, (b) Sublessee is not then in default under the terms and conditions of this Sublease, and (c) the financial condition (must meet the same criteria Sublessor uses to select comparable Building tenants) and business experience (must be suitable for the Building considering the business of other tenants) of the proposed assignee or transferee is acceptable to Sublessor. Excess sublease rent shall exclude reasonable leasing commissions paid by Sublessee, payments attributable to amortization of costs of Sublessee's improvements made to the Premises at Sublessee's cost and other reasonable costs incurred by Sublessee. Any such sales, assignment, transfer, mortgage, sublease or parting with possession in violation of the foregoing shall, and at Sublessor's option be null and void. This Sublease shall not, nor shall any interest therein, be assignable as to the interest of Sublessee by petition of law without the written

consent of Sublessor.

18. Sublessor May Assign Sublease and Transfer Security: Subordination.

a. Sublessor may, without the consent of Sublessee, sell, assign, mortgage, transfer or hypothecate all of its right, title and interest in this Sublease, in the improvements constructed on the Premises, or its leasehold interest in the property of which the Premises are a portion, to the extent of its right, title and interest therein, so long as such action does not interfere with Sublessee's rights and possession under this Sublease.

b. In the event of any such mortgage or hypothecation, Sublessee shall promptly execute any and all documents, including, but not limited to, consents and true and accurate estoppel certificates, as may be deemed reasonably necessary to such transaction by Sublessor. Further, in the event that for any business purpose of Sublessor it shall be reasonably necessary for Sublessor that Sublessee execute documents including but not limited to consents and estoppel certificates, Sublessee agrees to execute any and all said documents, provided only that said documents accurately and truthfully reflect matters contained therein.

c. In the event any mortgagee of Sublessor shall elect to have this Sublease prior to or subordinate to its mortgage, then and in such event, upon such mortgagee notifying Sublessee to that effect, this Sublease shall have priority over or be subordinate to the lien of such mortgage; provided, however, that Sublessee shall not be required to effectuate any subordination or other document hypothecating any interest in the Land, Building or Premises unless the mortgagee or beneficiary named in such mortgage or deed of trust shall first enter into a Subordination, Non-Disturbance and Attornment Agreement in such form and content as may be reasonable. Sublessee covenants and agrees, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of the sale under any mortgage heretofore or hereafter made by Sublessor covering the Premises (and which may or may not also cover other premises) that Sublessee shall, upon request by the purchaser and provided that such purchaser agrees to perform such and every term, condition and provision required of Sublessor pursuant to this Sublease, attorn to the purchaser upon any foreclosure or sale and recognize such purchaser as Sublessor under this Sublease, it being the intent hereof that this Sublease shall, upon request by the purchaser, be reinstated as a lease between the purchaser and Sublessee, it being nevertheless understood that such purchaser shall not be liable for any act or omission of a prior Sublessor nor be subject to any offsets or defenses which Sublessee may have against any prior Sublessor. Sublessee, upon request of any party in interest, shall execute such instrument or instruments as shall be requested to carry out the requirements of this paragraph within thirty (30) days after receipt by Sublessee of written request therefor.

d. Sublessee shall provide to Sublessor and to any such mortgagee, upon written request therefor and at Sublessee's sole expense, estoppel certificates certifying, the date to which all rent has been paid, the Sublease has not been modified or amended (or stating the modifications or amendments), there are no outstanding breaches of the terms, conditions or covenants contained in this Sublease on the part of either Sublessor or Sublessee (or stating the breaches), and such other certifications as Sublessor and any mortgagee shall reasonably require from time to time.

19. Risk of Loss.

Sublessor shall not be liable to Sublessee for any loss or damage to Sublessee's personal property kept or stored on the demised premises from any cause whatsoever, including

without limitation loss or damage caused by the failure or interruption of utility services to the demised premises, or by the breaking or bursting of any utility line or main, or by flooding of or fire on the demised premises, or by the acts of Sublessor's other tenants. All property kept or stored thereon, by whomsoever owned, shall be so kept or stored at Sublessee's sole risk, and Sublessee shall hold Sublessor harmless from any claims for loss or damage to said property including subrogation claims by Sublessee's insurance carriers, other than damage caused by the willful act or gross neglect of Sublessor, or breach by Sublessor of his obligations.

20. Default and Rights of Sublessor on Default.

This Sublease is made upon the condition that, if Sublessee shall fail to pay the said rent or any part thereof or make any other payment due hereunder within fifteen (15) days after notice from Sublessor that the same has become due, or shall finally and without further possibility of appeal become bankrupt or insolvent, or shall fail faithfully to observe or perform any of the covenants herein contained and on the part of Sublessee to be observed and performed within thirty (30) days after receipt of notice from Sublessor (provided, however, that if the default complained of shall be of such nature that the same cannot be completely remedied or cured within such thirty-day period, then such default shall not be an enforceable default against Sublessee for the purposes of this Paragraph if Sublessee shall have commenced curing such default within such thirty-day period and shall proceed with reasonable diligence and in good faith to remedy the default complained of); or shall abandon the Premises and fail to pay rent when due, or make an assignment of Sublessee's property for the benefit of creditors, or if this Sublease or any estate or interest hereunder shall be taken under any writ of execution, THEN AND IN ANY SUCH EVENT, Sublessor may at once re-enter the Premises or any part thereof in the name of the whole and at its option terminate this Sublease by written notice to Sublessee and thereupon take possession of the Premises and all improvements thereon and thereby become wholly vested with all right, title and interest of Sublessee or those claiming by, through or under Sublessee and its effects, all without service of additional notice or resort to any legal process, and without being deemed guilty of any trespass or becoming liable for any loss or damage which may be occasioned thereby and without prejudice to any other remedy or right of action which Sublessor may have for arrears of rent or for any preceding or other breach of contract. Whether or not Sublessor shall have taken any action above permitted, Sublessor may bring an action in the District Court of the Third Circuit of the State of Hawaii or any other court of competent jurisdiction for summary possessions in case of such default. Sublessor, in addition to any other rights or remedies it may have, may immediately enter into the Premises and take possession thereof and may use all force necessary to effect such entry and/or to hold such possession and/or to remove Sublessee and/or any person and/or property from the Premises. Any portion removed by Sublessor may be stored in any public warehouse or elsewhere at the cost, and for the account, of Sublessee and Sublessor shall not be responsible for the care or safekeeping thereof. In case of a default in the payment of any amounts due Sublessor hereunder, Sublessor, in addition to the remedies it may have, may take possession of said property or any part or parts thereof and sell or cause the same to be sold at public or private sale, with or without notice, and apply the proceeds of said sale toward the cost thereof and then toward any money which may be owing to Sublessor pursuant to the terms hereof.

21. Right to Issue a new Sublease to a Third Party.

Should Sublessor elect to re-enter and take possession of the Premises, as provided in Paragraph 20 above, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Sublease, or it may from time to time without terminating this Sublease make such reasonable alterations and repairs as may be necessary to grant another sublease to a third party for the use of the Premises or a part thereof for such term

or terms (which may be for a term extending beyond the term of this Sublease) and at such rent and upon such other terms and conditions as Sublessor in its sole but reasonable discretion may deem advisable. If Sublessor relets for a period longer than the current Sublease term, then any special concessions given to the new Sublessee shall be allocated throughout the reletting term to unduly reduce the amount of consideration reserved by Sublessor during the remaining period of Sublessee's term. Upon each such granting of a new sublease, all rent received by Sublessor from said third party shall be applied, first, to the payment of any indebtedness other than rent due and unpaid hereunder from Sublessee to Sublessor; second, to the payment of the payment of any reasonable costs and expenses incurred in issuing a new sublease, including reasonable brokerage fees (prorated over that part of the reletting term ending concurrently with the then current term of this Sublease) and reasonable attorneys' fees and costs of such alterations and repairs; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Sublessor and applied in payment of future rent as the same may become due and payable hereunder. If such rent received from said third party during any month is less than that required to be paid during that month by Sublessee hereunder, Sublessee shall pay any such deficiency to Sublessor upon demand. No such re-entry or taking possession of the Premises by Sublessor shall be construed as an election on its part to terminate this Sublease unless a written notice of such intention is given to Sublessee or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding the issuance of a new sublease to a third party without termination, Sublessor may at any time thereafter elect to terminate this Sublease for such previous default enumerated in Paragraph 20. Should Sublessor at any time terminate this sublease for any default enumerated in Paragraph 20, in addition to any other remedies it may have, Sublessor may recover from Sublessee all damages Sublessor may incur by reason of such breach, including the cost of recovering the Premises, reasonable attorneys' fees, and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Sublease for the remainder of the stated term over the then reasonable rental value of the Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Sublessee to Sublessor. Notwithstanding any contrary provision as may be contained in this Sublease, Sublessor shall make every reasonable effort to mitigate such loss by reletting the Premises upon reasonable terms as soon as reasonably possible thereafter. In no event shall Sublessor be entitled to any acceleration of any portion or additional rent.

22. Liquidated Damages.

If Sublessee shall, at the expiration or other termination of this Sublease, fail to yield up possession of the Premises to Sublessor, and Sublessor has not consented in writing to Sub-lessee's continued possession of the Premises, Sublessor shall have the option to require Sublessee to pay, and Sublessee shall pay as liquidated damages for each day possession is withheld, an amount equal to 125% of the daily rent computed on the thirty-day-month basis.

23. Hazardous Materials.

Sublessee shall not use any portion of the Land, Building or Premises for, and the business of Sublessee shall not involve the disposal, storage, treatment, processing or other handling of waste contamination, PCBs or other toxic or hazardous substances, including, without limitation, any substances defined or included in the definition of "hazardous substances", "hazardous waste", "hazardous materials" or "toxic substances" under any applicable laws

(collectively "Hazardous Materials"). Sublessee expressly acknowledges and agrees that it will reimburse, defend, indemnify and hold harmless Sublessor and Ground Lessor from and against any and all liabilities, claims, damages occurring to Land, Building or Premises, penalties, expenditures, losses or charges (including, but not limited to, all costs of investigation, monitoring, legal fees, remedial response, removal, restoration or permit acquisition) which may now or in the future, be undertaken, suffered, paid, awarded, assessed or otherwise incurred as a result of Sublessee's breach of its agreements as set forth in this Section. This indemnity shall survive the termination of this Lease and shall be for the benefit of the Sublessor and Ground Lessor and shall be assignable by Landlord to any subsequent purchaser of Sublessor's interest or any part thereof.

Sublessee is expressly required at all times during the term of this Lease to observe and perform the requirements of all "Hazardous Materials Laws". This term means and includes all federal, state or local laws, ordinance or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or hazardous materials, in, on or about the above-described Land, Building or Premises, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C., Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Clean Water Act, 33 U.S.C., Section 1251, et seq., the Clean Air Act, 42 U.S.C., Section 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2629, the Safe Drinking Water Act, 42 U.S.C., Sections 300f-300j, and any similar state or local laws or ordinances and the regulations now or hereafter adopted, published or promulgated pursuant thereto.

As used herein, the term "hazardous material" means and includes any substance which is toxic, ignitable, reactive, or corrosive or which is regulated by "Environmental Laws", including any and all radioactive materials, asbestos, polychlorobiphenyls, petroleum, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, toxic substances and any and all other substances or materials defined or as included in the definition of "hazardous substances", pursuant to state, federal or local governmental law.

24. Sublessor's Consent.

Whenever Sublessor's approval or consent hereunder is required, Sublessor shall not capriciously or unreasonably withhold or delay the same, nor shall Sublessor require the payment of any monies therefor, except a reasonable fee for services, including the services of any attorney, rendered in connection therewith.

25. Non-Waiver of Breach.

The acceptance of rent by Sublessor shall not be deemed to be a waiver by Sublessor of any breach by Sublessee of any term, covenant or condition of this Sublease, nor of Sublessor's right to declare and enforce forfeiture for any such breach. The failure of Sublessor to insist in any one or more instances upon strict performance of any of the terms, covenants or conditions of this Sublease, or to exercise any right or option herein conferred, or to serve any notice or to institute any action or proceeding, shall not be construed to be a waiver or a relinquishment for the future of any such terms, covenants, conditions, rights or options, but the same shall be and remain in full force and effect.

26. Condemnation.

If the demised premise is taken by any public authority under power of eminent domain, this Sublease shall terminate as of the date that possession of said premises is taken by such public authority, and all rent and other charges due hereunder shall be paid up to that date.

If only a portion of the demised premises is taken, this Sublease shall terminate as to the portion taken, but this Sublease shall continue in full force and effect as to the remainder of said premises, and the monthly rent due hereunder shall be reduced in the proportion that the area so taken bears to the area hereby demised.

All compensation payable for the land or building or other improvements thereon or damages of any type whatsoever awarded for any taking shall belong to and be the sole property of Sublessor, including any award, separately or otherwise made on account of Sublessee's leasehold interest; provided, however, that Sublessee shall have the right to claim and recover from the condemning authority, but not from Sublessor, such compensation as may be separately awarded or recoverable by Sublessee, in Sublessee's own right, on account of any cost or loss to which Sublessee might be put in removing Sublessee's merchandise, furniture, fixtures, equipment and business from the demised premises.

27. Destruction of Premises.

a. If either the Building, Premises or Common Area shall be destroyed or damaged in any way by fire, flood, tornado, hurricane, earthquake, windstorm, hail or otherwise, Sublessor shall, at its own cost and expense and in conformance with all applicable laws and ordinances, diligently and promptly repair rebuild and restore the Building, Premises and Common Areas to at least as good a condition in which they existed immediately prior to such destruction or damage and, from the date of such destruction or damage until such time as the Building, Premises and Common Areas are repaired and restored as aforesaid, all base rent, additional rent and other charges payable hereunder shall be equitably abated from the date of such destruction or damage to reflect the lesser utility of the Premises to the extent there is substantial interference with the operation of the business of Sublessee in the Premises.

b. Notwithstanding the provisions of subparagraph (a) above, in the event that the Premises, Building and/or Common Areas are destroyed or damaged to such an extent that same cannot be repaired and restored within one hundred twenty (120) days following said destruction or damage, either party may terminate this Sublease as of the date of said destruction or damage by giving written notice thereof to the other within twenty (20) days following said destruction or damage. In the event that this Sublease is not terminated as aforesaid but Sublessor does not in fact repair or restore the Building, Premises and Common Areas within one hundred twenty (120) days of said destruction or damage, then Sublessee may terminate this Lease as of the date of said destruction or damage by giving written notice thereof to Lessor within twenty (20) days following the expiration of said one hundred twenty (120) day period.

28. Waiver of Subrogation.

Notwithstanding the indemnity provision or any other contrary provision that may be contained in this Sublease, the parties release each other, and their respective authorized representatives, from any claims for damage to the Premises and/or Building and to the fixtures, personal property, Sublessee's improvements, and alterations of either Sublessor or Sublessee in or

on the Premises or Buildings or Common Areas that are caused by or result from risks insured against under any insurance policies carried by or required to be carried by the parties pursuant to this Sublease and/or Lease or was self-insured pursuant to this Sublease (including Sublessee's self insurance of its furnishings, fixtures, equipment and property under Paragraph 17 hereof) even though such damage or loss might have been occasioned by the negligence of Sublessor or Sublessee or any of their agents or employees.

Each party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy. Neither party shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy required by this Sublease. If any insurance policy cannot be obtained with a waiver of subrogation, or is obtainable only by the payment of an additional premium charge above that charged by insurance companies issuing policies without waiver of subrogation, the party undertaking to obtain the insurance shall notify the other party of this fact. The other party shall have a period of ten (10) days after receiving the notice either to place the insurance with a company that is reasonably satisfactory to the other party and that will carry the insurance with a waiver of subrogation, or to agree to pay the additional premium if such a policy is obtainable at additional cost. If the insurance cannot be obtained or the party in whose favor a waiver of subrogation is desired refuses to pay the additional premium charged, the other party is relieved of the obligation to obtain a waiver of subrogation rights with respect to the particular insurance involved.

29. Notice.

All notices, requests, demands or other communications with respect to this Sublease whether or not herein expressly provided for, shall be in writing and shall be deemed to have been duly given either (a) forty-eight (48) hours after being mailed by United States First-Class, certified or registered mail, postage prepaid, return receipt requested, or (b) the next business day after being deposited (in time for delivery by such service on such business day) with Federal Express or another national courier service, for delivery to the parties at the addresses shown on the Lease Term Sheet (which such addresses may be changed by either party by giving written notice thereof to the other).

Furthermore, Sublessor hereby agrees to promptly provide Sublessee with copies of all notices, writings or documents which it receives from the Lessor or Lessor's representative, or from any other person or entity which notices, writings or documents in any way affect Sublessee's use or occupancy of the Premises or the rights granted Sublessee pursuant to this Sublease.

30. Applicable Law.

The laws of the State of Hawaii shall govern the validity, construction and effect of this Sublease.

31. Binding Effect.

This Sublease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

32. Excuse of Performance.

Anything in this Sublease to the contrary notwithstanding, neither Sublessor nor Sublessee shall be deemed in default with respect to the performance of any of the terms,

covenants and conditions of this Sublease except for the obligation to pay and if the same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, inability after due diligence to obtain any material or service, through act of God, unusual and severe weather condition, or other cause beyond the control of the party obligated to perform. Any party utilizing this provision to suspend its obligation shall give prompt notice to the other party describing such condition and its anticipated effect and shall use commercially practicable efforts to eliminate or reduce the effect of such condition.

33. Reservations by Sublessor.

In addition to other rights conferred by this Sublease or by law, Sublessor reserves the right, to be exercised in Sublessor's sole discretion but at Sublessor's sole cost and expense, and subject to the terms and conditions and provisions of this Sublease, to:

- a. Install and maintain a sign or signs on the exterior or interior of the building;
- b. Have passkeys to the Premises;
- c. Repair, alter, add to, improve, build additional stories on, or build adjacent to said Building provided Sublessee's rights in the Premises and rights of this Sublease are not adversely affected;
- d. Run necessary pipes, conduits and ducts through the Premises, provided Sublessee's rights in the Premises and rights of this Sublease are not adversely affected and Sublessee's business operations are not unreasonably disturbed;
- e. Carry on any work, repairs, alterations or improvements in, on, or about the Building or in the vicinity thereof, provided Sublessee's rights in the Premises and rights of this Sublease are not adversely affected and Sublessee's business operations are not unreasonably disturbed. This paragraph shall not be construed to diminish the obligations of Sublessee with respect to repairs or improvements or other obligations of Sublessee provided herein, nor shall it be construed to create or increase any obligation on the part of Sublessor with respect to repairs or improvements;
- f. Take all reasonable measures, as may be necessary or desirable for the safety of the Premises or the Building.

34. Subordination to Lease.

Sublessee understands and agrees that the Premises are located upon and with property subject to the Lease by and between the State of Hawaii, as Lessor, and Hiram Rivera, as Lessee. In certain situations, the Premises are located upon and within property subject to a master lease (the "Master lease") in which Sublessor is the subtenant under the Master Lease. This Sublease is made expressly subject and subordinate in all respects to the terms and provisions of the Lease and, if applicable, the Master Lease, and in the event of any conflict among the master lessor, lessor, Sublessor and Sublessee, regarding contradictory terms and provisions of this Sublease as compared to the terms and provisions of the Lease or if applicable, the Master Lease, the terms and provisions of the Lease (or Master Lease) shall prevail. Sublessee agrees to abide by all of the terms and conditions of the Lease (or Master Lease) and all rules and regulations, if any, promulgated by Lessor (or master lessor) thereunder pursuant to the Lease (or Master Lease).

35. Amendments.

This Sublease may be amended or modified only by a written instrument executed by the parties hereto.

36. Headings.

The headings of sections, paragraphs and subparagraphs herein are inserted only for convenience and reference and shall in no way define, limit or describe the scope or intent of any provision of this Sublease.

37. Due Authority.

Each party represents and warrants that it has all requisite power and authority to execute this Sublease. The execution and delivery of this Sublease by the person(s) signing on its behalf have been duly authorized by all necessary corporate action. This Sublease constitutes the legal and binding obligations of both Sublessor and Sublessee, enforceable in accordance with its terms. Both Sublessor and Sublessee acknowledge that they have retained or have had an adequate opportunity to retain an attorney to review the terms and conditions of this Sublease on their behalf.

38. Broker's Commissions.

Sublessor and Sublessee represents to each other that it has not entered into any agreements, written or oral, which would create liability on the part of the other party for payment of commissions, finder's fees or other compensation in respect of this transaction and shall indemnify, defend and hold harmless the other party from and against any claims, demands, actions, judgments, liabilities or expenses arising therefrom, including attorneys' fees, costs of investigation and defense, and court costs.

39. Interpretation of Agreement.

The parties acknowledge that they have been represented and advised by legal counsel in the negotiation and legal effects of this Sublease. The terms and language of this Sublease have been negotiated in depth by the parties and their counsel and shall therefore not be construed either for or against any party.

40. Attorneys' Fees.

In the event of litigation between the parties under this Sublease, the prevailing party shall be entitled to recover, in addition to any judgment or order rendered therein, all costs and expenses of suit, including reasonable attorneys' fees.

41. Entire Agreement.

This Sublease (and the Exhibits attached or to be attached hereto) constitutes the entire agreement between the parties hereto regarding the subject matter hereof and supersedes any and all prior or contemporaneous negotiations correspondence, understandings and agreements, written or oral, between the parties and/or their representatives.

42. No Accord and Satisfaction.

No payment by Sublessee or receipt by Sublessor of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of rents due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of rent to be deemed an accord and satisfaction, and Sublessor may accept such check or payment without prejudice to Sublessor's right to recover the balance of such rent or pursue any other remedy in this Sublease provided.

43. Time of the Essence.

Time is of the essence in the observance and performance of all of the terms, covenants, conditions and provisions of this Sublease.

44. Special Conditions.

a. Sublessee acknowledges and agrees that the Premises demised hereunder comprise only a portion of the real property demised under the Lease to Sublessor and that Sublessor will be subleasing other portions of the subject real property to third parties.

b. For any such future sublease to third parties, Sublessor agrees that said subleases shall require the tenants therein to comply with all local, state or federal environmental laws. Sublessor further agrees that such future subleases will not be to third parties who would cause or increase the likelihood of causing any violations of Hazardous Materials Laws. Sublessor hereby agrees to provide information to Sublessee concerning the business operations and use and handling of Hazardous Materials by such third parties, as reasonably available. Sublessee shall have the burden of demonstrating to Sublessor's reasonable satisfaction that a prospective subtenant would cause or increase the likelihood of causing any such violations.

45. Default by Sublessor.

If at any time during the term Sublessor shall fail to: (i) perform any of its obligations under the Lease or this Sublease, (ii) make any payments required of it pursuant to the Lease or this Sublease, (iii) make any mortgage ground rent or other required payments on the Land, Building or Premises then in any of such events Sublessee may (but shall not be required to):

a. If any such failure shall continue for a period of fourteen (14) consecutive business days after Sublessee gives written notice thereof to Sublessor, perform such obligations and/or make such payments and deduct the cost thereof, together with interest thereon at the rate of twelve percent (12%) per annum from the base rent; and

b. If any such failure shall cause disruption in Sublessee's normal business operations being conducted on the Premises for a period of fourteen (14) consecutive business days after Sublessee gives written notice thereof to Sublessor, abate the base rent and additional rent for the period of such disruption; and

c. If any such failure prohibits Sublessee from conducting its normal business operations on the Premises for a period of thirty (30) consecutive days after Sublessee gives written notice thereof to Sublessor, terminate this Sublease; and

d. Exercise any and all other rights and remedies available to Sublessee at law or in equity.

46. Taxes.

a. Sublessor shall pay to the public officers charged with the collection thereof, before any fine or penalty may be added thereto for the nonpayment thereof, all real estate taxes, assessments, and other governmental charges general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever in said categories (all of which taxes, assessments and other governmental charges are hereafter referred to as "Impositions"), that are assessed upon the Land and Building and become payable during the term of this Sublease; provided, however, that if, by law, any such Impositions may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Impositions), Sublessor shall pay only such installments as shall become due during the term of this Sublease.

b. Sublessor shall pay to the public officers charged with the collection thereof before any fine or penalty may be added thereto for the nonpayment thereof, all taxes assessed or levied against Sublessor's personal property located in or on the Land or Building.

c. Sublessee shall pay to the public officers charged with the collection thereof before any fine or penalty may be added thereto for the nonpayment thereof, all taxes assessed or levied against Sublessee's personal property located in or on the Premises.

47. Authority.

Sublessee warrants that it is duly licensed, if required, and authorized to do business in the State of Hawaii and that the person signing this Sublease Agreement has the authority to bind Sublessee.

48. Execution in Counterparts.

This Sublease may be executed in counterparts, each copy of which, when executed and delivered shall be deemed an original, but all such copies shall together constitute one and the same instrument. For purposes of this Sublease, facsimile signatures shall be acceptable and effective as of the date of execution; provided, however, that the original of said signatures shall be promptly forwarded to the other party and substituted for the same.

49. Sublessee's Signs.

Sublessee shall have the rights to post or erect signs on the Premises so long as they comply with all laws, and Sublessee has first obtained the written consent of Sublessor, which consent shall not be unreasonably withheld.

50. Interpretation.

The terms "Sublessor" and "Sublessee" shall include Sublessor and Sublessee above-named and their respective heirs, personal representatives, administrators, successors, successors-in-interest and assigns. The use of the singular number shall be construed to include the plural; and the use of the masculine gender shall include all genders; wherever the context shall so require. The term "premises" or "demised premises" shall include (except where such

meaning would be clearly repugnant to the context), the property described hereinabove and all additions and alterations thereto now existing or hereafter made.

IN WITNESS WHEREOF, the parties have signed this Sublease on the day and year first above written.

SUBLESSOR:

Hiram Rivera
Hiram Rivera

SUBLESSEE:

PHOENIX V LLC DBA BEI HAWAII
By Maureen A. Hamblin
its CEO

EXHIBIT "B"

- (1) The driveways, sidewalks, parking areas, entrances and other common elements shall not be used by any other Sublessee or employee, agent or invitee, nor shall they be used for any purpose other than ingress to or egress from Sublessee's Premises.
- (2) No trash dumpsters, boxes, shipping crates or other articles shall be put in front of, or affixed to, any part of the exterior of the building of which the premises are a part without the prior written consent of Sublessor.
- (3) Sublessee shall not connect any gas or water pipes in or about the Premises, nor use or connect any electrical wire in or about the Premises, any X-ray machines, water heater, refrigerator, stove or any other apparatus requiring comparable electrical power, without obtaining Sublessor's prior written consent. No water-cooled condenser or other water-cooled apparatus shall be used by Sublessee, except with the written consent of Sublessor and only upon such condition as shall be specified in writing by Sublessor in such consent. If water beyond any installed basin and toilet is to be used in the Premises, Sublessee will at Sublessee's cost, install a water submeter and will be billed monthly for all water used.
- (4) No animals of any kind shall be brought into or kept in or about the Premises, and no cooking shall be done or permitted by Sublessee in the Premises without the prior written consent of Sublessor.
- (5) No loud noises or noxious or offensive activity shall be carried on, in or about the Premises nor shall anything be done or placed thereon which may be or become a nuisance, or cause disturbance or annoyance to any of the other Sublessees in the building of which the Premises are a part or any other adjacent or adjoining property. Without limiting any of the foregoing, Sublessee shall not cause, or permit, any unusual or objectionable odors to be produced upon or permeate from the Premises.
- (6) Neither Sublessee nor any of its employees, agents, visitors, or licensees shall at any time bring or keep upon the Premises any flammable, combustible or explosive fluids, chemicals, or substances, unless specifically approved in writing by Sublessor and then only in strict compliance with all applicable laws, ordinances, rules and regulations.
- (7) Sublessee shall not permit any portion of the Premises to be used for the possession, storage, manufacture, or sale of narcotics or controlled substances in any form, nor shall Sublessee permit the storage in bulk, manufacture, or sale of intoxicating liquors, unless the same is specifically provided for by Sublessee's Sublease.
- (8) The Premises, or any part thereof, shall not be used as a residence or for lodging or sleeping.

- (9) Canvassing, soliciting, or peddling in the building of which the Premises are a part is prohibited, and Sublease shall cooperate fully to prevent the same.
- (10) Sublessee shall, before leaving the building of which Premises are a part, close and securely lock all windows and doors of the Premises, turn off all water faucets or water apparatus, and turn off all electrical equipment (excluding all required lighting) within the Premises. Sublessee will be responsible for all injuries sustained by other Sublessees or occupants of the building of which the Premises are a part due to any failure to abide by any rules and regulations contained herein.
- (11) No window shall be tinted and no reflective window coverings will be permitted.
- (12) Sublessor reserves the right to close off any and all of the roadways, parking areas and sidewalks for twenty-four (24) hours once every year or as Sublessor in its sole discretion deems necessary to sustain ownership rights to the foregoing areas.
- (13) Sublessor is not responsible or liable to Sublessee for the non-observance or violation of any of these rules and regulations by any other Sublessee, and Sublessor reserves the right to enforce, or not enforce, any of these rules and regulations as to a particular Sublessee.
- (14) Sublessor reserves the right to regulate and limit parking within Sublessor premises.
- (15) Sublessee shall store any and all trash within the interior of the premises or at designated disposal sites until removal of the same. No material shall be placed in trash receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary removal and disposal of trash and garbage, or without being in violation of any law or ordinance governing such disposal. All trash shall be removed by Sublessee as promptly as possible so that the Premises shall, at all times, be kept in a clean and sanitary condition. Excessive use of the trash dumpster(s) will cause the Sublessee to bear the cost of the extra pickup.
- (16) No signage or posters are to be taped, glued or affixed to glass doors or glass windows or any exterior building surface without the prior written approval of Sublessor.
- (17) Sublessee shall not damage or penetrate the roof of the Premises or any other portion of the roof of the building of which the Premises are a part.
- (18) All deliveries are to be made to designated service or receiving areas and Sublessee shall request delivery trucks to approach their service or receiving areas by designated service routes and drives. All delivered goods shall immediately be moved into Sublessee's Premises and shall not be left in parking or receiving areas.
- (19) Sublessee shall not permit or suffer merchandise of any kind, including Sublessee's work product and trade goods, at any time to be placed, exhibited or displayed outside its Premises.

- (20) No locks other than those provided by Sublessor shall be placed on any doors or windows, nor shall any changes be made to the mechanism of existing locks. No duplicate keys shall be made; all extra keys will be furnished by Sublessor at Sublessee's expense and all keys shall be surrendered upon termination of the Sublease.
- (21) No abandoned vehicles or non-working vehicles shall be stored or parked in any Common Area of the Premises. Sublessee must request permission in writing to the Sublessor if the duration of the stored or parked vehicle exceeds 48 hours.
- (22) Sublessees must ensure that the Common Area restrooms are kept clean and locked at all times. Patrons of the restrooms must obtain keys from the Sublessees prior to each use. If the restrooms are being misused or kept untidy, the Sublessor has the right to take action accordingly.

These Rules and Regulations have been adopted for the purpose of insuring order and safety and to maintain the rights of all Sublessees and Sublessor. Sublessor has the right to modify, amend, supplement, or rescind any of these Rules and Regulations.

Sublessee shall be liable for, and shall indemnify, defend and hold harmless Sublessor from and against any and all injury, damage, loss and/or expense, including reasonable attorney's fees, caused by, arising out of or in any way connected with the infraction of any of the above Rules and Regulations by Sublessee or any of Sublessee's employees, agents, visitors, or licensees. Sublessor may, without any obligation to do so repair any damage caused thereby and charge the resulting costs to Sublessee plus fifteen percent (15%) for Sublessor's reasonable overhead costs. Such costs shall be payable within fifteen (15) days after receipt of written demand, together with reasonable documentation of the nature and cost of repairing said damage, and, if unpaid, shall constitute a default for nonpayment of sums due under the Sublease.

In the event of any conflict between the terms of these Rules and Regulations and the terms of the Sublease, the terms of the Sublease shall control.

By signing below, Sublessee acknowledges that Sublessee has read the foregoing Rules and Regulations and agrees to abide by them during the term of the Sublease. These Rules and Regulations shall supersede any and all prior rules and regulations, which may have been promulgated by Sublessor relating to Sublessee's use and occupancy of the Premises covered by the Sublease.

Date: 12/8/14

Print Name

Warren Adam Davis

Signature

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN TO:

BY ☒ MAIL ☐ PICK-UP

TITLE OF DOCUMENT:

SUBLEASE EXTENSION AGREEMENT

PARTIES TO DOCUMENT:

LANDLORD: KEALAKEHE FREIGHT, LLC, a Hawaii limited liability company, whose mailing address is 60 Kuhio Street, Hilo, Hawaii 96720

TENANT: PHOENIX V LLC, dba BEI HAWAII, a Hawaii limited liability company, whose mailing address is 311 Pacific Street, Honolulu, Hawaii 96817

TMK: (3) 7-4-020-018 and 020

SUBLEASE EXTENSION AGREEMENT

THIS SUBLEASE EXTENSION AGREEMENT (the "Agreement") is dated this ____ day of _____, 20__, by and between KEALAKEHE FREIGHT, LLC a Hawaii limited liability company, whose mailing address is 60 Kuhio Street, Hilo, Hawaii 96720 (the "Landlord") and PHOENIX V LLC, dba BEI HAWAII, a Hawaii limited liability company, whose mailing address is 311 Pacific Street, Honolulu, Hawaii 96817 (the "Tenant").

Landlord acquired possession of the subject property pursuant to an Assignment from Fred Giannini, Commissioner duly appointed pursuant to that certain Findings of Fact, Conclusions of Law and Order Granting Motion for Summary Judgment and Interlocutory Decree of Foreclosure filed March 25, 2015, in the Circuit Court of the Third Circuit, State of Hawaii, in Civil No. 14-1-294K, recorded in the State of Hawaii Bureau of Conveyances as Document No. A-60090016 on June 14, 2016, and thereafter was assigned to Landlord pursuant to an Assignment of Lease, recorded in the State of Hawaii Bureau of Conveyances as Document No. 60090017.

Landlord assumed the previous Landlord and Tenant's certain unrecorded Sublease dated March 1, 2013, and being designated as Tax Maps of the State of Hawaii as Tax Map Key No. (3) 7-4-020-018, being approximately 10,000 square feet of outside yard space; 9,000 sq. feet of office/warehouse space and 500 sq. feet of mezzanine space; and 300 sq. ft. loading ramp space.

Pursuant to the Lease Term Sheet, the term thereof was from March 1, 2013 and terminating on February 28, 2018. The parties have agreed to an extension as provided herein.

For valuable consideration, the receipt and sufficiency of which is acknowledge, the Parties agree as follows:

1. The terms of the Sublease pursuant to the Lease Term Sheet shall be extended for an additional period, commencing on March 1, 2018.

2. Rent for the extended term shall be as follows:

For the period March 1, 2018 through December 31, 2018, Tenant shall pay to Landlord the sum of Eight Thousand Eight Hundred and 00/100 Dollars (\$8,800.00) per month plus general excise tax and the sum of One Thousand One Hundred Seventy-six and 00/100 Dollars (\$1,176.00) per month plus general excise tax, as common area maintenance fees. Said common

area maintenance fees may be adjusted from time to time to reflect actual costs incurred by the Sublessor.

3. Landlord and Tenant warrant and represent to each other that as of the date of this Agreement, they have no claims against each other which comprise a default under the Sublease, and that any such claims as of the date of this Agreement are hereby waived.
4. In all other respects, the Subleases shall remain in full force and effect, except as modified herein.

IN WITNESS WHEREOF, Landlord and Tenant have signed this instrument on the day and year first above written.

"LANDLORD"

KEALAKEHE FREIGHT, LLC, a Hawaii
limited liability company

By: _____
CONEN NAKAMURA
Its Manager

PHOENIX V LLC, d/b/a BEI HAWAII
a Hawaii limited liability company

By: _____
Its: _____
Of Marathon Group, LLC, Member

STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

On this ____ day of _____, 2018, before me personally appeared CONEN NAKAMURA, who did say that he is the Manager of KEALAKEHE FREIGHT, LLC, a Hawaii limited liability company, to me known (or proved to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.

Type/Print Name: _____
Notary Public, State of HAWAII
My Commission Expires: _____

NOTARY CERTIFICATION	
Doc. Date: _____	#Pages: _____
Notary Name: _____	
_____ Circuit	
Doc. Description: Sublease Extension Agreement	
Notary Signature _____	(Stamp or Seal) Date _____

STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

On this ____ day of _____, 2018, before me personally appeared _____, who did say that he/she is the _____ of Marathon Group, LLC, Member of PHOENIX V LLC, a Hawaii limited liability company, to me known (or proved to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument, and acknowledged to me that he/she executed the same as his/her free act and deed.

Type/Print Name: _____
Notary Public, State of HAWAII
My Commission Expires: _____

NOTARY CERTIFICATION	
Doc. Date: _____	#Pages: _____
Notary Name: _____	
_____ Circuit	
Doc. Description: Sublease Extension Agreement	
_____ (Stamp or Seal)	
Notary Signature _____	Date _____

Approved as to form:

JUNG & VASSAR, P.C.
A Law Corporation

By: _____
CAROL MONAHAN JUNG