

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

December 16 & 17, 2019

To: Chairman and Members, Hawaiian Homes Commission

Through: Tyler Iokepa Gomes, Interim Deputy to the Chairman *fy*
Office of the Chairman

From: Peter "Kahana" Albinio, Jr., Acting Administrator
Land Management Division *PA*

Subject: Consent to Assignment of General Lease No. 275 from Millennium HI Carbon, LLC ("Assignor") to Millennium HI Carbon Board of Hawaiian Affairs and Initiatives ("Assignee"), Kawaihae, Hawaii Island, TMK No. (3) 6-1-006:007

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission grant its consent to the following:

Assignment of General Lease No. 275 from Millennium HI Carbon, LLC, a Hawai'i limited liability corporation, as General Lessee/Assignor, to MHC Board for Hawaiian Relations & Initiatives, a Hawaii Corporation, as Assignee, subject to the following conditions:

1. The standard terms of the Department of Hawaiian Homes Lands' Consent to Assignment of Lease;
2. The review and approval of the Consent document by the Department of the Attorney General;
3. Assignee to provide its written acknowledgment and acceptance of the department's sublease rent participation policy, which was adopted by the HHC on April 24, 1987;
4. Assignee to furnish a Certificate of Insurance which verifies the issuance of a General Comprehensive Public Liability Insurance Policy in an amount acceptable to the Department and naming it as an additional insured;
5. Assignee to furnish a Certificate of Insurance which verifies the issuance of a Multi-peril Insurance Policy, that includes coverage against loss or damage by fire, in an amount equal to the maximum insurable value of all buildings and improvements on the demised premises and naming the Department as an additional insured;
6. Assignee to furnish a lease performance bond in an amount equal to two times the annual lease rent or substitute a security deposit in an amount equal to three months rent in lieu of a lease performance bond;
7. Assignee to accept the addition of a new provision, titled "**Interest, costs and fees**" to the lease document stipulating the interest rate on any and all unpaid or delinquent rentals shall be at one

ITEM NO. F-6

percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency. Also, in case of any default by LESSEE in the performance of the terms, covenants and conditions herein contained, LESSEE shall pay to LESSOR any and all costs incurred in connection with the default, including reasonable attorneys' fees. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, LESSEE shall pay, in addition to the indebtedness, reasonable collector's and/or attorneys' fees, together with all costs;

8. Assignee shall cure deficient rent for the twenty-nine (29) month period covering September 1, 2017 – January 1, 2020 in the total amount of THREE HUNDRED NINETY-FIVE THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$395,750.00) at such time that Assignee receives the New Market Tax Credit;
9. Assignor shall execute and sign or provide a signed copy of “First Amendment to General Lease No. 275 Between State of Hawaii Department of Hawaiian Home Lands, as Lessor, and Millennium HI Carbon, LLC, a Hawaii Limited Liability Company, as Lessee;
10. As a condition to this assignment, a portion of MHCBC’s annual net proceeds are reserved, to be negotiated at a later date;
11. Except as changed, modified or amended herein, all other terms and conditions of General Lease No. 275 shall continue and remain in full force and effect.
12. The Chairman of the Hawaiian Homes Commission is authorized to set forth any additional terms and conditions which shall ensure and promote the purposes of the demised premises; and
13. This action is subject to ratification by the Hawaiian Homes Commission.

DISCUSSION

General Lease No. 275 was originally awarded to KonaCarbon, LLC, as Lessee, for a fifty-five (55) year term commencing on March 10, 2009 as noted in the Memorandum of Lease dated March 23, 2009 and recorded in the State of Hawai‘i Bureau of Conveyances on July 22, 2009, Document No.: 2009-112379, (See Exhibit “A”) which Lease by mesne assignments was assigned to BIG ISLAND CARBON, LLC effective August 18, 2009 as noted in the Assignment of Lease recorded in the State of Hawai‘i Bureau of Conveyances as Document No.: 2009-133295, and the Consent to Assignment of Lease recorded with the State of Hawaii Bureau of Conveyances Document No. 2009-133296 (See Exhibit “B”), then assigned to MILLENNIUM HAWAII CARBON, LLC, a Hawaii limited liability company, by instrument dated and signed on January 20, 2015 unrecorded (See Exhibit “C”).

The following are pertinent information on GL No. 275:

General Lessee:	Millennium HI Carbon, LLC., a Hawaii Corporation
Location:	61-3277 Maluokalani Street, Kaei Hana II Industrial Subdivision, Kawaihae, Island of Hawaii
Tax Map Key No.:	(3) 6-1-006:007 (See Exhibit

Land Area: 12.961 Acres (564,581 sq. Ft.)

Term: 55 years; 03/01/2009 – 02/29/2064

Base Annual Rental: \$168,000.00; 12/1/2014 – 11/30/2024
\$201,000.00; 12/1/2024 – 11/30/2034

Rental Re-opening: The annual ground lease rent shall be reopened and re-determined on December 1, 2034 and 2044 for the ensuing ten-year periods, and on December 1, 2054 for the period ending February 29, 2064.

Character of Use: MG-1a (General Industrial)

Site Improvements: A carbon activation plant facility which is 95% complete at a cost of \$45 Million.

Current Delinquencies: \$742,000.00

In 2015, when MHC was assigned the lease, the Hawaiian Homes Commission granted a two (2) year rental to defer totaling in the amount of \$336,000.00, under the condition that the deferred amount in full payment be made no later than March 1, 2024. *As of December 2019, no payment(s) have been applied to the deferred amount.*

(\$336,000.00)

Current terms of the lease set payments at \$14,000 per month beginning January 1, 2017. The first payment made was March 16, 2019 and each month since in amounts ranging from \$500 to \$2,000. *As of December 10, 2019, (\$10,250.00) has been paid.*

Total Debt: \$395,750.00

PROPOSED DEBT MIGITATION STRATEGY

1. Suspend current base monthly lease rent of \$14,000 effective January 1, 2020.
2. Establish monthly rental amount of \$1,000 per month beginning January 1, 2020 through December 31, 2020.
3. The difference in monthly rent of \$13,000 per month (\$156,000 for the year of 2020) shall be deferred and added to the deferred rent of \$336,000 due March 2024. The new amount due in March 2024 is \$492,000.
4. Beginning January 1, 2021, reestablish base monthly lease rent in the amount of \$14,000 per month.

5. MHCBC will apply for the New Market Tax Credit. Successful application for the tax credit will result in the purchase of necessary equipment to restore operation to the primary activated carbon production envisioned under the current lease assignment. Failure to obtain the New Market Tax credit by January 1, 2021 will be a violation of the lease and result in termination of this agreement.

Consent to Assignment of Lease

Mr. Randolph Pomai Freitas informed the department through his proposal of June 13, 2019 of his desire and intent to assign the general lease interest demising the property identified as TMK: (3) 6-1-006:007 General Lease No. 275, to Millennium HI Carbon Board for Hawaiian Relations & Initiatives (“MHCBC”), a Hawaii Corporation.

On December 5, 2019, David H. Lesser, President and Manager of Millennium HI Carbon, LLC (“MHC”) signed and executed a Limited Power of Attorney appointing Mr. Randolph Pomai Freitas as the attorney-in-fact for MHC for the purpose of renegotiating terms of the lease, but not to include finalization of a Lease Agreement or execution of a Lease Agreement. (See Exhibit “E”). Mr. Freitas also serves as President and Board Member of MHCBC, the proposed assignee.

Authorization

Article Four, Condition No. 9. Titled Assignment, pages 10-11 of General Lease No. 275, states as follows: “Assignment.

(a) No Assignment Without Consent. LESSEE shall not assign this Lease without the prior written consent of LESSOR, which consent LESSOR shall not unreasonably withhold. Any assignment without LESSOR’s prior express written consent shall be void.

(b) Assumption of Lease. Any assignment of this Lease shall be specifically made and therein expressly stated to be made subject to all terms, covenants and conditions of this Lease, and the assignee therein shall expressly assume and agree to all such terms, covenants and conditions.

(c) Compliance with Hawaii Revised Statutes §171-36(a)(5). LESSOR may withhold its consent to any assignment unless the assignment meets the requirements of Hawaii Revised Statutes §171-36(a)(5), or any other successor statute imposing conditions on the assignment of leases of Lessor’s lands.

(d) No Change of Use. No assignment will be permitted if the assignee contemplates or proposes any change in the use of the Premises from that expressly permitted by this Lease.

(e) LESSOR’s Response. LESSOR shall respond to any request for its consent to an assignment of this Lease within thirty (30) days following LESSOR’s receipt of all financial statements, documents and other information reasonably necessary for LESSOR to make its determination (or within such longer time as may be reasonably required by it and of which it shall notify LESSEE within such thirty (30) day period). If LESSOR shall fail to approve or disapprove of a request for consent within the thirty (30) day period as the same may be extended, LESSOR’s approval shall be conclusively presumed.

(f) “Assignment” Defined. The term “assignment” as used in this Lease shall mean and include one or more sales or transfers by operation of law or otherwise by which:

(i) if LESSEE is a corporation, an aggregate of fifty percent (50%) or more of the total common stock or any class of voting stock of LESSEE;

(ii) if LESSEE is a partnership, an aggregate of fifty percent (50%) or more of the total partnership interests of LESSEE or a change of control of any general partner of LESSEE;

(iii) if LESSEE is a limited liability company, whether member-managed or manager-managed, an aggregate of fifty percent (50%) or more of the total membership interests of LESSEE or a change of control of any managing member of LESSEE;

(iv) if the LESSEE is any other form of entity, an aggregate of fifty percent (50%) or more of the legal, beneficial or other cognizable interests therein or in the governance, administration or control thereof; shall become vested in one or more individuals, firms, associations, corporations, partnerships, limited liability companies or other entities, or any derivative or combination thereof, who or which did not own directly not less than a ten percent (10%) interest, legally or equitably, in the LESSEE as of the Commencement Date or as of the date of LESSEE’s subsequent acquisition of this Lease by assignment, with the ownership of such interests in LESSEE being determined in accordance with the principles enunciated in Sections 318 and 544 of the Internal Revenue Code of 1986; provided, however, that the foregoing definition shall not apply with respect to a corporate LESSEE whose capital stock is listed on a recognized stock exchange or on the NASDAQ; provided, however, that a merger or acquisition of fifty percent (50%) or more of the outstanding stock of any such LESSEE shall be construed to be an assignment and shall require Landlord’s consent unless the successor or acquiring corporation has a net worth equal to or greater than LESSEE had at the time this Lease was executed, or at the time of any such merger or acquisition (whichever shall be the later); and provided further that, if LESSEE is a corporation, a change in ownership of the stock of LESSEE resulting from the death of a stockholder shall not be deemed a default hereunder if the decedent’s shares pass to a surviving spouse and/or issue or to a trust for the primary benefit of such spouse or issue.”

RECOMMENDATION

Land Management Division requests approval of the motion as stated.

40



R-732 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
JUL 22, 2009 02:00 PM
Doc No(s) 2009-112379



20 1/1 29

/s/ NICKI ANN THOMPSON
REGISTRAR
CONVEYANCE TAX: \$27357.22

LAND COURT *g* REGULAR SYSTEM
RETURN BY (X) MAIL () PICK-UP

*Damon Key Leongkup chak Hastart (MMS)
1003 Bishop St, Ste 1600
Honolulu, HI 96813*

TMK No.: (3) 6-1-06: parcel 7

This document contains 6 pages

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made and entered into as of *March 23* 2009, by and between the State of Hawaii, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LESSOR," and KonaCarbon, LLC, a Delaware limited liability company, whose mailing address is P. O. Box 276, Kamuela, Hawaii 96743, hereinafter called "LESSEE.

1. **TERM AND PREMISES.** For a lease term commencing on March 1, 2009, and ending as of midnight on February 29, 2064, upon the provisions set forth in that certain written lease of even date herewith from LESSOR to LESSEE ("Lease"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, LESSOR leases to LESSEE, and LESSEE leases from LESSOR, that certain real property ("Premises") located at Kaei Hana II Industrial Subdivision, Kawaihae, Island of Hawaii, County of Hawaii, further identified as TMK No. (3) 6-1-06: parcel 07 comprising 12.961 acres, more or less, of Hawaiian Home Lands, more particularly described in Exhibit "A", together with all rights of ingress and egress and all other rights appurtenant to said Premises including, without limitation, the right to use the building to be constructed on the Premises for the purposes contemplated in the Lease, all of which rights are more particularly described in the Lease.

631053.01

Exhibit "A"
Item No. F-6

2. **USE.** LESSEE is granted the right to use the Premises for a gasification facility and any other uses permitted by the applicable County zoning.

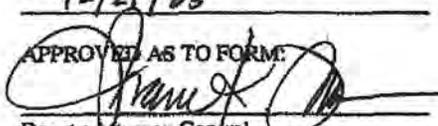
3. **PURPOSE OF MEMORANDUM OF LEASE.** This Memorandum is prepared for the purpose of providing for record notice of the Lease, and in no way modifies the express and particular provisions of the Lease.

4. **FOR THE BENEFIT OF THE PREMISES.** LESSOR and LESSEE intend that the covenants, conditions and restrictions described and referred to herein shall be both personal to LESSOR and LESSEE and binding on their successors and assigns. Each successive owner of the Premises or of any portion thereof, and each person having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Premises.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON
12/21/05

APPROVED AS TO FORM


Deputy Attorney General
State of Hawaii

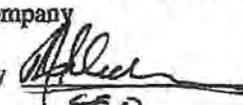
State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By 

Micah A. Kane, Chairman
Hawaiian Homes Commission

LESSOR

KONACARBON, LLC, a Delaware limited liability
company

By 

CEO R.J. Vidgen

Its

LESSEE

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 26th day of June, 2009, before me appeared MICAH A. KANE, to me personally known, who, being by me duly sworn, did say that he is the chairman of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth.



Abigail L. Tubera

Print Name: ABIGAIL L. TUBERA
Notary Public, State of Hawaii

My Commission Expires: 11/31/2012

Doc. Date: 3/23/09 # Pages: 6
Notary Name: Abigail L. Tubera First Circuit
Doc. Description: Memorandum of lease
DHHL + Kona Carbon, LLC

Abigail L. Tubera 6/26/09
Notary Signature Date



STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 23rd day of March, 2009, before me appeared R.J. Viden, to me personally known, who, being by me duly sworn or affirmed did say that he is the CEO KONACARBON, LLC, a Delaware limited liability company and such person executed the foregoing instrument on behalf of said limited liability company as the free act and deed of such person and in the capacities shown having been authorized to execute such instrument in such capacity.



Print or Type Name _____

Notary Public, State of Hawaii

Joanne Stubenberg
Notary Public, State of Hawaii
My commission expires: August 14, 2009

My Commission expires: _____

NOTARY PUBLIC CERTIFICATION
Joanne Stubenberg Third Judicial Circuit
Doc. Description: memorandum of lease

No. of Pages: 6 Date of Doc. 3/23/09

 3/23/09
Notary Signature Date

EXHIBIT "A"

KAEI HANA-II INDUSTRIAL SUBDIVISION

LOT E-1

Kawaihae 1st, South Kohala, Island of Hawaii, Hawaii

Being a portion of the Government (Crown) Land of Kawaihae designated as Hawaiian Home Land under Section 203 of the Hawaiian Homes Commission Act, 1920.

Beginning at the south corner of this parcel of land, at the east corner of Lot F of Kaei Hana-II Industrial Subdivision and on the west boundary of Lot G of Kaei Hana-II Industrial Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU KAMALII" being 1670.75 feet South and 4099.56 feet West, thence running by azimuths measured clockwise from True South: -

1. 126° 56' 200.00 feet along Lot F of Kaei Hana-II Industrial Subdivision;
2. 142° 12' 154.27 feet along Lot A of Kaei Hana-II Industrial Subdivision;
3. 232° 12' 80.00 feet along the south end of Maluokalani Place;
4. 142° 12' 60.00 feet along the south end of Maluokalani Place;
5. 232° 12' 151.23 feet along Lot E-2 of Kaei Hana-II Industrial Subdivision;
6. 142° 12' 219.15 feet along Lot E-2 of Kaei Hana-II Industrial Subdivision;
7. 52° 12' 201.23 feet along Lot E-2 of Kaei Hana-II Industrial Subdivision;
8. 142° 12' 18.78 feet along the north side of Maluokalani Place;
9. Thence along the north side of Maluokalani Place on a curve to the left with a radius of 330.00 feet, the chord azimuth and distance

- being: 125° 42' 187.45 feet;
10. 109° 12' 71.91 feet along the north side of Maluokalani Place;
 11. Thence along the north corner of the intersection of Maluokalani Place and Maluokalani Street on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being: 148° 50' 20" 63.79 feet;
 12. Thence along the north side of Maluokalani Street on a curve to the left with a radius of 380.00 feet, the chord azimuth and distance being: 169° 15' 20" 250.22 feet;
 13. 150° 02' 362.75 feet along the north side of Maluokalani Street;
 14. 240° 02' 287.77 feet along Lot C-2 of Kahei Hana-II Industrial Subdivision;
 15. 202° 44' 30" 68.62 feet along Lot C-2 of Kahei Hana-II Industrial Subdivision;
 16. 221° 04' 53.92 feet along Lot C-2 of Kahei Hana-II Industrial Subdivision;
 17. 329° 29' 20" 364.04 feet along the remainder of Hawaiian Home Land of Kawaihae 1st;
 18. Thence along the remainder of Hawaiian Home Land of Kawaihae 1st on a curve to the left with a radius of 3683.66 feet, the chord azimuth and distance being: 325° 50' 40" 468.30 feet;
 19. 322° 12' 604.22 feet along the remainder of Hawaiian Home Land of Kawaihae 1st;
 20. 36° 56' 391.14 feet along Lot G of Kahei Hana-II Industrial Subdivision to the point of beginning and containing an AREA OF 12.961 ACRES.

SUBJECT, however, to an Access and Utilities Easement as shown on plan attached hereto (Exhibit "B") and made a part hereof.

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. 275

between

STATE OF HAWAII

and

KONACARBON, LLC

covering

HAWAIIAN HOME LANDS

situate at

Kaie Hana II Industrial Subdivision
Kawaihae, Island of Hawaii
County of Hawaii

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EXHIBITS:

"A"	Legal Description of Premises
"B"	Subdivision Map
"C"	E.M. Rivera & Sons, Inc. Bid Proposal
"D"	Consent to Assignment of Lease
"E"	Sublease Rent Participation Policy
"F"	Memorandum of Lease

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. 275

THIS INDENTURE OF LEASE (the "Lease"), is made this 10th day of March, 2009, by and between the State of Hawaii, by its Department of Hawaiian Home Lands, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LESSOR," and KonaCarbon, LLC, a Delaware limited liability company, whose mailing address is P. O. Box 276, Kamae, Hawaii 96743, hereinafter called "LESSEE."

WITNESSETH:

ARTICLE ONE
DEMISE

1. **Lease.** LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of LESSEE to be kept, observed and performed, does lease to LESSEE, and LESSEE does lease from LESSOR, those certain premises located at Kaei Hana II Industrial Subdivision, Kawaihae, Island of Hawaii, County of Hawaii, further identified as TMK No. (3) 6-1-06: parcel 07 comprising 12.961 acres, more or less, of Hawaiian Home lands, more particularly described in **Exhibit "A"**, and as situated on the map marked **Exhibit "B"**, both attached hereto and made a part hereof ("Premises").

2. **Term.** The Premises are demised unto LESSEE TO HAVE AND TO HOLD, together with all buildings, improvements, tenements, rights, easements, privileges appurtenant thereto, but subject to the terms and conditions of this Lease, for a term commencing on March 1, 2009 (which shall be the "Effective Date" of the Lease), and ending as of midnight on February 29, 2064, unless sooner terminated as hereinafter provided.

ARTICLE TWO
RESERVATIONS AND RIGHT OF WITHDRAWAL

RESERVING UNTO LESSOR THE FOLLOWING:

1. **Minerals and Waters.**

(a) All minerals as hereinafter defined, in, on, or under the Premises, except that the right to prospect for, mine and remove such minerals shall be suspended during the term of this Lease. "Minerals," as used herein, shall mean any and all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in construction in furtherance of LESSEE'S permitted activities on the demised Premises and not for sale to others. This provision is intended only to govern extraction of minerals and not to impair in any manner

LESSOR'S ownership of the mineral rights pursuant to Sections 171-58 and 182-2 of the Hawaii Revised Statutes.

(b) All surface waters, ground waters, and water systems, appurtenant to the Premises, provided that LESSOR will permit LESSEE to drill a water well on the Premises and to obtain water therefrom, all at LESSEE'S sole cost, and subject to LESSEE'S full compliance with all governmental regulatory requirements, if LESSEE is unable to timely obtain an adequate supply of water through the County of Hawaii Department of Water Supply system. LESSOR makes no warranties whatsoever as to whether any groundwater underlying the Premises exists in sufficient quantities and quality to adequately serve the Premises in LESSEE'S proposed use of the Premises or in any other use.

2. Prehistoric and Historic Remains. LESSOR has reviewed its files and records and determined that it has no information, reports or inspections reflecting that there are any prehistoric or historic remains or sites of archaeological significance present at the Premises. If, however, any area is rendered unsuitable for development as a result of the discovery of sites of archaeological significance or prehistoric or historic remains, such sites or remains shall be excluded from the Premises demised to LESSEE with an equitable adjustment of the rental payable hereunder determined in the manner provided in Section 5 of this Article Two.

3. Right of Withdrawal. The right to withdraw all or any portion of the Premises for the purposes of the Hawaiian Homes Commission Act, 1920 (the "Act"), as reserved by Section 204(a)(2) of the Act. The right to withdraw reserved under this Section 3 of Article Two shall be exercised only after not less than two (2) years prior written notice to LESSEE. As a condition to the exercise by LESSOR of any rights reserved in this Section 3 of Article Two, just compensation shall be paid to LESSEE for any of the Premises and/or LESSEE'S improvements so withdrawn or rendered unsuitable for LESSEE'S intended use, which amount is to be determined in the manner set forth in Section 5 of this Article Two, and the annual base rental under this Lease shall also be proportionately reduced also as provided in Section 5 of this Article Two.

4. Reservation of Easements in Favor of LESSOR. LESSOR hereby reserves the right and option, with the reasonable consent of LESSEE, to create, designate, grant and relocate from time to time, at its sole cost and expense, any and all necessary easements for underground utilities and services, including drainage, water, sewer, electricity and other utilities under, across and through the Premises, provided that (a) such easements do not cross through or under any permanent structures constructed on the Premises or planned to be constructed on the Premises, and (b) the work to construct and install any such easements shall be done, and the easement shall be utilized, in such a fashion as to cause minimal disruption with LESSEE'S operations or use of the Premises. Upon completion of any such work by LESSOR the surface of the Premises shall be returned, at LESSOR'S sole cost and expense, to substantially the same condition as it was prior to installation of any underground utility.

5. Compensation for Takings, Withdrawal and other Entry or Actions Reserved in Favor of LESSOR. In the event all or any portion of the Premises is taken or withdrawn, or LESSEE is denied the practical and economic use thereof by any other entry or actions or matters reserved to LESSOR under this Lease, then and in any such event, LESSEE and/or those

claiming by, through or under LESSEE shall be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain. If at any time during the term, a portion, but not all, of the Premises should be taken or withdrawn, or LESSEE is denied the practical and economic use of such portion, then and in any such event, the annual base rental shall be proportionately reduced based upon the ratio between the fair market value of the Premises prior to such taking, withdrawal, or use denied to the fair market value of the Premises remaining after such taking, withdrawal, or use denial. In such event, LESSEE shall also be entitled to receive from LESSOR a portion of the value of LESSEE'S permanent improvements situated on the taken, withdrawn, or use denied portion of the Premises in the proportion that the unexpired term of the Lease bears to the entire term of the Lease, provided, that LESSEE may, in the alternative, at LESSOR'S cost and expense, remove and relocate its improvements to the remainder of the Premises occupied by LESSEE. Where the portion taken, withdrawn, or use denied renders the remainder of the Premises unusable in LESSEE'S reasonable determination, LESSEE shall have the option to surrender this Lease in accordance with Section 17 of Article Four below or partially surrender this Lease as to the portion of the Premises so affected, and be discharged and relieved from any further liability therefor. In the event LESSEE shall not exercise such option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected, then the annual base rental for the balance of the term shall be abated and adjusted in an equitable manner as set forth above. In the event that LESSEE reasonably exercises its option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected by reason of a partial taking, withdrawal or use denial, LESSEE shall be entitled to just compensation as if LESSOR had elected to take, withdraw or deny the use of the entire Premises or the portion of the Premises so affected under the Lease and LESSEE shall be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises or the portion of the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain as more particularly set forth above.

6. Clean Up of Premises at Commencement of Lease. LESSOR acknowledges that LESSEE has performed and completed all clean-up work required to implement that certain June 18, 2008 Environmental Resources Management Work Plan for Remediation of Solid Waste Debris at the DHHL Kaei Hana II, Industrial Subdivision in Kawaihae, Hawaii prepared by ERM ("Work Plan") insofar as the same pertains to trash or other waste materials situated on or under the Premises and that the State of Hawaii Department of Health has issued a "No Further Action" letter with respect to the site. LESSOR agrees to reimburse LESSEE for the expenses incurred by LESSEE in performing the clean up in the amount of \$51,366.57. LESSOR, not LESSEE, shall have sole responsibility for cleaning up any and all Hazardous Materials which are hereafter determined to have been situated on or under the Premises prior to the commencement of the term of this Lease which are not identified and described in the Work Plan and which were not encountered or discovered by LESSEE in connection with its clean-up work, but only to the extent that DOH requires such clean up. LESSOR shall not have any obligation to defend, indemnify or hold LESSEE harmless with respect to any direct, indirect, consequential, lost profits or other damages which LESSEE, its officers, directors, employees and agents, might incur as a result of the presence of such Hazardous Materials on the Premises at and prior to the inception of the Lease and LESSEE accepts any and all risks which arise or might arise out of the same. LESSOR, however, shall be solely responsible for any clean-up of

such Hazardous Materials which is required by the Department of Health. If LESSOR fails to promptly effect any such required clean-up, LESSEE may complete the required work and LESSOR shall reimburse LESSEE, through offset against base rental only, for any direct cost of cleaning up such Hazardous Materials.

ARTICLE THREE RENTAL

LESSEE shall pay to LESSOR at the office of the Department of Hawaiian Home Lands, Honolulu, Oahu, State of Hawaii, a net annual rental as provided hereinbelow, payable in advance, without notice or demand and without any set-off or deduction, in equal monthly installments, as follows:

1. Annual Base Rental. Annual base rental shall be paid on the first day of each and every calendar month from and after the Rent Commencement Date by LESSEE to LESSOR at LESSOR'S principal place of business first described above, in United States dollars, as follows:

Lease years 1 through 10: Four Hundred Fifty Thousand and No/100s Dollars (\$450,000.00) per annum (\$37,500.00 per month);

Lease years 11 through 15: Five Hundred Sixty-Two Thousand Five Hundred and No/100s Dollars (\$562,500.00) per annum (\$46,875.00 per month);

Lease years 16 through 20: Six Hundred Thirty-Two Thousand Eight Hundred Twelve and 50/100s Dollars (\$632,812.50) per annum (\$52,734.38 per month);

Lease years 21 through 55: Annual base rental shall be reopened as provided in Section 2 below.

Base rental payable for any month shall be proportionately reduced for any partial month during the term. The first Lease year shall commence on the Effective Date with succeeding Lease years commencing on each succeeding anniversary of such Effective Date. The "Rent Commencement Date" is the first day of the first Lease year.

Notwithstanding the rental schedule set forth above, LESSEE shall be entitled to one-year (12 months) of free rent upon completion of grading and other on-site work on the Premises described in the January 14, 2008 E. M. Rivera & Sons, Inc. "Big Proposal" attached hereto as Exhibit "C", provided that the cost of the computed work is not less than \$500,000, and provided further that LESSEE is then current in performing all of its obligations to pay and perform under the Lease. LESSOR hereby acknowledges receipt from LESSEE of the first three months of base rental in the aggregate amount of \$112,500. LESSOR will reimburse LESSEE the \$51,366.57 owed LESSEE for clean-up work on the Premises completed prior to the commencement of the Lease by applying that sum as a credit against the base rental next coming due under the Lease, i.e. after application of LESSEE'S \$112,500 three months rent deposit to the base rent owed for the first three months following the Rent Commencement Date.

2. Reopening of Annual Base Rental. The annual base rental hereinabove reserved shall be reopened and re-determined at the expiration of the twentieth (20th) Lease year of the

term for the next ensuing 10-year period comprising Lease years 21-30 and shall be reopened and redetermined at the expiration of the thirtieth (30th) Lease year for each of the next ensuing one 10-year and one 15-year periods comprising Lease years 31-40 and 41-55 respectively, to an amount equal to the then fair market rental value of the Premises at the commencement of each such reopening period based on the use or uses then permitted to be made on the Premises under the applicable County zoning, as such uses may be further restricted by the terms of this Lease, exclusive of improvements constructed by LESSEE, and as if the Premises were unencumbered by this Lease (referred to hereafter as the "fair market rental value" of the Premises), all as shall be determined by mutual agreement between LESSOR and LESSEE. If LESSOR and LESSEE fail to mutually agree upon the fair market rental value of the Premises which shall be the annual base rental for the reopening period at least ninety (90) days prior to the commencement of each of the reopening periods, the proposed new annual base rental shall be determined by an appraiser whose services shall be contracted for by LESSOR who shall determine the fair market rental value of the Premises; provided, that should LESSEE fail to agree upon the fair market rental value of the Premises as determined by LESSOR'S appraiser, LESSEE shall promptly appoint its own appraiser and give written notice thereof to LESSOR, and in case LESSEE shall fail to do so within thirty (30) days after being advised of the fair market rental value as determined by LESSOR'S appraiser, LESSOR may apply to any person then sitting as judge of the Circuit Court of the judicial circuit in which the Premises are located for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall have thirty (30) days (or such additional time as LESSOR and LESSEE shall mutually agree) to resolve any disagreement on the fair market rental value determination and settle the reopened rent for the ensuing reopening period. Should both appraisers fail to agree upon the fair market rental value of the Premises within this 30-day period (as the same may be extended by mutual agreement of LESSOR and LESSEE), they shall appoint a third appraiser. In case of their failure to do so within fifteen (15) days, either party may have the third appraiser appointed by the judge and the fair market rental value of the Premises shall be determined by arbitration as provided in Chapter 658A, Hawaii Revised Statutes. Each appraiser, whether appointed by a party to the Lease or by the Circuit Court, shall have the following minimum qualifications: at least five (5) years experience in appraising commercial real property and hold a current MAI or SREA designation. The decision of the appraisers or a majority of them shall be final, conclusive and binding upon both parties hereto. The appraisers so appointed shall deliver their determination before the ninetieth (90th) day following appointment of the third appraiser, and, in the event they shall fail to do so and the time for delivery of such determination shall not have been extended by mutual agreement of LESSOR and LESSEE, the employment of the appraisers shall immediately terminate and, except as may be approved by LESSOR and LESSEE in the exercise of their sole and absolute discretion with respect thereto, the appraisers shall not be entitled to any payment for services or reimbursement of expenses incurred because of such appointment. In the event the employment of the appraisers shall be so terminated, new appraisers shall be appointed in the manner hereinbefore provided. LESSEE shall pay for its own appraiser, LESSOR shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by LESSEE and LESSOR. Upon completion of the arbitration procedure, all appraisal reports shall become part of the public record of LESSOR. If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, LESSEE shall continue to pay the rent effective for the previous rental period, but LESSEE shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any plus interest thereon at the rate of ten percent

(10.0%) per annum from the due date for each payment of the additional rent. In no event shall the annual base rental determined by appraisal for any 10-year period (or for the last 15-year period) be less than the annual base rent for the next preceding 10-year period. Notwithstanding the above, in the event that LESSOR and LESSEE shall fail to mutually agree upon the fair market rental value of the Premises for any 10-year or 15-year period, and the rent is thereafter determined by the appraisal procedure described above, then LESSEE may elect, if the rent determined by the appraisal is unacceptable to LESSEE, to surrender all, but not part, of its right, title and interest under this Lease, provided, however, that any such election to terminate and surrender must be made by LESSEE within thirty (30) days of the date the appraisers deliver their determination and shall be effective only if LESSOR is provided written notice of the election within the thirty (30) days. LESSEE'S election to surrender shall not relieve LESSEE of any obligation imposed on LESSEE by this Lease in connection with termination of the Lease.

ARTICLE FOUR

THE PARTIES HEREIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of Rent. LESSEE shall pay the rent to LESSOR at the times, in the manner and form provided in this Lease and at the place specified above, or at any other place LESSOR may from time to time designate, in legal tender of the United States of America.
2. Taxes and Assessments. (a) LESSEE shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, are now or may be assessed by governmental authorities during the term of this Lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only those installments, together with interest, which become due and payable during the term; (b) LESSEE shall reimburse to LESSOR, upon demand, any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document to which LESSEE is a party, creating or transferring an interest or an estate in the Premises; and (c) LESSEE shall have the right to contest any tax, rate, assessment or other charge imposed against the Premises provided, however, that any such proceeding shall be brought by LESSEE only after payment by LESSEE as hereinabove provided of such taxes, assessments or other charges or impositions if required by law as a condition to bringing such proceeding, and if any such proceeding be brought by LESSEE, LESSEE shall defend, indemnify and save harmless LESSOR against any and all loss, costs or expenses of any kind that may be incurred by or imposed upon LESSOR in connection therewith. LESSOR agrees to reasonably cooperate with LESSEE in any application or proceeding to contest such tax, rate, assessment or other charge, provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEE.
3. Utility Services. LESSEE shall pay or caused to be paid all utility charges, duties, rates and, other similar outgoings, including water, sewer, gas, refuse collection, recycling, relocation of utility poles and lines or any other charges, as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, may become liable for during the term, whether assessed to or payable by LESSOR or LESSEE. LESSEE, at its sole cost and expense, shall be responsible for bringing any and all necessary utility connections to the

Premises for its contemplated improvements. LESSOR agrees to reasonably cooperate with LESSEE in connection with obtaining the necessary utility connections, provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEE. LESSEE is aware that the Premises are currently served by two 5/8" water meters and that LESSEE will have to construct and install its own septic tank.

4. Improvements Required by Law. LESSEE shall, at LESSEE'S own expense during the whole of the term, make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Premises or any part thereof.

5. Observance of Laws. LESSEE shall at all times during the term keep the Premises in a strictly safe, clean, orderly and sanitary condition, free of any nuisance or improper or offensive use; and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Premises or any improvement thereon or use thereof, and shall defend, indemnify and hold harmless LESSOR against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance by LESSEE of said laws, ordinances, rules and regulations or of this covenant.

6. Inspection of Premises. Upon reasonable advance notice, LESSEE shall permit LESSOR and its agents at all reasonable times during the term of this Lease to enter the Premises and examine the state of repair and condition of the Premises, provided that LESSEE may require that LESSOR be accompanied at all times while on the Premises by a representative of LESSEE and provided also that LESSOR may not photograph or film the interior or exterior of LESSEE'S facility without LESSEE'S prior approval in writing, which approval shall not be unreasonably withheld. LESSEE shall repair and make good at LESSEE'S own expense all defects required by the provisions of this Lease to be repaired by LESSEE of which written notice shall be given by LESSOR or its agents within thirty (30) days after the giving of such notice, or if such defect is not reasonably susceptible to repair within said thirty (30) day period, LESSEE shall undertake to repair such defect within said thirty (30) day period and shall diligently and expeditiously proceed to complete the steps or action necessary to repair the defect. If for any reason LESSEE shall fail to commence and complete such repairs within the time period specified herein, LESSOR may, but shall not be obligated to, make or cause to be made such repairs and shall not be responsible to LESSEE or anyone claiming by, through or under LESSEE for any loss or damage to the occupancy, business or property of any of them by reason thereof (except to the extent such loss or damage is the result of the gross negligence or willful misconduct of LESSOR or LESSOR'S agents or employees in effecting any such repairs), and LESSEE shall pay to LESSOR, within ten (10) days following written demand by LESSOR, and as additional rent, all costs and expenses paid or incurred by LESSOR in connection with such repairs.

7. Improvements/Right to Terminate Lease.

(a) Initial Construction of LESSEE'S Plant. LESSOR has approved the schematic plans for construction of LESSEE'S facility. Final plans and specifications for the

facility shall be submitted to LESSOR for approval within six (6) months from the Effective Date of the Lease. LESSEE shall have thirty-six (36) months from the Effective Date of the Lease to complete the construction of and open its facility. LESSOR shall have an option to terminate this Lease, to be exercised in LESSOR's sole discretion, (i) if LESSEE has not purchased, paid for and shipped to the Big Island the gassifier and rotary kiln components of its gasification facility within two (2) years of the Effective Date, or (ii) LESSEE fails to complete construction of and begin operating its facility within three (3) years of the Effective Date. LESSOR must provide written notice to LESSEE of its election to terminate within sixty (60) days of the above specified two (2) and three (3) year deadlines. LESSOR may reasonably withhold consent to any sublease proposed by LESSEE prior to the date it completes the grading and other work described in Exhibit "C" free and clear of any mechanic's liens. LESSEE shall be required to remove its gassifier and rotary kiln components of its gasification facility from the Premises on expiration or sooner termination of the Lease.

(b) Governmental Approvals and Permits. Before commencing any construction of buildings or improvements on the Premises, LESSEE shall seek and secure all approvals and permits which may be required from any governmental authority having jurisdiction thereof, including, without limitation, governmental requirements from time to time in effect regarding land, air and water use or emissions and noise emissions and Hazardous Materials. LESSEE shall bear all costs and expenses of obtaining the necessary approvals and permits. LESSOR agrees to reasonably cooperate with LESSEE in connection with obtaining the necessary permits and approvals, e.g. sign applications as fee owner, provide reasonable support at any agency hearing, etc., provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEE.

(c) Construction of Improvements. LESSEE may, during the term of this Lease, construct, place, maintain and install on the Premises additional buildings and structures with LESSOR'S prior written consent of the final plans and specifications for each such building or structure, which consent will not be unreasonably withheld, delayed or denied. LESSEE shall have the right to make interior, structural and non-structural repairs and improvements without LESSOR'S consent. LESSOR agrees to execute any and all instruments necessary to obtain licenses and permits from the applicable governmental authorities in order to make such repairs or alterations. LESSEE shall own these improvements until the expiration or termination of this Lease, at which time the ownership shall automatically be vested in LESSOR. LESSEE will before commencing construction of its facility or any subsequent improvements within the Premises in excess of TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00) deposit with LESSOR either: (i) copies of the contractor's performance bond (HS/AIA Document A311 or its equivalent), and a labor and materials payment bond (HS/AIA Document A311 or its equivalent), naming LESSOR as an additional obligee thereunder in an amount equal to one hundred percent (100%) of the estimated construction cost of the improvements to be made on the Premises, with a surety reasonably satisfactory to LESSOR, to assure the performance by the contractor of the contract for the construction of such improvement on the Premises, and the completion of such construction work, free and clear of all mechanics' and materialmen's liens; or (ii) a written guaranty of performance and payment of the construction contract(s) for the improvements planned for the Premises from a person or entity of size and substance satisfactory to LESSOR, in LESSOR'S reasonable judgment, in favor of LESSOR, and guaranteeing the performance of the construction contract(s) and completion of such work

free and clear of all mechanic's and materialmen's liens; or (iii) an irrevocable standby letter of credit issued by a recognized financial institution, as reasonably determined by LESSOR to be satisfactory, to assure performance of any construction contracts for and payment of all labor, materials, services or other work done by or on behalf of LESSEE (or any affiliated parties, contractors, materialmen or subcontractors) in connection with the improvements planned for the Premises. LESSEE shall also provide LESSOR with such information and evidence as LESSOR may reasonably require to assure LESSOR that LESSEE is able to and will make all payments required by the construction contract(s) for the improvements to be made to the Premises, as and when LESSEE is required to do so.

(d) Compliance with Americans with Disabilities Act.

(i) Applicable Laws. LESSEE shall cause drawings and specifications to be prepared for, and shall cause to be performed, any construction, alteration or renovation of the Premises, including signage, in accordance with all applicable laws, ordinances and regulations of all duly constituted authorities, including, without limitation, Title III of the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. 12181-12183, 12186(b)-12189, the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 U.S.C. 200a et. seq., the Architectural Barriers Act of 1968, 42, U.S.C.4151 et. seq., as amended, Title V of the Rehabilitation Act of 1973, 29 U.S.C.790 et seq., the Minimum Guidelines and Requirements for Accessible Design, 36 C.F.R Part 1190, and the Uniform Federal Accessibility Standards, as the same are in effect on the date hereof and may be hereafter modified, amended or supplemented (all such laws, ordinances, regulations and guidelines regarding access collectively called "Public Accommodations Laws").

(ii) Responsibility for Compliance. Notwithstanding LESSOR'S review of such drawings and specifications, and whether or not LESSOR approves or disapproves such drawings and specifications, LESSEE and not LESSOR shall be responsible for compliance of such drawings and specifications and of all Public Accommodations Laws. LESSEE shall defend, pay, indemnify and hold LESSOR harmless against all reasonable costs and expenses (including reasonable attorneys' fees), losses, damages and liabilities incurred by LESSOR which may be attributable to: (A) LESSEE'S alleged failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (B) LESSOR'S investigation and handling (including the defense) of LESSEE'S failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (C) any amounts assessed against LESSOR pursuant to any Public Accommodations Law based upon LESSOR'S ownership of the Premises; and (D) LESSOR'S enforcement of this paragraph, whether or not suit is brought therefore. All the above amounts shall constitute additional rent and shall be payable on demand with interest at the rate of ten percent (10%) per annum.

8. Repairs to Improvements. LESSEE shall, at its own expense, keep, repair and maintain all buildings and other improvements now existing or hereafter constructed or installed on the Premises in good and safe order, condition and repair, reasonable wear and tear excepted.

9. Assignment.

(a) No Assignment Without Consent. LESSEE shall not assign this Lease without the prior written consent of LESSOR, which consent LESSOR shall not be unreasonably withheld, conditioned or delayed. Any assignment without LESSOR'S prior express written consent shall be void. LESSOR will consent to the assignment of this Lease to Big Island Carbon, LLC by form of consent attached hereto as **Exhibit "D"**.

(b) Assumption of Lease. Any assignment of this Lease shall be specifically made and therein expressly stated to be made subject to all terms, covenants and conditions of this Lease, and the assignee therein shall expressly assume and agree to all such terms, covenants and conditions.

(c) Compliance with Hawaii Revised Statutes §171-36(a)(5). LESSOR may withhold its consent to any assignment unless the assignment meets the requirements of Hawaii Revised Statutes §171-36(a)(5), or any other successor statute imposing conditions on the assignment of leases of LESSOR'S lands.

(d) No Change of Use. No assignment shall be permitted if the assignee contemplates or proposes any change in the use of the Premises from that expressly permitted by this Lease.

(e) LESSOR'S Response. LESSOR shall respond to any request for its consent to an assignment of this Lease within thirty (30) days following LESSOR'S receipt of all financial statements, documents and other information reasonably necessary for LESSOR to make its determination (or within such longer time as may be reasonably required by it and of which it shall notify LESSEE within such thirty (30) day period). If LESSOR shall fail to approve or disapprove of a request for consent within the thirty (30) day period as the same may be extended, LESSOR'S approval shall be conclusively presumed.

(f) "Assignment" Defined. The term "assignment" as used in this Lease shall mean and include one or more sales or transfers by operation of law or otherwise by which:

(i) if LESSEE is a corporation, an aggregate of fifty percent (50%) or more of the total common stock or any class of voting stock of LESSEE;

(ii) if LESSEE is a partnership, an aggregate of fifty percent (50%) or more of the total partnership interests of LESSEE or a change of control of any general partner of LESSEE;

(iii) if LESSEE is a limited liability company, whether member-managed or manager-managed, an aggregate of fifty percent (50%) or more of the total membership interests of LESSEE or a change of control of any managing member of LESSEE;

(iv) if the LESSEE is any other form of entity, an aggregate of fifty percent (50%) or more of the legal, beneficial or other cognizable interests therein or in the governance, administration or control thereof;

shall become vested in one or more individuals, firms, associations, corporations, partnerships, limited liability companies or other entities, or any derivative or combination thereof, which directly owned less than a ten percent (10%) interest in the LESSEE as of the Effective Date or as of the date of LESSEE'S subsequent acquisition of this Lease by assignment, with the ownership of such interests in LESSEE being determined in accordance with the principles enunciated in Sections 318 and 544 of the Internal Revenue Code of 1986; provided, however, that the foregoing definition shall not apply with respect to a corporate LESSEE whose capital stock is listed on a recognized stock exchange or on the NASDAQ; provided, however, that a merger or acquisition of fifty percent (50%) or more of the outstanding stock of any such LESSEE shall be construed to be an assignment and shall require Landlord's consent unless the successor or acquiring corporation has a net worth equal to or greater than LESSEE had at the time this Lease was executed, or at the time of any such merger or acquisition (whichever shall be the later); and provided further that, if LESSEE is a corporation, a change in ownership of the stock of LESSEE resulting from the death of a stockholder shall not be deemed a default hereunder if the decedent's shares pass to a surviving spouse and/or issue or to a trust for the primary benefit of such spouse or issue.

10. Subletting. LESSEE shall not, without the prior written consent of LESSOR, which consent shall not be unreasonably withheld, conditioned or delayed, have the right to sublease all or any portion of the Premises, provided, however, that prior to LESSOR approval, LESSOR shall have the right to review and approve the rent to be charged to the proposed sublessee; provided further, that the LESSOR shall have the right to revise, if necessary, the rental of the Premises based upon the rental rate charged to the proposed sublessee, pursuant to the Sublease Rent Participation Policy adopted by the Hawaiian Homes Commission on April 24, 1987, a copy of which is attached herewith as Exhibit "E", and provided further, that the base rent may not be revised downward. The term of any such sublease shall not exceed the term of this Lease.

11. Liens. LESSEE shall not commit or suffer any act or neglect by which the Premises or the respective estates of LESSEE or LESSOR therein shall at any time during the term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, including mechanics' and materialmen's liens, and shall indemnify, defend, save and hold LESSOR harmless from and against all loss, cost and expense with respect thereto (including reasonable attorneys' fees). If any order directing the attachment of any lien for work, labor, services or materials done for or supplied to the Premises regardless of who contracted therefor is filed against the Premises, LESSEE shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit or bond or otherwise stayed to the reasonable satisfaction of LESSOR. Subject to the foregoing, LESSEE may contest in good faith by any appropriate proceedings prosecuted in a diligent and timely manner, the amount or validity of any such attachment, judgment, lien, charge or encumbrance, and, if permitted by applicable law, upon making deposit or posting bond, may defer payment thereof until final determination of such contest. LESSEE'S obligations under this Section 11 shall survive the termination of this Lease.

12. Permitted Uses. The Premises shall be used for the construction and operation of a gasification facility that processes macadamia nut shells to produce activated carbon and/or bio-fuel and all facilities and activities reasonably related to the foregoing and such other uses as

are consistent with County zoning for the Premises, which is designated as MG-1a (General Industrial), subject, however, to LESSOR'S consent, which consent shall not be unreasonably withheld. In no event, however, shall the Premises be used for the construction of any residential lots, units or project.

13. Indemnity.

(a) LESSEE shall defend, indemnify and hold LESSOR harmless from and against all liens, claims and demands for loss or damage, including property damage, personal injury and wrongful death, from (i) any cause whatsoever arising out of or in connection with the use, occupancy and enjoyment of the Premises by LESSEE or any other person thereon or claiming under it, including, without limitation, any harm resulting therefrom to LESSOR, persons claiming under LESSOR, other tenants of LESSOR, third parties, the aquifer underlying the Premises, the water therein, the soil of the Premises and surrounding lands and the air, or (ii) any failure by LESSEE to keep the Premises in a safe condition. LESSEE shall reimburse LESSOR for all of LESSOR'S costs and expenses, including reasonable attorneys' fees, incurred in connection with the defense of any such liens, claims, and demands. LESSEE shall hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises at its sole risk and shall hold LESSOR harmless from and against any loss or damage thereto by any cause whatsoever. The obligation to indemnify shall include all fines and penalties and all reasonable costs LESSOR may incur in connection with any such lien, claim and demand, including reasonable attorneys' fees and investigation costs, from the first notice that any lien, claim or demand is to be made or may be made. LESSEE shall satisfy LESSOR of its ability to so indemnify LESSOR by means satisfactory to LESSOR, which, at the discretion of LESSOR, may include any or all of insurance bonds, security deposits, sinking funds or such other means as may be approved in writing by LESSOR. LESSEE'S obligations under this section shall survive the termination or other determination of this Lease and shall continue in full force and effect for the benefit of LESSOR.

(b) Immediately upon discovery thereof, LESSEE shall give written notice to LESSOR of any claims, actions or causes of action concerning the Premises, or any claims, actions or causes of actions that may subject LESSOR to liability, risk of loss or binding adjudication of rights.

14. Costs of Litigation. In case either party shall, without fault on its part, be made a party to any litigation commenced by the other party or against the other party (other than condemnation proceedings), the other party shall pay all costs, including reasonable attorneys' fees and expenses incurred by or imposed on the party joined without fault on its part.

15. Insurance. At all times during the term of this Lease, LESSEE shall purchase and maintain, at LESSEE'S sole expense, the following policies of insurance in amounts not less than the amounts specified below, or such other amounts as LESSOR may from time to time reasonably request, with insurance companies and on forms reasonably satisfactory to LESSOR:

(a) Commercial Property Insurance.

(i) Coverage. A policy or policies of commercial property insurance covering all buildings, structures and other improvements on the Premises, and including without limitation, all furniture, fixtures, machinery, equipment, stock and any other personal property owned and/or used in LESSEE'S business, whether made or acquired at LESSEE'S, LESSOR'S or at another's expense, in an amount equal to their full replacement cost at time of loss, without deduction for depreciation. The insurance shall be written on an Insurance Services Office, Inc. ("ISO") Commercial Property Policy - "Special Form" Causes of Loss form as from time to time filed with the Hawaii Insurance Commissioner, or its equivalent, and at a minimum such policy shall insure against destruction or damage by fire and other perils covered under such an ISO policy, with additional coverage for risk of loss by flood, hurricane and tsunami (to the extent such coverage is available at commercially reasonable cost), perils normally insured under a policy of boiler and machinery insurance, and such other hazards or risks which a prudent business person would insure against. The policy(ies) required under this Lease shall provide replacement cost coverage (exclusive only of excavation, foundations and footings), and shall include Building Ordinance/Law coverage (for increased costs of demolition and repair due to changes in building codes or zoning ordinances). Except with LESSOR'S prior written consent, which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of \$10,000 for any one occurrence.

(ii) Trust. In the event that proceeds for loss or damage are paid under any property insurance policy required by this Lease and unless otherwise agreed to in writing by LESSOR, all such loss payment proceeds shall be deposited with a trust company designated by LESSOR to receive all such proceeds, which trustee shall have its principal office in Honolulu and be authorized to exercise corporate trust powers in the State of Hawaii. The trustee shall have no obligation whatsoever to effect, maintain or renew such insurance nor to attend to any claim for lesser damage thereunder or the collection of any proceeds thereof nor to incur any expense therefor, and shall be responsible only for the proper custody and application as herein provided of all such proceeds that actually shall come into its possession. LESSEE shall pay all fees and expenses of such trustee for or in connection with its services.

(iii) Use of Proceeds. In every case of loss, all proceeds of such insurance (excluding the proceeds of any rental value or use and occupancy insurance of LESSEE) shall be immediately available to and be used as soon as reasonably possible by LESSEE for rebuilding, repairing or otherwise reinstating the same improvements in good and substantial manner according to the plan and elevation of the improvements so destroyed or damaged or according to such modified plan as shall have been first approved in writing by LESSOR. In the event that such insurance proceeds shall be insufficient, LESSEE shall make up any deficiency from its own funds; provided, however, that if the principal improvement on the Premises shall be destroyed at any time during the last ten (10) years of the term of this Lease (or any extension hereof), LESSEE shall have the option, exercisable within sixty (60) days after such casualty, to surrender this Lease subject to compliance with the provisions of Section 16 of Article Four and thereby forfeit all interest in such insurance proceeds and in any improvements remaining on the Premises, all of which shall thereupon be payable to and be the sole property of LESSOR.

(b) Liability Insurance.

(i) Commercial General Liability Insurance. Commercial general liability or commercial general liability and excess or umbrella liability insurance written on an "occurrence" form covering the use, occupancy and maintenance of the Premises and all operations of LESSEE including: Premises Operations; Independent Contractors; Products - Completed Operations; Blanket Contractual Liability; Personal and Advertising Injury; Fire Legal Liability; Employees Named as Additional Insureds; Medical Expense; elevator collision; and incidental medical malpractice. Such insurance may be provided by a surplus lines insurer provided the insurer is otherwise acceptable to LESSOR. Such insurance shall be written on an ISO Commercial General Liability Policy form or its equivalent.

(1) Limits. Limits for such coverage shall be not less than \$1.0 million per occurrence and not less than \$2.0 million in the aggregate.

(2) Deductible. Except with LESSOR'S prior written approval, which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of \$10,000 for any one occurrence.

(3) Application of General Aggregate. The policy(ies) of insurance shall further contain a provision that the general aggregate limit applies exclusively to the Premises and the operations conducted thereon.

(ii) Workers' Compensation and Employers' Liability Insurance. Workers' Compensation and Employers' Liability insurance as required by HRS Chapter 386 and regulations thereunder, as the same may be amended from time to time, for all employees of LESSEE.

(1) Limits for such coverage shall be not less than the statutory limits for Workers' Compensation and the following for Employers' Liability: \$1,000,000 Each Accident; \$1,000,000 Disease - Policy Limit; and \$1,000,000 Disease - Each Employee.

(2) The policy shall further contain an endorsement providing a waiver of subrogation in favor of LESSOR and its employees.

(c) Umbrella Liability. Umbrella Liability Insurance providing excess coverage over Commercial General Liability, Employer's Liability, and Automobile Liability Insurance. The Umbrella Liability policy shall be written on an "occurrence" form with a limit of liability of not less than \$5,000,000 per policy year and a self-insured retention and/or deductible no greater than \$10,000.

(d) Builder's and Installation Risk. Builder's and installation risk insurance while the Premises or any part thereof are under construction, written on the Builder's Risk Completed Value form (nonreporting full coverage), including coverage on equipment, machinery and materials not yet installed but to become a permanent part of the Premises.

(e) General Policy Terms. All policies of insurance required to be maintained pursuant to this section covering loss or damage to any of LESSEE'S property shall provide that the insurer is required to provide LESSOR with at least thirty (30) days (or not less than ten (10) days in the case of nonpayment of premiums) prior written notice of cancellation or non-renewal

of any such insurance policy. LESSEE shall pay all premiums thereon when due and shall from time to time deposit promptly with LESSOR current policies of such insurance or certificates thereof. All public liability and property damage policies shall be in the joint names of and for the mutual and joint benefit and protection of LESSOR, LESSEE, and LESSEE'S mortgagee(s), as their respective interests may appear, and shall contain a provision providing that LESSOR, although named as an additional insured, shall not be denied any recovery under the policy(ies) for any loss occasioned to it, its servants, agents and employees by reason of the acts, omissions and/or negligence of LESSEE which recovery would be possible if LESSOR were not named as an additional insured. As often as any such policy shall expire or terminate, LESSEE shall procure and maintain renewal or additional policies in like manner and to like extent. All general liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which LESSOR may carry.

(f) Periodic Review of Insurance Coverages. LESSOR shall retain the right at any time, but not more frequently than once every three (3) years, to review the coverage, form, and amount of the insurance required by this Lease. If, in the reasonable judgment of LESSOR, the insurance provisions in this Lease do not provide adequate protection for LESSOR in light of then prevailing practices under leases of similar properties in the State of Hawaii, LESSOR may require LESSEE to obtain insurance sufficient in coverage, form, and amount to provide such additional protection, provided such additional coverage is available at commercially reasonable rates. LESSOR'S requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LESSOR shall notify LESSEE in writing of changes in the insurance requirements and LESSEE shall deposit copies of acceptable insurance policies or certificates thereof with LESSOR incorporating the reasonably required changes within sixty (60) days of receipt of such notice from LESSOR.

16. Surrender. At the end of the term or other sooner determination of all or a portion of this Lease, LESSEE shall peaceably deliver up to LESSOR possession of the land hereby demised, including all buildings and other improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition, except for reasonable wear and tear, and in strictly clean, safe and sanitary condition; provided, however, that if LESSEE is not in default hereunder, it may then remove any trade fixtures installed by it on the Premises but shall repair promptly to LESSOR'S satisfaction all damage caused by such removal; provided, further, that if LESSOR, in its sole discretion, shall determine that such improvements or portions thereof should be removed and provided LESSOR gave LESSEE written notice that LESSOR may or will require such removal at the time LESSOR approved LESSEE'S plans for construction of the improvements, LESSEE, at no cost to LESSOR and with as little damage to the Premises as is reasonably possible, shall remove promptly said improvements or portions thereof in accordance with applicable law and shall leave the Premises in clean and orderly condition free of all debris. Notwithstanding any notice requirement above, LESSEE shall be required to remove the gassifier and rotary kiln (including stacks) components of its gasification facility from the Premises on expiration or sooner termination of the Lease.

Upon such termination or sooner determination, LESSEE shall, at LESSEE'S cost and expense, provide LESSOR with evidence satisfactory to LESSOR that LESSEE has fully complied with all applicable law or orders by any governmental authority having jurisdiction

therefor, including, without limitation, full compliance with any closure plan filed or required to be filed with any such governmental authority and removal from the Premises of all Hazardous Materials and other materials that may cause damage or injury to the environment or health as reasonably determined by LESSOR.

If, within thirty (30) days after such termination or sooner determination of this Lease, such evidence shall not have been provided LESSOR, or if LESSOR shall have requested removal of improvements and LESSEE shall not have removed said improvements, LESSOR may effect such full compliance or removal on behalf of LESSEE. All costs incurred by LESSOR in effecting such compliance or removal shall be at LESSEE'S expense and LESSEE shall, within thirty (30) days from LESSEE'S receipt of demand by LESSOR, reimburse LESSOR for such costs, together with interest as provided in Section 10 of Article Five of this Lease. Until such full compliance or removal is completed, either by LESSEE or LESSOR, and all costs therefor have been paid by LESSEE or reimbursed by LESSEE to LESSOR, together with interest thereon, if any, the Premises and this Lease shall not be deemed surrendered even though LESSEE has vacated the Premises, and LESSEE shall continue to incur and pay annual rent on the Premises or portion thereof being surrendered in an amount equal to one and one-half times (1½X) the total of annual rent paid by LESSEE during the Lease year just preceding termination, prorated for the period of time from termination to the time surrender is completed.

LESSEE shall not be relieved of its obligations under this Lease until surrender is completed in accordance with the provisions of this section. Final inspection and release of the Premises by concerned governmental agencies, if any, and by LESSOR shall be a condition precedent to completion of surrender and termination of LESSEE'S obligations hereunder. Nothing herein shall be deemed to relieve LESSEE of an obligation, such as the obligation to indemnify LESSOR, which by its specific terms survives termination.

17. Processing Fees/Documentation. LESSEE agrees to pay to LESSOR, LESSOR'S standard fees for LESSOR'S processing of consents and assignments and providing documents required or authorized by the terms, covenants, and conditions of this Lease.

18. Hazardous Materials.

LESSEE shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or about the Premises any Hazardous Materials, except in compliance with all applicable Hazardous Materials Laws (see definition in Article Five, Section 14). LESSEE at all times shall utilize the best control technology reasonably available to result in maximum control of emissions into the environment, taking into account and balancing from the perspectives of the LESSEE and LESSOR, commercially reasonable and prudent economic considerations and the relative emission reduction benefits to the Premises. The foregoing shall not be construed to require experimental technology or prototype facilities.

LESSEE shall timely comply with all governmental requirements applicable to its business or to its use or occupation of the Premises, including without limitation, all governmental requirements relating to human health, the environment and the prevention, investigation and remediation of soil or groundwater contamination, waste disposal, air or

wastewater emissions, occupational safety and health, underground storage tanks and the handling or storage of Hazardous Materials. If any of said requirements shall be inconsistent with each other, LESSEE shall comply with the most stringent requirements.

LESSEE shall obtain or cause to be obtained in advance and thereafter shall maintain or cause to be maintained without interruption, all governmental permits or approvals required for any gasification facility established on the Premises. Within ten (10) business days of the submission or receipt thereof, as the case may be, LESSEE shall provide LESSOR with a copy (i) of every application therefore and (ii) of each such permit or approval. LESSEE shall comply with the terms and conditions of each permit or approval. LESSEE agrees to undertake to consult with supervising governmental authorities and to comply with the directions and design requirements of such authorities for the operation of its business and construction of any improvements on the Premises. Nothing in this Lease shall be deemed or construed to oblige LESSOR to execute, endorse, guarantee or join in any application for any health or environmental permit that may be required of LESSEE.

LESSEE shall immediately advise LESSOR in writing of (i) any and all enforcement, clean up, removal, mitigation or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises, (ii) all claims made or threatened by any third party against LESSEE or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials, and (iii) LESSEE'S discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject LESSEE, LESSOR or the Premises to any claims, loss, damages, cost expense, liability or restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws.

LESSEE shall cause any Hazardous Materials on the Premises to be (A) remediated on-site in accordance with applicable Hazardous Materials Laws, or (B) removed from the Premises for remediation or disposal and to be transported solely by duly licensed Hazardous Materials transporters to duly licensed disposal facilities for final disposal to the extent required by and in accordance with applicable Hazardous Materials Laws, and within two (2) business days of receipt thereof, shall deliver to LESSOR copies of any hazardous waste manifest reflecting the proper disposal of such Hazardous Materials. Except in emergencies or as otherwise required by law, LESSEE shall not take any remedial or removal action in response to the presence, release or threatened release of any Hazardous Materials on or about the Premises without first giving written notice of the same to LESSOR and obtaining LESSOR'S written consent thereto, which consent shall not be unreasonably withheld.

Within ten (10) days of receipt thereof, LESSEE shall provide LESSOR with a copy of (i) any and all environmental assessments, audits, studies and reports regarding LESSEE'S past or current activities on the Premises or the environmental condition of the Premises, in each case, in LESSEE'S possession or control, (ii) any and all notices and correspondence relating to any environmental permit held by LESSEE or any actual or possible violation, complaint or other communication initiating or associated with governmental enforcement action against LESSEE for any violation of any Hazardous Materials Law or any related requirement, and (iii) any original or updated material safety data sheet for any substance present on the Premises.

LESSEE shall maintain in its files for inspection by LESSOR, current updated copies of (i) all records, permits, approvals and plans plus all notices of any enforcement, cleanup, removal, mitigation or other governmental or regulatory action instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises, (ii) all claims made or threatened by any third party against LESSEE or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials, and (iii) all records pertaining to LESSEE'S discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject LESSEE, LESSOR or the Premises to any claim, loss, damages, expenses, liability or restrictions on ownership, occupancy, transferability or use of the Premises under applicable law.

At reasonable times and after reasonable notice, LESSOR or their Agents may inspect any records maintained by LESSEE relating to LESSEE'S compliance or noncompliance with the provisions of this Lease, and LESSOR may, at its sole cost and expense, enter the Premises to conduct any reasonable test, inspection or environmental audit or assessment of the Premises or LESSEE'S operation or use of the Premises to determine LESSEE'S compliance or noncompliance with the provisions of this Section 18 of Article Four of this Lease; provided, however, that such test, inspection or environmental audit or assessment shall be conducted only after reasonable advance notice, with a representative of LESSEE present, and in such a manner and during such reasonable times as to cause minimal interruption to LESSEE'S quiet enjoyment of the Premises and the operation of LESSEE'S business provided, further, that if the results of any such tests, inspections, audits or assessments indicate that LESSEE has failed to comply with the provisions of this Lease, all costs and expenses of such tests, inspections, audits or assessments shall be borne by LESSEE.

Upon vacating the Premises and prior to surrendering the Lease, LESSEE shall promptly and properly remove and dispose of all waste, product, inventory, equipment, Hazardous Materials, all soil and other material within LESSEE'S containment system or the Premises contaminated with Hazardous Materials and other personal property present at the Premises to bring the Premises within compliance with all Hazardous Materials Laws. All such removal and disposal shall be conducted in full compliance with all Hazardous Materials Laws.

LESSEE shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Materials claims without first notifying LESSOR of LESSEE'S intention to do so and affording LESSOR the opportunity to join and participate, as a party if LESSOR so elects, in such proceedings. Except as provided above, LESSEE shall be solely responsible for and shall indemnify, defend and hold harmless LESSOR and LESSOR'S employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to LESSEE'S use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials, on, under or about the Premises, including (A) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (B) all reasonable costs and expenses incurred by LESSOR in connection therewith, including, without limitation, reasonable attorneys' fees.

Any provision above to the contrary notwithstanding, any duty imposed on LESSEE by this Section 18 of Article Four with respect to Hazardous Materials shall not apply to Hazardous Materials which were situated on or under the Premises as of the Effective Date of the Lease. The covenants of this Section 18 of Article Four, including, without limitation, the indemnification provisions, shall survive the expiration or sooner termination of this Lease, or any termination of LESSEE'S interest in the Premises.

19. Underground Storage Tank (UST). A UST is any tank, including underground piping connected to the tank, that has at least ten percent (10%) of its volume underground and is used for the storage of certain regulated substances like petroleum or certain hazardous chemicals, as defined at H.A.R. section 11-281-03. Prior consent and approval from LESSOR is required for the installation of any UST on the Premises, which consent and approval shall not be unreasonably withheld, conditioned or delayed. All USTs are considered trade fixtures and are to be removed upon termination or expiration of the Lease by LESSEE. If LESSEE has installed a UST, then and in such event, LESSEE shall arrange, at its sole cost and expense, for the removal of any such UST at the end of the term of this Lease and upon such removal shall arrange to be provided to LESSOR within ninety (90) days after the end of such Lease term a satisfactory UST closure report prepared by a recognized Hawaii environmental engineer and accepted by the Department of Health of the State of Hawaii. If any clean up procedures and/or remediation is necessary as a result of the installation, use or removal of such UST, then and in such event LESSEE shall arrange to have all such work done, at LESSEE'S sole cost and expense, by an environmental engineering company reasonably acceptable to LESSOR, in accordance with all then applicable regulations and requirements of the State of Hawaii, Department of Health and the Fire Department of the county in which the Premises are located. The covenants of this Section 19 of Article Four shall survive the expiration or sooner termination of this Lease or any termination of LESSEE'S interest in the Premises.

20. Non-warranty. LESSOR does not make any warranties with respect to the condition of the Premises, and the Premises are being leased "AS IS". LESSEE acknowledges that (a) the Premises may require additional soil compaction, filling, grading and site preparation and may have expansive soils, boulders, cavities and other such soils conditions, and (b) LESSOR'S surrounding lands may be subdivided, developed, improved, operated and otherwise used in any lawful way and LESSOR makes no warranty or representation, express or implied, as to the subdivision, development, improvement, operation and use of LESSOR'S surrounding lands by it or others. LESSEE is also aware that dust is generated from activities on neighboring lands. Any provisions of this Lease which permit or provide for abatement of the annual base rental in specified circumstances shall not be deemed to be warranties.

21. Lease Performance Bond and Security Deposit. LESSEE shall, at its own cost and expense, within thirty (30) days from the Lease execution date, deposit with LESSOR and thereafter keep in full force and effect during the term of this Lease, a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by LESSEE of all of the terms, covenants and conditions of this Lease. The amount of the bond must equal the annual rent under the Lease, the initial amount to be established at the time of the auction of the LESSEE, and thereafter shall be adjusted to equal the annual rental determined at each lease rental reopening date and each stepped-up lease rent date. There shall be attached to the bond an affidavit by a surety or sureties pursuant to and in accordance with the provisions contained in

Section 78-20, Hawaii Revised Statutes, provided, however, LESSEE may furnish a bond in like amount, conditioned as aforesaid, executed by LESSEE alone as obligor, if, in lieu of any surety or sureties, LESSEE shall also furnish and at all times thereafter keep and maintain on deposit bonds, stocks, or other negotiable securities properly endorsed, or executed and deliver to LESSOR a deed or deed of trust of real property, all of such character as shall be satisfactory to LESSOR and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value at which securities may be accepted and at any time thereafter held by LESSOR under the foregoing provision shall be determined by LESSOR, and LESSEE may, with the approval of LESSOR, exchange other securities or money for any of the deposited securities, if in the judgment of LESSOR the substitute securities or money is at least equal in value to those withdrawn.

It is further agreed that LESSEE may substitute the sureties with a security deposit equal to three months of the established rent pursuant to an action taken by the Hawaiian Homes Commission on June 26, 1990. The security deposit shall be adjusted to equal the three months rent determined at each Lease rent reopening date. The deposit shall be refunded without interest to LESSEE at the expiration of the Lease or upon assignment of the Lease.

ARTICLE FIVE

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Mortgage. Upon due application and with the written consent of LESSOR, which consent shall not be unreasonably withheld, conditioned or delayed, LESSEE may mortgage this Lease, or any interest therein. LESSOR covenants and agrees to promptly review any request by LESSEE for consent to a mortgage to finance any portion of the construction of the improvements or facilities to be developed and constructed on the Premises under this Lease and any permanent loan or loans replacing any such construction loans. Any mortgage consented to by LESSOR pursuant to this Section 1 of Article Five shall be deemed an "Approved Mortgage" for purposes of all other provisions of this Lease. If the mortgage or security interest is to a recognized lending institution, authorized to do business as such in either the State of Hawaii or elsewhere in the United States, the consent shall extend to foreclosure and sale of LESSEE'S interest at the foreclosure to any purchaser, including the mortgagee (the "Mortgagee"), without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the Premises or any interest in the Lease. The interest of the Mortgagee or holder shall be freely assignable. The term "holder" shall include the Mortgagee and an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these federal agencies.

If an Approved Mortgagee of this Lease (the "Mortgagee") shall deliver to LESSOR an executed counterpart of the leasehold mortgage (the "Mortgage") with the recording information duly noted thereon as certified by a title company doing business in the State of Hawaii, together with a written notice setting forth the name and address of Mortgagee, then, until the time, if any, that the Mortgage shall be satisfied or Mortgagee shall give to LESSOR written notice that the Mortgage has been satisfied, the following provisions shall be applicable:

(a) No mutual cancellation, surrender, acceptance of surrender or modification of this Lease shall be binding upon Mortgagee or affect the lien of the Mortgage, without the prior written consent of Mortgagee.

(b) No notice, demand, election or other communication required or permitted to be given under the Lease (all of the foregoing hereinafter collectively being referred to as "notices", and each of them as a "notice") which shall be given by LESSOR to LESSEE shall be binding upon or affect Mortgagee, unless a copy of said notice shall be given to Mortgagee within the time when such notice shall be required or permitted to be given to LESSEE. In the case of an assignment of the Mortgage or change in address of Mortgagee, the assignee thereof or the Mortgagee, by notice to LESSOR, may change the address to which copies of notices are to be sent as herein provided. LESSOR shall not be bound to recognize any assignment of the Mortgage unless and until LESSOR shall be given a notice of such assignment, including a copy thereof in the form proper for recording, together with the name and address of assignee and, thereafter, until a further assignment, the assignee named in such assignment shall be deemed to be "Mortgagee" for all purposes under this Lease. If the Mortgage is held by more than one person, corporation or entity, no provision of this agreement requiring LESSOR to give a notice or copy of any notice to Mortgagee shall be binding upon LESSOR unless and until all of the holders of the Mortgage shall designate in writing one of their number to receive all notices and copies of notices and shall have given to LESSOR an original executed counterpart of the designation in form proper for recording. All notices and copies of notices to be given to Mortgagee as provided in this section shall be given in the same manner as is provided in this Lease in respect of notices to be given by LESSOR or LESSEE.

(c) Mortgagee shall have the right (but not the obligation) to perform any term, covenant, condition or agreement and to remedy any default by LESSEE under the Lease, and LESSOR shall accept such performance by Mortgagee with the same force and effect as if furnished by LESSEE; provided, however, that Mortgagee shall not thereby or hereby be subrogated to the rights of LESSOR.

(d) If LESSOR shall give a notice of default to LESSEE pursuant to the provisions of this Lease, and if such default shall not be remedied within the applicable cure period provided for in this Lease, and LESSOR shall thereby, or otherwise, become entitled to give a notice of election to terminate the Lease, then, before giving any such notice of election to terminate the Lease, LESSOR shall give to Mortgagee not less than sixty (60) days' additional written notice of LESSEE'S failure to cure the default, and shall allow Mortgagee such additional sixty (60) days within which to cure the default, provided, however, that (i) if the default can be cured by the payment of money, the additional time for Mortgagee to cure shall be limited to thirty (30) days, and provided further (ii) if the default cannot practicably be cured by Mortgagee without taking possession of the Premises, Mortgagee shall proceed diligently to

obtain possession of the Premises as Mortgagee (through appointment of a receiver or otherwise), and, upon obtaining possession, shall promptly commence and duly prosecute to completion such action as may be necessary to cure such default. Mortgagee shall not be required to continue to proceed to obtain possession, or to continue in possession as mortgagee, of the Premises pursuant to this subsection (d), if and when such default shall be cured. Nothing herein shall preclude LESSOR from exercising any of its rights or remedies with respect to any other default by LESSEE during any period when LESSOR shall be forbearing in the termination of this Lease as above provided, but in such event Mortgagee shall have all of the rights and protections herein provided.

(e) LESSEE may delegate irrevocably to Mortgagee the authority to exercise any or all of LESSEE'S rights under this Lease, but no such delegation shall be binding upon LESSOR unless and until either LESSEE or Mortgagee shall deliver to LESSOR a signed counterpart, in form proper for recording, of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Mortgage itself, in which case the service upon LESSOR of an executed counterpart of the Mortgage in accordance with this Section, together with a written notice specifying the provisions therein which delegate such authority to Mortgagee, shall be sufficient to give LESSOR notice of such delegation. Any provision of this Lease which gives to Mortgagee the privilege of exercising a particular right of LESSEE hereunder on condition that LESSEE shall have failed to exercise such right shall not be deemed to diminish any privilege which Mortgagee may have, by virtue of a delegation of authority from LESSEE, to exercise such right without regard to whether or not LESSEE shall have failed to exercise such right.

(f) In the event of the commencement of a bankruptcy proceeding by or against LESSEE, the Mortgagee shall have the option, and LESSOR shall recognize the Mortgagee's right, within the statutory time period or any extension thereof provided under Section 365 of the Bankruptcy Code for the rejection or assumption of Lease, to obtain or cause LESSEE and/or trustee in bankruptcy to obtain:

(i) An extension of the period during which the Lease may be assumed or rejected; or

(ii) An abandonment of the leasehold estate by LESSEE and/or trustee in bankruptcy court pursuant to Section 554 of the Bankruptcy Code, as amended; or

(iii) An assumption of the Lease pursuant to Section 365 of the Bankruptcy Code, as amended.

In the event of the commencement of a bankruptcy proceeding by or against LESSEE, LESSOR agrees and acknowledges for the exclusive benefit of the Mortgagee and any person or entity acquiring an interest in the Lease in or in lieu of the foreclosure of the Mortgage, that the actual or deemed rejection of the Lease under Section 365 of the Bankruptcy Code (11 United States Code Section 365) or any other law having similar effect, shall not effect a termination of the Lease or affect or impair the Mortgagee's lien thereon or rights with respect thereto, provided however, that this provision is not intended and shall not be deemed to confer any rights or benefits upon LESSEE or LESSEE'S bankruptcy trustee, and upon written request of the

Mortgage delivered to LESSOR within thirty (30) days following the Mortgagee's receipt of written notice of such actual or deemed rejection of the Lease, LESSOR shall, at the option of the Mortgagee, execute and deliver to the Mortgagee or its designee an instrument (in form acceptable to Mortgagee or its designee) recognizing, confirming and giving legal effect to the continued existence of the Lease, with its original validity and priority, in favor of the Mortgagee or its designee (hereinafter called the "Confirmation of Lease"), subject to the lien of the Mortgage and any lien or encumbrance prior to the lien of the Mortgage, upon and subject to the following terms and conditions:

(i) The Mortgagee shall pay or cause to be paid to LESSOR at the time of the execution and delivery of the Confirmation of Lease, any and all sums which are at the time of execution and delivery thereof due under the Lease and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, which LESSOR shall have incurred by reason of the actual or deemed rejection of the Lease and the execution and delivery of the Confirmation of Lease;

(ii) The Mortgagee or its designee shall undertake, by accepting the Confirmation of Lease, to perform all covenants and conditions of the Lease reasonably capable of performance by the Mortgagee or such other person or entity. The Mortgagee or its designee, as the case may be, may assign the Lease or may foreclose upon the Mortgage without further consent of LESSOR and the Mortgagee or its designee shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such Lease contained and on LESSEE'S part thereunder to be performed and observed from and after the date of such assignment by the Mortgagee or its designee or upon foreclosure, provided that a certified copy of such assignment be provided to LESSOR; and

(iii) The Mortgagee or its designee under the Lease shall be entitled to and shall have the same right, title and interest in and to the Premises and the buildings and improvements thereon as LESSEE had under the Lease prior to its rejection and LESSOR shall use commercially reasonable efforts to obtain the cooperation of all parties in interest such that any Confirmation of Lease made pursuant to this Agreement shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the Premises which mortgage, lien, charge or encumbrance was junior to the Lease.

2. **Breach.** Time is of the essence of this agreement and if LESSEE shall become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be attached or taken by operation of law, or if any assignment is made of LESSEE'S property for the benefit of creditors, or if LESSEE shall fail to observe and perform any of the material terms, covenants and conditions contained in this Lease and on its part to be observed and performed, LESSOR shall deliver a written notice of the breach or default by service, as provided by Section 634-35, or 634-36, Hawaii Revised Statutes, or by registered mail, or certified mail to LESSEE at its last known address, and to each mortgagee or holder of record having a security interest in the Premises, making demand upon LESSEE to cure or remedy the breach or default within sixty (60) days from the date of receipt of the notice [if such default is by its nature not reasonably susceptible of being cured within such 60 day period, such 60 day period may be extended as necessary to provide LESSEE the opportunity to cure the default, provided LESSEE within said period commences and thereafter diligently proceeds to cure such default without interruption

until such cure is completed]; provided that where the breach involves a failure to make timely rental payments pursuant to the Lease, the written notice shall include a demand upon LESSEE to cure the breach within less than sixty (60) days, but not less than five (5) business days, after receipt of the notice. Upon failure of LESSEE to cure or remedy the breach or default within the time period provided herein, or within such additional period as LESSOR may allow for good cause, but subject to the provisions of Section 171-21, Hawaii Revised Statutes, as amended, and subject also to Sections 1(d) and 1(f) of Article Five above, LESSOR, in addition to all other rights and remedies LESSOR may have under this Lease, shall have the following rights:

(a) The right to declare the term of this Lease (or any extension) ended, to re-enter the Premises and take possession thereof and to terminate all of the rights of LESSEE in and to the Premises.

(b) The right, without declaring the term of this Lease (or any extension) ended, to re-enter the Premises and to occupy the same or any portion thereof and/or to Lease the whole or any portion thereof, all for and on account of LESSEE as hereinafter provided.

(c) The right, even though LESSOR may have re-let all or any portion of the Premises, at any time thereafter to elect to terminate this Lease for such previous defaults on the part of LESSEE and to terminate all of the rights of LESSEE in and to the Premises.

Pursuant to said rights of re-entry, LESSOR may, subject to compliance with any applicable laws, but shall not be obligated to, (i) remove all persons from the Premises using such force as may be necessary therefor, (ii) remove all personal property therefrom, including, but not limited to, LESSEE'S property, and (iii) enforce any rights LESSOR may have against said personal property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of LESSEE or the owners or owner thereof. After sixty (60) days, personal property so stored shall be considered abandoned. Anything contained herein to the contrary notwithstanding, LESSOR shall not be deemed to have terminated this Lease or LESSEE'S liability hereunder (whether such liability accrues before or after LESSOR exercises its rights hereunder) by any such re-entry or other action to obtain possession of the Premises, except as LESSOR may otherwise expressly provide in writing. LESSEE covenants and agrees that the service by LESSOR of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not be deemed to be a termination of this Lease or of any liability of LESSEE hereunder, except as LESSOR may otherwise expressly provide in writing.

3. Rights of Holder of Record of a Security Interest. In the event LESSOR seeks to forfeit the privilege, interest, or estate created by this Lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach, if the same can be cured or remedied by the payment of money or, if such is not the case, by performing or undertaking in writing to perform all of the terms, covenants and conditions contained in the Lease on LESSEE'S part to be performed, capable of performance by the holder, as determined by LESSOR, within the time period provided in Section 171-20, Hawaii Revised Statutes, or within any additional period allowed under Sections 1(d) and 1(f) of Article Five above, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, LESSOR may: (a) pay to the holder from any monies at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and

mortgage from the holder or if ownership of the privilege, interest or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, LESSOR shall be entitled to the conveyance of the privilege, interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to LESSOR, then terminate the outstanding privilege, interest or estate without prejudice to any other right or remedy for arrearages of rent or for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by LESSOR in instituting or prosecuting its rights or remedies under this provision and Section 171-21 of the Hawaii Revised Statutes shall not operate as a waiver of these rights or to deprive it of the remedy when it may still otherwise hope to resolve the problems created by the breach or default involved. The proceeds of any disposition under subparagraph (b) above shall be applied as follows: first, to reimburse LESSOR for costs and expenses in connection with the disposition; second, to discharge in full any unpaid purchase price, indebtedness or damages owing LESSOR in connection with the privilege, interest or estate terminated; third, to Mortgagee to the extent of the value received by LESSOR upon disposition which exceeds the fair market lease value of the land as previously determined by LESSOR'S appraiser; and fourth, to the owner of the privilege, interest, or estate.

4. Condemnation. If at any time, during the term of this Lease, all or any portion of the Premises should be condemned, or required for public purposes by the State of Hawaii, or any county or city and county, or any other governmental agency or subdivision, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE shall be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon had been condemned by the State of Hawaii under its power of eminent domain, the amount of such just compensation to be determined in the manner set forth in Section 5 of Article Two. Nothing herein contained shall be construed as preventing LESSEE from being entitled to any separate award made to LESSEE for the taking of LESSEE'S personal property, or from claiming all or any portion of its award directly against the condemning authority. The foregoing rights of LESSEE shall not be exclusive of any other to which LESSEE may be entitled by law. In the event that LESSEE reasonably determines that the remainder of the Premises are rendered unusable as the result of any such condemnation LESSEE shall have the right to surrender the Premises and terminate this Lease pursuant to Section 17 of Article Four upon the delivery of written notice to LESSOR.

5. Right to Enter. LESSOR and agents or representatives shall have the right to enter and cross any portion of the Premises other than the building for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, LESSOR shall not interfere unreasonably with LESSEE or LESSEE'S use and enjoyment of the Premises.

6. Inspection by Prospective Bidders. LESSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the Premises prior to the proposed disposition; provided, however,

that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or designated agents of LESSEE; provided, further, that no such authorization shall be given more than two (2) years before the expiration or termination of this Lease.

7. Payment or Acceptance of Rent Not a Waiver. The payment or acceptance of rent shall not be deemed a waiver of any breach by LESSOR or LESSEE of any term, covenant or condition of this Lease, nor of LESSOR'S right to re-entry for breach of covenant, nor of the right to declare and enforce a forfeiture for any breach, and the failure of LESSOR or LESSEE to insist upon strict performance of any term, covenant or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of such term, covenant, condition or option.

8. Extension of Time. Whenever a party is required to perform an act under this Lease, other than the payment of money, by a certain time, said time shall be deemed extended so as to take into account events of "Force Majeure." "Force Majeure" is any of the following events that prevents, delays, retards or hinders a party's performance of its duties hereunder: act of God; fire; earthquake; volcanic eruption; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts; condemnation; requisition; acts of governmental, civil, military or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, not within such party's control.

9. Quiet Enjoyment. LESSOR covenants and agrees with LESSEE that upon payment of the rent at the times and in the manner provided and the observance and performance of these terms, covenants and conditions on the part of LESSEE to be observed and performed, LESSEE shall and may have, hold, possess and enjoy the Premises for the term of the Lease, without hindrance or interruption by LESSOR or any other person or persons by, through or under it. LESSOR shall defend the title to the Premises and the use and occupancy of the same by LESSEE against the claims of all persons, except those claiming by or through LESSEE.

10. Interest, Costs and Fees. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of ONE HUNDRED AND NO/100 DOLLARS (\$100.00) per month for each month of delinquency.

In case of any default by LESSEE in the performance of the terms, covenants and conditions herein contained, LESSEE shall pay to LESSOR any and all costs incurred in connection with the default, including reasonable attorneys' fees. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, LESSEE shall pay, in addition to the indebtedness, reasonable collector's and/or attorneys' fees, together with all costs.

11. Hawaii Law/Filing. This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii. This Lease shall not be recorded although the parties agree to duly execute and file with the Bureau of Conveyances a memorandum of this Lease in the form attached hereto as Exhibit "F".

12. Partial Invalidity. If any term, provision, covenant or condition of this Lease should be held to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. Notice. Except as otherwise required by Chapter 171, Hawaii Revised Statutes, any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other party as follows:

If to LESSEE: Big Island Carbon, LLC
75-5722 Kuakini Highway, Suite 202
Kailua-Kona, HI 96740

If to LESSOR: Department of Hawaiian Home Lands
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707
Attn: Land Management Division

And a copy to: Department of the Attorney General
465 South King Street, Basement
Honolulu, Hawaii 96813
Attention: AG - PSHH

Or, at such other address as may be specified from time to time in writing by either party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

14. Confidentiality. LESSOR covenants and agrees not to divulge or communicate to any third party any technical, financial, trade secrets or other proprietary information which LESSEE may transmit to LESSOR, provided that in transmitting the information to LESSOR, LESSEE prominently identifies the information, by cover letter and stamp, as proprietary and/or confidential information and provided further that this prohibition shall not apply to records which LESSOR, as a government agency, is required by laws to disclose. It is agreed between the parties that LESSEE would be irreparably damaged by reason of any violation of the provisions of this Section 14, and that any remedy at law for a breach of such provisions would be inadequate. Therefore, in addition to any other remedies LESSEE might have, LESSEE shall be entitled to seek and obtain injunctive or other equitable relief (including, but not limited to, a temporary restraining order, a temporary injunction or a permanent injunction) against LESSOR for a breach or threatened breach of such provisions and without the necessity of proving actual monetary loss. LESSOR shall provide LESSEE not less than five (5) business days prior notice of any confidential or proprietary information which it proposes to disclose without LESSEE'S written consent.

15. Definitions. As used herein, unless clearly repugnant to the context:

(a) "Chairman" shall mean the Chairman of the Hawaiian Homes Commission of the Department of Hawaiian Home Lands of the State of Hawaii or his/her successor.

(b) For the purpose of this Lease, the term "Hazardous Materials" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, or Hawaii state or local statute, regulation or ordinance, as amended from time to time, including but not limited to the following statutes and regulations promulgated pursuant to them ("Hazardous Materials Laws"):

Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq. ("RCRA")

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") amended by Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. 9601 et seq.

Clean Air Act, 42 U.S.C. Sections 7401 et seq.

Clean Water Act of 1977, 33 U.S.C. 1251 et seq.

Federal Fungicide, Insecticide and Rodenticide Act of 1978 ("FIFRA" or "Pesticide Act"), 7 U.S.C. 136 et seq.

Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2601 et seq.

Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.

Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq.

Chapter 128D, Hawaii Revised Statutes

Chapters 342B through 342P, Hawaii Revised Statutes,

and including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-byphenyls ("PCBs"), formaldehyde, and also including any substance designated by federal or Hawaii state or local regulation, now or in the future, as presenting a risk to human health or the environment because the substance may:

(1) Cause or significantly contribute to an increase in serious irreversible or incapacitating reversible illness; or

(2) Pose a substantial present or potential hazard to human health, to property, or to the environment when improperly stored, transported, released, or otherwise managed.

(c) "Holder of record of a security interest" is a person who is the owner or possessor of a security interest in the Premises and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "LESSOR" shall mean and include LESSOR herein, its successors or assigns.

(e) "LESSEE" shall mean and include LESSEE herein, its successors or permitted assigns.

(f) The "Premises" shall mean the land leased hereunder.

(g) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural.

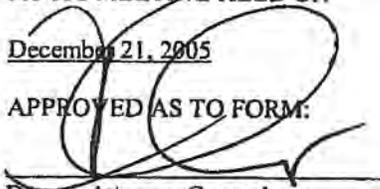
(h) The paragraph headings throughout this Lease are for the convenience of LESSOR and LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON

December 21, 2005

APPROVED AS TO FORM:


Deputy Attorney General
State of Hawaii

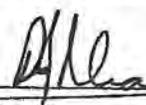
STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

By 

Micah A. Kane, Chairman
Hawaiian Homes Commission

LESSOR

KONACARBON, LLC
a Delaware limited liability company

By 

Its _____
CEO

LESSEE

STATE OF HAWAII

)

) SS.

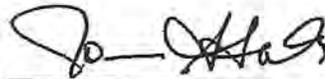
COUNTY OF HAWAII

)

On this 10th day of March, 2009, before me appeared Richard J. Vidgen, to me personally known, who, being by me duly sworn or affirmed did say that he she is the CEO for Konacarbon LHC, a limited liability company corporation and such person executed the foregoing instrument on behalf of said corporation as the free act and deed of such person and in the capacities shown having been authorized to execute such instrument in such capacity.

dfp

LS



Print or Type Name _____

Notary Public, State of Hawaii

My Commission expires: Joanne Stubenberg
Notary Public, State of Hawaii
 My commission expires: August 14, 2009

LS

NOTARY PUBLIC CERTIFICATION

Joanne Stubenberg Third Judicial Circuit

Doc. Description: State of Hawaii

Department of Hawaiian Home Lands

General lease # 275

No. of Pages: 54 Date of Doc. 3/1/09

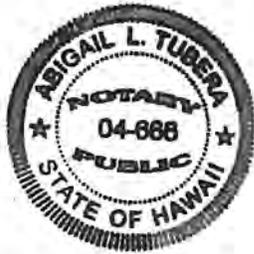


Notary Signature

Date

STATE OF HAWAII .)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 16th day of March, 2009, before me appeared MICAH A. KANE, to me personally known, who, being by me duly sworn, did say that he is the chairman of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth.



Abigail L. Tubera
Notary Public, State of Hawaii
ABIGAIL L. TUBERA
Print Name of Notary Public
My commission expires: 11/21/2012

Doc. Date: 3/1/09 # Pages: 54
Notary Name: Abigail L. Tubera First Circuit
Doc. Description: GL 275 - between
OHHL + Kima Carbon, LLC

Abigail L. Tubera 3/1/09
Notary Signature Date

EXHIBIT "A"

LEGAL DESCRIPTION OF PREMISES

KAEI HANA-II INDUSTRIAL SUBDIVISION

LOT E-1

Kawaihae 1st, South Kohala, Island of Hawaii, Hawaii

Being a portion of the Government (Crown) Land of Kawaihae designated as Hawaiian Home Land under Section 203 of the Hawaiian Homes Commission Act, 1920.

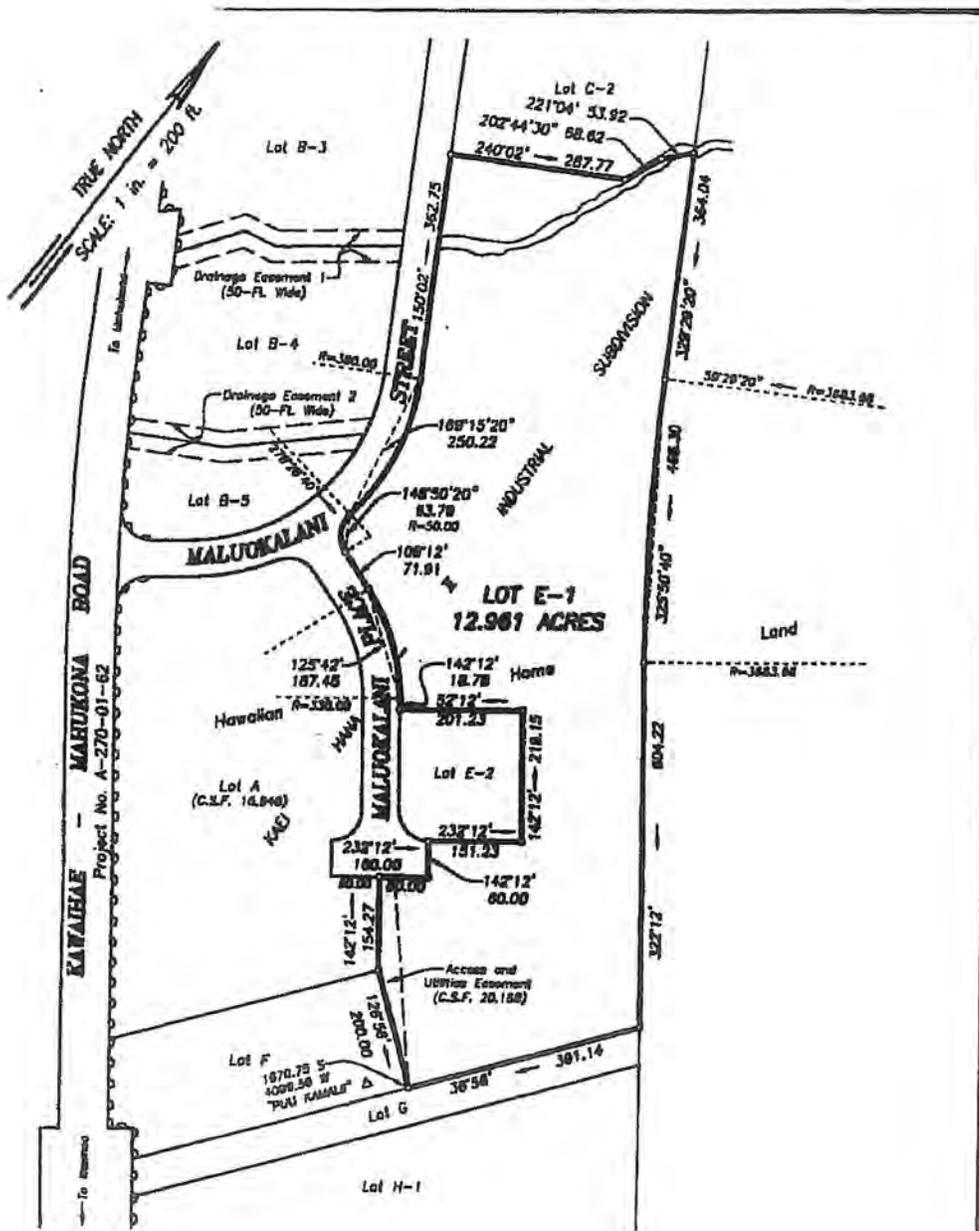
Beginning at the south corner of this parcel of land, at the east corner of Lot F of Kaei Hana-II Industrial Subdivision and on the west boundary of Lot G of Kaei Hana-II Industrial Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU KAMALII" being 1670.75 feet South and 4099.56 feet West, thence running by azimuths measured clockwise from True South: -

1. 126° 56' 200.00 feet along Lot F of Kaei Hana-II Industrial Subdivision;
2. 142° 12' 154.27 feet along Lot A of Kaei Hana-II Industrial Subdivision;
3. 232° 12' 80.00 feet along the south end of Maluokalani Place;
4. 142° 12' 60.00 feet along the south end of Maluokalani Place;
5. 232° 12' 151.23 feet along Lot E-2 of Kaei Hana-II Industrial Subdivision;
6. 142° 12' 219.15 feet along Lot E-2 of Kaei Hana-II Industrial Subdivision;
7. 52° 12' 201.23 feet along Lot E-2 of Kaei Hana-II Industrial Subdivision;
8. 142° 12' 18.78 feet along the north side of Maluokalani Place;
9. Thence along the north side of Maluokalani Place on a curve to the left with a radius of

- 330.00 feet, the chord azimuth and distance being: 125° 42' 187.45 feet;
10. 109° 12' 71.91 feet along the north side of Maluokalani Place;
 11. Thence along the north corner of the intersection of Maluokalani Place and Maluokalani Street on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being: 148° 50' 20" 63.79 feet;
 12. Thence along the north side of Maluokalani Street on a curve to the left with a radius of 380.00 feet, the chord azimuth and distance being: 169° 15' 20" 250.22 feet;
 13. 150° 02' 362.75 feet along the north side of Maluokalani Street;
 14. 240° 02' 287.77 feet along Lot C-2 of Kahei Hana-II Industrial Subdivision;
 15. 202° 44' 30" 68.62 feet along Lot C-2 of Kahei Hana-II Industrial Subdivision;
 16. 221° 04' 53.92 feet along Lot C-2 of Kahei Hana-II Industrial Subdivision;
 17. 329° 29' 20" 364.04 feet along the remainder of Hawaiian Home Land of Kawaihae 1st;
 18. Thence along the remainder of Hawaiian Home Land of Kawaihae 1st on a curve to the left with a radius of 3683.66 feet, the chord azimuth and distance being: 325° 50' 40" 468.30 feet;
 19. 322° 12' 604.22 feet along the remainder of Hawaiian Home Land of Kawaihae 1st;
 20. 36° 56' 391.14 feet along Lot G of Kahei Hana-II Industrial Subdivision to the point of beginning and containing an AREA OF 12.961 ACRES.

SUBJECT, however, to an Access and Utilities Easement as shown on plan attached hereto (Exhibit "B") and made a part hereof.

EXHIBIT "B"
SUBDIVISION MAP



KAEI HANA-II INDUSTRIAL SUBDIVISION
LOT E-1
Kawaihae 1st, South Kohala, Island of Hawaii, Hawaii

Job H-258(08)
C. Ek.

Scale: 1 inch = 200 feet

..... Denotes no vehicle access permitted

TAX MAP B-1-08-07

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

HAWAII FILE FOLDER H

RD8 August 4, 2008

EXHIBIT "C"



January 14, 2009

PROPOSAL
29-1138

Rick Vidgen

email: rickvidgen@hawaii.rr.com

Re: Bid Proposal
Kawaihae Industrial

The undersigned Contractor hereby submits this Preliminary Cost Estimate for the construction of the proposed Kawaihae Industrial, as per preliminary Site Plan by Nancy E. Burns, for the sum of:

~ Eight Hundred Seventy Nine Thousand Two Hundred Eleven Dollars & 80/100 ~

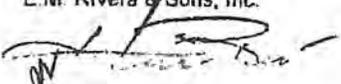
(\$ 879,211.80)

A copy of the proposed scope of work is attached for your review. Prices may be subject to change upon review of Approved drawings.

We thank you for allowing us the opportunity in submitting the above proposal. We look forward to hearing from you.

Should you have any questions, please contact our office, (808) 325-5057.

Respectfully Submitted,
E.M. Rivera & Sons, Inc.



Hiram Rivera
President

P.O. Box 9031 • Kailua-Kona, Hawaii 96745
(808)325-5057 / Fax(808)325-3279
Lic No AC-10302

E. M. Rivera & Sons, Inc.
 Job: Kawaihae Industrial

Prop.29-1138

<u>SCOPE OF WORK</u>		<u>U / M</u>	<u>Unit Price</u>	<u>Amount</u>	<u>TOTAL</u>
1. Mobilization		1 LS	18,000.00	18,000.00	
2. Clear & Grub		1 LS	2,500.00	2,500.00	
3. Mass Excavation		16,470 cy	14.50	238,815.00	
4. Embankment		16,470 cy	6.50	107,055.00	
5. Dust Control		2 mo	18,500.00	37,000.00	
6. Erosion Control		510 lf	6.50	3,315.00	
				SUBTOTAL	\$ 406,685.00
<u>DRAINAGE SYSTEM</u>					
7. Drain Sump		2 ea	9,500.00	19,000.00	
8. Realign Drain Ditch		1,221 cy	24.00	29,304.00	
9. Culvert Head Wall w/ Apron		2 ea	14,000.00	28,000.00	
10. Realign Head Wall		1 ea	2,800.00	2,800.00	
11. 36" Culvert		38 lf	160.00	6,080.00	
				SUBTOTAL	\$ 85,184.00
<u>ROADWAYS</u>					
12. 2" A.C. Paving - Loop Road		2,871 sy	30.00	86,130.00	
13. 6" Base Course		27,910 sf	1.90	53,029.00	
				SUBTOTAL	\$ 139,159.00
<u>UPPER BUILDING PAD</u>					
14. Rock Wall		4,148 sf	22.00	91,256.00	
15. Structural Wall Backfill		495 cy	24.00	11,880.00	
16. 2-ft Structural Fill for Building Pad		2,700 cy	24.00	64,800.00	
				SUBTOTAL	\$ 167,936.00
<u>LOWER BUILDING PAD</u>					
17. 2-ft Structural Fill - Building Area Only		1,400 cy	24.00	33,600.00	
				SUBTOTAL	\$ 33,600.00
<u>2" A.C. PAVING CONNECTOR</u>					
18. Road & Loading Area		962 sy	30.00	28,860.00	
19. 6" Base Course		9,362 sf	1.90	17,787.80	
				SUBTOTAL	\$ 46,647.80
				PROPOSAL TOTAL	\$ 879,211.80

Acceptance of Proposal. The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified.

Payment to be made as follows:

Monthly Progress Billings, payment due upon receipt of invoice.

Date of Acceptance _____ Signature: _____

Its: _____

EXHIBIT "D"

RETURN BY () MAIL () PICK-UP

This document contains ____ pages

TITLE OF DOCUMENT:

CONSENT TO ASSIGNMENT OF LEASE

PROPERTY DESCRIPTION:

See Exhibit A attached hereto.

TAX MAP KEY (3) 6-1-06

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII

BUREAU OF CONVEYANCES

DATE _____ Doc 2009-133296
DOCUMENT # AUG 31, 2009 11:00 AM

Return by Mail () Pickup (x) To:

DAMON KEY LEONG KUPCHAK HASTERT (MMS)
1003 Bishop Street, Suite 1600
Honolulu, HI 96813
Tel: 531-8031

Total No. of Pages: 3

Affects TMK: (3) 6-1-006:007

CONSENT TO ASSIGNMENT OF LEASE

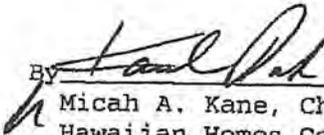
The STATE OF HAWAII, by its Hawaiian Homes Commission, the Lessor named in that certain unrecorded indenture of lease, General Lease No. 275, dated March 10th, 2009, made by and between it, as Lessor, and KONACARBON, LLC, a Delaware limited liability company, as Lessee, a Short Form Memorandum of Lease of which is recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2009-112379 (the "Lease"), does hereby consent to the assignment of the Lease to BIG ISLAND CARBON, LLC, a Delaware limited liability company, as Assignee, which is recorded in the Bureau of Conveyances of the State of Hawaii as Document No. ^{Doc 2009-133296} AUG 31, 2009 11:00 AM -- upon the following express conditions:

(1) This consent shall not authorize, nor be deemed to authorize, any further or other assignment of the Lease; (2) This Consent shall not be deemed nor construed to be a waiver of any of the terms, covenants, conditions, or provisions of the Lease; all rights of the Lessor under the Lease being hereby reserved; and (3) Should there be any conflict between the

provisions of the Lease and the Assignment of Lease, the provisions in the former shall control.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Hawaiian Homes Commission, has executed these presents this 6th day of August, 2009.

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

BY 
Micah A. Kane, Chairman
Hawaiian Homes Commission

APPROVED AS TO FORM:


Deputy Attorney General
State of Hawaii

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 6th day of August, 2009, before me appeared KAULANA PARK, to me personally known, who, being by me duly sworn, did say that he is the Deputy to the Chairman of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth.



Abigail L. Tubera
Notary Public, State of Hawaii
ABIGAIL L. TUBERA
Print Name of Notary Public
My commission expires: 11/31/2012

Doc. Date: 8/6/09 # Pages: 3
Notary Name: Abigail L. Tubera First Circuit
Doc. Description: Consent to Assignment of Lease - Big Island Custom LLC
Abigail L. Tubera 8/6/09
Notary Signature Date



THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII

BUREAU OF CONVEYANCES

DATE _____
DOCUMENT NO. Doc 2009-133295
AUG 31, 2009 11:00 AM

LAND COURT SYSTEM

REGULAR SYSTEM

Return By Mail () Pickup (x) To:

DAMON KEY LEONG KUPCHAK HASTERT (MMS)
1600 Pauahi Tower, 1003 Bishop St.
Honolulu, HI 96813
TEL: 531-8031

Total No. of Pages 5

TMK: (3) 6-1-06: parcel 7

ASSIGNMENT OF LEASE

THIS ASSIGNMENT OF LEASE, is made and entered into as of August 18, 2009, by and between KONACARBON, LLC, a Delaware limited liability company, whose mailing address is 75-5722 Kuakini Highway, Suite 202, Kailua-Kona, Hawaii 96740, hereinafter called "Assignor," and BIG ISLAND CARBON, LLC, a Delaware limited liability company, whose mailing address is 75-5722 Kuakini Highway, Suite 202, Kailua-Kona, Hawaii 96740, hereinafter called "Assignee."

WITNESSETH:

That for and in consideration of the sum of ONE DOLLAR (\$1.00) and other valuable consideration, receipt and sufficiency of which are acknowledged, and of the covenants and agreements of Assignee hereinafter contained and on Assignee's part to be faithfully kept and performed, Assignor does hereby sell, assign, transfer, set over and deliver unto Assignee, as tenant in severalty, its successors and permitted assigns, all of Assignor's interest in and to the leasehold estate (hereinafter referred to as the "Lease") described in Exhibit "A," attached hereto and made a part hereof;

TO HAVE AND TO HOLD the same for and during the full unexpired term of said Lease, together with all of the right, title, interest and estate of Assignor as present Lessee under the terms thereof, in and to the premises therein described and thereby demised and all of the rights, privileges and appurtenances thereunto belonging, unto Assignee;

SUBJECT, HOWEVER, to the payment of rent, taxes, assessments and other charges reserved by said Lease and subject also to the observance and performance by Assignee of all of the covenants and conditions in said Lease contained, which, according to the terms and provisions thereof, are or ought to be observed and performed by the Lessee therein named;

AND Assignor, in consideration of the premises, does hereby covenant and agree to and with Assignee that Assignor is the lawful owner of the leasehold estate and interest created under the Lease; that the Lease is in full force and effect and is not in default; that the property is free and clear of all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid, and except as may be specifically set forth herein; that Assignor is the lawful owner of any personal property described herein and that Assignor's title thereto is free and clear of and from all liens and encumbrances except as set forth herein; that Assignor has good right to transfer and assign said real property and personal property; and that Assignor will WARRANT AND DEFEND the same unto Assignee against the lawful claims and demands of all persons, except as aforesaid;

AND Assignee, in consideration of the foregoing, does promise, covenant and agree to and with Assignor and with the Lessor named in said Lease (in consideration of the Lessor's consent to the foregoing assignment) that Assignee will pay the rent, taxes, assessments and other charges reserved in said Lease as and when the same become due and payable pursuant to the provisions of said Lease and will also faithfully observe and perform all of the covenants and conditions contained in said Lease which are or ought to be observed and performed by the Lessee;

The terms "Assignor," "Assignee," "Lessor" and "Lessee" shall include Assignor, Assignee, Lessor, Lessee and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

KONACARBON, LLC,
a Delaware limited liability company


Richard Vidgen
Its Member

BIG ISLAND CARBON, LLC,
a Delaware limited liability company


Richard Vidgen
Its Chief Executive Officer

STATE OF HAWAII)
COUNTY OF HAWAII) SS.
THIRD JUDICIAL CIRCUIT)

On AUG 18 2009, 2009, before me personally appeared Richard Widgen, to me personally known, who being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Document Description: Assignment of lease

Doc. Date: AUG 18 2009 No. pages: 6
Joanne Stubenberg AUG 18 2009
Notary Signature Date

Name (printed): JOANNE STUBENBERG

My Commission expires: 8/14/2013

LS

ASSIGNMENT OF LEASE
EXHIBIT "A"

All of the leasehold estate and interest created by that certain indenture of lease, General Lease No. 275, dated March 1, 2009, made by and between the State of Hawaii, by its DEPARTMENT OF HAWAIIAN HOME LANDS, as Lessor, and KONACARBON, LLC, a Delaware limited liability company, as Lessee, a Short Form Memorandum of General Lease of which is recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2009-112379, the real property devised by said Lease being described as follows:

KAEI HANA-II INDUSTRIAL SUBDIVISION

LOT E-1

Kawaihae Ist, South Kohala, Island of Hawaii, Hawaii

Being a portion of the Government (Crown) Land of Kawaihae designated as Hawaiian Home Land under Section 203 of the Hawaiian Homes Commission Act, 1920.

Beginning at the south corner of this parcel of land, at the east corner of Lot F of Kaei Hana-II Industrial Subdivision and on the west boundary of Lot G of Kaei Hana-II Industrial Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU KAMALII" being 1670.75 feet South and 4099.56 feet West, thence running by azimuths measured clockwise from True South: -

1. 126° 56' 200.00 feet along Lot F of Kaei Hana-II Industrial Subdivision;
2. 142° 12' 154.27 feet along Lot A of Kaei Hana-II Industrial Subdivision;
3. 232° 12' 80.00 feet along the south end of Maluokalani Place;
4. 142° 12' 60.00 feet along the south end of Maluokalani Place;
5. 232° 12' 151.23 feet along Lot E-2 of Kaei Hana-II Industrial Subdivision;
6. 142° 12' 219.15 feet along Lot E-2 of Kaei Hana-II Industrial Subdivision;
7. 52° 12' 201.23 feet along Lot E-2 of Kaei Hana-II Industrial Subdivision;
8. 142° 12' 18.78 feet along the north side of Maluokalani Place;
9. Thence along the north side of Maluokalani Place on a curve to the left with a radius of 330.00 feet, the chord azimuth and distance

EXHIBIT "A"

- being: 125° 42' 187.45 feet;
10. 109° 12' 71.91 feet along the north side of Maluokalani Place;
 11. Thence along the north corner of the intersection of Maluokalani Place and Maluokalani Street on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being: 148° 50' 20" 63.79 feet;
 12. Thence along the north side of Maluokalani Street on a curve to the left with a radius of 380.00 feet, the chord azimuth and distance being: 169° 15' 20" 250.22 feet;
 13. 150° 02' 362.75 feet along the north side of Maluokalani Street;
 14. 240° 02' 287.77 feet along Lot C-2 of Kahei Hana-II Industrial Subdivision;
 15. 202° 44' 30" 68.62 feet along Lot C-2 of Kahei Hana-II Industrial Subdivision;
 16. 221° 04' 53.92 feet along Lot C-2 of Kahei Hana-II Industrial Subdivision;
 17. 329° 29' 20" 364.04 feet along the remainder of Hawaiian Home Land of Kawaihae 1st;
 18. Thence along the remainder of Hawaiian Home Land of Kawaihae 1st on a curve to the left with a radius of 3683.66 feet, the chord azimuth and distance being: 325° 50' 40" 468.30 feet;
 19. 322° 12' 604.22 feet along the remainder of Hawaiian Home Land of Kawaihae 1st;
 20. 36° 56' 391.14 feet along Lot G of Kahei Hana-II Industrial Subdivision to the point of beginning and containing an AREA OF 12.961 ACRES.

SUBJECT, however, to an Access and Utilities Easement as shown on plan attached hereto (Exhibit "B") and made a part hereof.

EXHIBIT "E"

SUBLEASE RENT PARTICIPATION POLICY

DEFINITION OF TERMS

Refer to Worksheet

I. SUBLEASING OF BUILDING SPACE

- Line 1: GROSS ANNUAL SUBLEASE RENT**
The total sublease rent amount collected by a general lessee without any deductions
- Line 2: LESS 4% GENERAL EXCISE TAX**
State of Hawaii G.E. Tax; deducted only if not paid by a sublessee.
- Line 3: EFFECTIVE ANNUAL SUBLEASE RENT**
Gross annual sublease rent less State G.E. Tax.
- Line 4: LESS ALLOWANCES**
Allowances for costs incurred by a general lessee for construction and maintenance of improvements.
- Line 4a: MANAGEMENT, CREDIT LOSS**
Applicable to rent collections, accounting, legal and miscellaneous property management expenses, and allowance for non-collection of sublease rent. A rate of ten percent (10%) of the Effective Annual Sublease Rent is used.
- Line 4b: REPAIR and MAINTENANCE**
Expenses applicable to maintenance and repairs on building(s) and premises such as painting, refuse disposal, re-paving, utilities, landscaping, security, etc. If detailed expenses are not provided by the general lessee, such expenses will be estimated at two percent (2%) of Line 3.
- Line 4c: REAL PROPERTY TAXES**
Per current real property tax bill or notice sent by appropriate County Real Property Tax Office.
- Line 4d: INSURANCE PREMIUMS**
Premiums paid for fire/liability insurance policies.
- Line 4e: SURETY BOND PREMIUM**

Premium paid for lease performance bond. Premiums paid for bonds are currently at a rate of \$20 per \$1,000 of the surety amount unless detailed expenses are provided by the general lessee.

Line 4f: **RETURN OF INVESTMENT**
Return of general lessee's cost of improvements over the term of the lease. If the actual cost is not determined, an estimated amount is obtained from appropriate County real property assessed valuations established within eighteen (18) months from completion of improvements.

Line 4g: **RETURN ON INVESTMENT**
A reasonable return on investment that a prudent general lessee expects. Return rate fluctuates with market and economic conditions. Rate currently in effect is twelve percent (12%). The rate may be adjusted to reflect the change in market and economic conditions.

Line 5: **INCOME ATTRIBUTABLE TO LAND**
The difference of Line 4 subtracted from Line 3 equals the rent collected that is attributable to subleasing of land only.

Line 6: **ALLOCATED BASE RENT**
The ratio of the subleased area to the Total area of the leasehold premises multiplied by the base lease rent of the general lease to indicate the rent paid by a general lessee for the subleased area.

Line 7: **INDICATED ADDITIONAL RENT**
Line 5 (Annual income Attributable to Land) less Line 6 (Allotted Annual Base Lease Rent) indicates Additional Annual Rent. Amount will not be less than zero.

Line 8: **ADDITIONAL RENT PAYABLE TO DHBL**
Fifty percent (50%) of Line 7 equals Sublease Rent Participation Amount.

II. **SUBLEASING OF VACANT ("RAW") LAND ONLY**
(No subleasing of building space)

Line 1: **CROSS ANNUAL SUBLEASE RENT**
The total sublease rent amount collected by a general lessee without any deductions.

Line 2: **LESS 4% GENERAL EXCISE TAX**
State of Hawaii G.E. Tax; deducted only if not paid by a

sublessee.

- Line 3: **EFFECTIVE ANNUAL SUBLEASE RENT**
Gross annual sublease rent less State G.E. Tax.
- Line 4: **ALLOCATED ANNUAL BASE LEASE RENT**
The ratio of the subleased area to the total area of the leasehold premises multiplied by the base lease rent of the general lease to indicate the rent paid by a general lessee for the subleased area.
- Line 5: **INDICATED ANNUAL ADDITIONAL RENT**
Line 3 minus Line 4, but not less than zero.
- Line 6: **ADDITIONAL ANNUAL RENT PAYABLE TO DHHL**
Fifty percent (50%) of Line 5 equals Sublease Rent Participation Amount.

SUBLEASE RENT PARTICIPATION

WORKSHEET

I. SUBLEASING OF BUILDING SPACE:

Line 1:	Gross Annual Sublease Rent	\$ _____
Line 2:	Less 4% General Excise Tax	(_____)
Line 3:	EQUALS Effective Annual Sublease Rent	\$ _____
Line 4:	Less Allowances:	
a.	Management, Credit Loss	\$ _____
b.	Repair and Maintenance	\$ _____
c.	Real Property Taxes	\$ _____
d.	Insurance Premiums	\$ _____
e.	Surety Bond Premium	\$ _____
f.	Return OF Investment	\$ _____
g.	Return ~ Investment	\$ _____
Line 5:	EQUALS Annual Income Attributable to Land	\$ _____
Line 6:	Less Allocated Annual Base Lease Rent	\$ _____
Line 7:	EQUALS Indicated Additional Annual Rent	\$ _____
	TIMES 50%	X 0.50
Line 8:	EQUALS Additional Annual Rent Payable to DHHL	\$ _____

II. SUBLEASING OF VACANT ("RAW") LAND ONLY:

Line 1:	Gross Annual Sublease Rent	\$ _____
Line 2:	Less 4% General Excise Tax	(_____)
Line 3:	EQUALS Effective Annual Sublease Rent	\$ _____
Line 4:	Less Allocated Annual Base Lease Rent	\$ _____

Line 5:	EQUALS Indicated Annual Additional Rent	\$ _____
	TIMES 50%	X 0.50
Line 6:	EQUALS Additional Annual Rent Payable to DHHL	\$ _____

HYPOTHETICAL SUBLEASE OF VACANT LAND

Annual Base Lease Rent of General Lease:	\$8,000
Effective Annual Sublease Rent	\$3,000
Total Land Area of Leasehold Premises:	24,000 sq. ft.
Subleased Land Area:	6,000 sq. ft.
RATIO: $6/24 = .25 \times \$8,000 = \$2,000$ Allocated Annual Base Lease Rent	
Effective Annual Sublease Rent:	\$3,000
Allocated Annual Base Lease Rent:	<u>- 2,000</u>
Indicated Additional Rent:	\$1,000
	Times 50% <u>.50</u>
SUBLEASE RENT PARTICIPATION AMOUNT PAYABLE TO DHHL	\$ 500

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII

BUREAU OF CONVEYANCES

Doc 2009-112379

JUL 22, 2009 02:00 PM

LAND COURT

REGULAR SYSTEM

RETURN BY (X) MAIL () PICK-UP

TMK No.: (3) 6-1-06: parcel 7

This document contains 6 pages

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made and entered into as of March 23 2009, by and between the State of Hawaii, by its **DEPARTMENT OF HAWAIIAN HOME LANDS**, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "**LESSOR**," and **KonaCarbon, LLC**, a Delaware limited liability company, whose mailing address is P. O. Box 276, Kamaela, Hawaii 96743, hereinafter called "**LESSEE**."

1. **TERM AND PREMISES.** For a lease term commencing on March 1, 2009, and ending as of midnight on February 29, 2064, upon the provisions set forth in that certain written lease of even date herewith from LESSOR to LESSEE ("Lease"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, LESSOR leases to LESSEE, and LESSEE leases from LESSOR, that certain real property ("Premises") located at Kaei Hana II Industrial Subdivision, Kawaihae, Island of Hawaii, County of Hawaii, further identified as TMK No. (3) 6-1-06: parcel 07 comprising 12.961 acres, more or less, of Hawaiian Home Lands, more particularly described in Exhibit "A", together with all rights of ingress and egress and all other rights appurtenant to said Premises including, without limitation, the right to use the building to be constructed on the Premises for the purposes contemplated in the Lease, all of which rights are more particularly described in the Lease.

2. **USE.** LESSEE is granted the right to use the Premises for a gasification facility and any other uses permitted by the applicable County zoning.

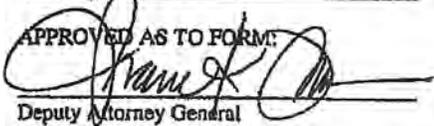
3. **PURPOSE OF MEMORANDUM OF LEASE.** This Memorandum is prepared for the purpose of providing for record notice of the Lease, and in no way modifies the express and particular provisions of the Lease.

4. **FOR THE BENEFIT OF THE PREMISES.** LESSOR and LESSEE intend that the covenants, conditions and restrictions described and referred to herein shall be both personal to LESSOR and LESSEE and binding on their successors and assigns. Each successive owner of the Premises or of any portion thereof, and each person having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Premises.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON
12/21/05

APPROVED AS TO FORM:

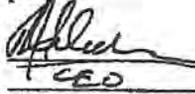

Deputy Attorney General
State of Hawaii

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By 
Micah A. Kane, Chairman
Hawaiian Homes Commission

LESSOR

KONACARBON, LLC, a Delaware limited liability
company

By 
CEO R.J. Vidgen

its

LESSEE

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 26th day of June, 2009, before me appeared MICAH A. KANE, to me personally known, who, being by me duly sworn, did say that he is the chairman of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth.



Abigail L. Tubera

Print Name: ABIGAIL L. TUBERA
Notary Public, State of Hawaii

My Commission Expires: 11/21/2012

Doc. Date: 3/23/09 # Pages: 6
Notary Name: Abigail L. Tubera First Circuit
Doc. Description: Memorandum of lease
OHHK + Kona Carbon, LLC
Abigail L. Tubera 6/26/09
Notary Signature Date



STATE OF Hawaii)
) SS.
COUNTY OF HAWAII)

On this 23rd day of March, 2009, before me appeared R.J. Vidgen, to me personally known, who, being by me duly sworn or affirmed did say that he is the CEO KONACARBON, LLC, a Delaware limited liability company and such person executed the foregoing instrument on behalf of said limited liability company as the free act and deed of such person and in the capacities shown having been authorized to execute such instrument in such capacity.



Print or Type Name _____

Notary Public, State of Hawaii Joanna Stubenberg
Notary Public, State of Hawaii

My Commission expires: _____
My commission expires: August 14, 2009

NOTARY PUBLIC CERTIFICATION
Joanna Stubenberg Third Judicial Circuit
Doc. Description: Lease memorandum

No. of Pages: 6 Date of Doc. 3/23/09

 3/23/09
Notary Signature Date

EXHIBIT "A"

KAEI HANA-II INDUSTRIAL SUBDIVISION

LOT E-1

Kawaihae Ist, South Kohala, Island of Hawaii, Hawaii

Being a portion of the Government (Crown) Land of Kawaihae designated as Hawaiian Home Land under Section 203 of the Hawaiian Homes Commission Act, 1920.

Beginning at the south corner of this parcel of land, at the east corner of Lot F of Kaei Hana-II Industrial Subdivision and on the west boundary of Lot G of Kaei Hana-II Industrial Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU KAMALII" being 1670.75 feet South and 4099.56 feet West, thence running by azimuths measured clockwise from True South: -

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2. 142° 12' 154.27 feet along Lot A of Kaei Hana-II Industrial Subdivision;
3. 232° 12' 80.00 feet along the south end of Maluokalani Place;
4. 142° 12' 60.00 feet along the south end of Maluokalani Place;
5. 232° 12' 151.23 feet along Lot E-2 of Kaei Hana-II Industrial Subdivision;
6. 142° 12' 219.15 feet along Lot E-2 of Kaei Hana-II Industrial Subdivision;
7. 52° 12' 201.23 feet along Lot E-2 of Kaei Hana-II Industrial Subdivision;
8. 142° 12' 18.78 feet along the north side of Maluokalani Place;
9. Thence along the north side of Maluokalani Place on a curve to the left with a radius of 330.00 feet, the chord azimuth and distance

- being: 125° 42' 187.45 feet;
10. 109° 12' 71.91 feet along the north side of Maluokalani Place;
 11. Thence along the north corner of the intersection of Maluokalani Place and Maluokalani Street on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being: 148° 50' 20" 63.79 feet;
 12. Thence along the north side of Maluokalani Street on a curve to the left with a radius of 380.00 feet, the chord azimuth and distance being: 169° 15' 20" 250.22 feet;
 13. 150° 02' 362.75 feet along the north side of Maluokalani Street;
 14. 240° 02' 287.77 feet along Lot C-2 of Kahei Hana-II Industrial Subdivision;
 15. 202° 44' 30" 68.62 feet along Lot C-2 of Kahei Hana-II Industrial Subdivision;
 16. 221° 04' 53.92 feet along Lot C-2 of Kahei Hana-II Industrial Subdivision;
 17. 329° 29' 20" 364.04 feet along the remainder of Hawaiian Home Land of Kawaihae 1st;
 18. Thence along the remainder of Hawaiian Home Land of Kawaihae 1st on a curve to the left with a radius of 3683.66 feet, the chord azimuth and distance being: 325° 50' 40" 468.30 feet;
 19. 322° 12' 604.22 feet along the remainder of Hawaiian Home Land of Kawaihae 1st;
 20. 36° 56' 391.14 feet along Lot G of Kahei Hana-II Industrial Subdivision to the point of beginning and containing an AREA OF 12.961 ACRES.

SUBJECT, however, to an Access and Utilities Easement as shown on plan attached hereto (Exhibit "B") and made a part hereof.



R-393 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
AUG 31, 2009 11:00 AM
Doc No(s) 2009-133296



Is/ NICKI ANN THOMPSON
REGISTRAR

20 2/2 29

Handwritten initials

Return by Mail () Pickup (x) To:

DAMON KEY LEONG KUPCHAK HASTERT (MMS)
1003 Bishop Street, Suite 1600
Honolulu, HI 96813
Tel: 531-8031

Total No. of Pages: 3

Affects TMK: (3) 6-1-006:007

CONSENT TO ASSIGNMENT OF LEASE

The STATE OF HAWAII, by its Hawaiian Homes Commission, the Lessor named in that certain unrecorded indenture of lease, General Lease No. 275, dated March 10th, 2009, made by and between it, as Lessor, and **KONACARBON, LLC**, a Delaware limited liability company, as Lessee, a Short Form Memorandum of Lease of which is recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2009-112379 (the "Lease"), does hereby consent to the assignment of the Lease to **BIG ISLAND CARBON, LLC**, a Delaware limited liability company, as Assignee, which is recorded in the Bureau of Conveyances of the State of Hawaii as Document No. **Doc 2009-133295** **AUG 31, 2009 11:00 AM** upon the following express conditions:

- (1) This consent shall not authorize, nor be deemed to authorize, any further or other assignment of the Lease;
- (2) This Consent shall not be deemed nor construed to be a waiver of any of the terms, covenants, conditions, or provisions of the Lease; all rights of the Lessor under the Lease being hereby reserved;
- (3) Should there be any conflict between the

Exhibit "B"
Item No. F-6



R-392 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
AUG 31, 2009 11:00 AM
Doc No(s) 2009-133295



/s/ NICKI ANN THOMPSON
REGISTRAR
CONVEYANCE TAX: \$1.00

20 1/2 Z9

LAND COURT SYSTEM

REGULAR SYSTEM

Return By Mail () Pickup (x) To:

DAMON KEY LEONG KUPCHAK HASTERT (MMS)
1600 Pauahi Tower, 1003 Bishop St.
Honolulu, HI 96813
TEL: 531-8031

Total No. of Pages 5

TMK: (3) 6-1-06: parcel 7

ASSIGNMENT OF LEASE

THIS ASSIGNMENT OF LEASE, is made and entered into as of August 18, 2009, by and between KONACARBON, LLC, a Delaware limited liability company, whose mailing address is 75-5722 Kuakini Highway, Suite 202, Kailua-Kona, Hawaii 96740, hereinafter called "Assignor," and BIG ISLAND CARBON, LLC, a Delaware limited liability company, whose mailing address is 75-5722 Kuakini Highway, Suite 202, Kailua-Kona, Hawaii 96740, hereinafter called "Assignee."

WITNESSETH:

That for and in consideration of the sum of ONE DOLLAR (\$1.00) and other valuable consideration, receipt and sufficiency of which are acknowledged, and of the covenants and agreements of Assignee hereinafter contained and on Assignee's part to be faithfully kept and performed, Assignor does hereby sell, assign, transfer, set over and deliver unto Assignee, as tenant in severalty, its successors and permitted assigns, all of Assignor's interest in and to the leasehold estate (hereinafter referred to as the "Lease") described in Exhibit "A," attached hereto and made a part hereof;

TO HAVE AND TO HOLD the same for and during the full unexpired term of said Lease, together with all of the right, title, interest and estate of Assignor as present Lessee under the terms thereof, in and to the premises therein described and thereby demised and all of the rights, privileges and appurtenances thereunto belonging, unto Assignee;

SUBJECT, HOWEVER, to the payment of rent, taxes, assessments and other charges reserved by said Lease and subject also to the observance and performance by Assignee of all of the covenants and conditions in said Lease contained, which, according to the terms and provisions thereof, are or ought to be observed and performed by the Lessee therein named;

AND Assignor, in consideration of the premises, does hereby covenant and agree to and with Assignee that Assignor is the lawful owner of the leasehold estate and interest created under the Lease; that the Lease is in full force and effect and is not in default; that the property is free and clear of all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid, and except as may be specifically set forth herein; that Assignor is the lawful owner of any personal property described herein and that Assignor's title thereto is free and clear of and from all liens and encumbrances except as set forth herein; that Assignor has good right to transfer and assign said real property and personal property; and that Assignor will WARRANT AND DEFEND the same unto Assignee against the lawful claims and demands of all persons, except as aforesaid;

AND Assignee, in consideration of the foregoing, does promise, covenant and agree to and with Assignor and with the Lessor named in said Lease (in consideration of the Lessor's consent to the foregoing assignment) that Assignee will pay the rent, taxes, assessments and other charges reserved in said Lease as and when the same become due and payable pursuant to the provisions of said Lease and will also faithfully observe and perform all of the covenants and conditions contained in said Lease which are or ought to be observed and performed by the Lessee;

The terms "Assignor," "Assignee," "Lessor" and "Lessee" shall include Assignor, Assignee, Lessor, Lessee and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

KONACARBON, LLC,
a Delaware limited liability company


Richard Vidgen
Its Member

BIG ISLAND CARBON, LLC,
a Delaware limited liability company


Richard Vidgen
Its Chief Executive Officer

STATE OF HAWAII)
COUNTY OF HAWAII) SS.
THIRD JUDICIAL CIRCUIT)

On AUG 18 2009, 2009, before me personally appeared Richard Vidgen, to me personally known, who being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Document Description: Assignment of
lease

Doc. Date: AUG 18 2009 No. pages: 5

Joanne Stubenberg AUG 18 2009
Notary Signature Date

Name (printed): JOANNE STUBENBERG

My Commission expires: 8/14/2013

WS

**ASSIGNMENT OF LEASE
EXHIBIT "A"**

All of the leasehold estate and interest created by that certain indenture of lease, General Lease No. 275, dated March 1, 2009, made by and between the State of Hawaii, by its DEPARTMENT OF HAWAIIAN HOME LANDS, as Lessor, and KONACARBON, LLC, a Delaware limited liability company, as Lessee, a Short Form Memorandum of General Lease of which is recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2009-112379, the real property demised by said Lease being described as follows:

KAEI HANA-II INDUSTRIAL SUBDIVISION

LOT E-1

Kawaihae Ist, South Kohala, Island of Hawaii, Hawaii

Being a portion of the Government (Crown) Land of Kawaihae designated as Hawaiian Home Land under Section 203 of the Hawaiian Homes Commission Act, 1920.

Beginning at the south corner of this parcel of land, at the east corner of Lot F of Kaei Hana-II Industrial Subdivision and on the west boundary of Lot G of Kaei Hana-II Industrial Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU KAMALII" being 1670.75 feet South and 4099.56 feet West, thence running by azimuths measured clockwise from True South: -

- | | | | | |
|----|--|-----|-------------|---|
| 1. | 125° | 56' | 200.00 feet | along Lot F of Kaei Hana-II Industrial Subdivision; |
| 2. | 142° | 12' | 154.27 feet | along Lot A of Kaei Hana-II Industrial Subdivision; |
| 3. | 232° | 12' | 80.00 feet | along the south end of Maluokalani Place; |
| 4. | 142° | 12' | 60.00 feet | along the south end of Maluokalani Place; |
| 5. | 232° | 12' | 151.23 feet | along Lot E-2 of Kaei Hana-II Industrial Subdivision; |
| 6. | 142° | 12' | 219.15 feet | along Lot E-2 of Kaei Hana-II Industrial Subdivision; |
| 7. | 52° | 12' | 201.23 feet | along Lot E-2 of Kaei Hana-II Industrial Subdivision; |
| 8. | 142° | 12' | 18.78 feet | along the north side of Maluokalani Place; |
| 9. | Thence along the north side of Maluokalani Place on a curve to the left with a radius of 330.00 feet, the chord azimuth and distance | | | |

EXHIBIT "A"

- being: 125° 42' 187.45 feet;
10. 109° 12' 71.91 feet along the north side of Maluokalani Place;
 11. Thence along the north corner of the intersection of Maluokalani Place and Maluokalani Street on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being: 148° 50' 20" 63.79 feet;
 12. Thence along the north side of Maluokalani Street on a curve to the left with a radius of 380.00 feet, the chord azimuth and distance being: 169° 15' 20" 250.22 feet;
 13. 150° 02' 362.75 feet along the north side of Maluokalani Street;
 14. 240° 02' 287.77 feet along Lot C-2 of Kahei Hana-II Industrial Subdivision;
 15. 202° 44' 30" 68.62 feet along Lot C-2 of Kahei Hana-II Industrial Subdivision;
 16. 221° 04' 53.92 feet along Lot C-2 of Kahei Hana-II Industrial Subdivision;
 17. 329° 29' 20" 364.04 feet along the remainder of Hawaiian Home Land of Kawaihae 1st;
 18. Thence along the remainder of Hawaiian Home Land of Kawaihae 1st on a curve to the left with a radius of 3683.66 feet, the chord azimuth and distance being: 325° 50' 40" 468.30 feet;
 19. 322° 12' 604.22 feet along the remainder of Hawaiian Home Land of Kawaihae 1st;
 20. 36° 56' 391.14 feet along Lot G of Kahei Hana-II Industrial Subdivision to the point of beginning and containing an AREA OF 12.961 ACRES.

SUBJECT, however, to an Access and Utilities Easement as shown on plan attached hereto (Exhibit "B") and made a part hereof.

FIRST AMENDMENT TO GENERAL LEASE NO. 275

Between

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS,
as LESSOR,

and

MILLENNIUM HI CARBON, LLC,
a Hawaii Limited Liability Company,
as LESSEE

(00267897.9)

Exhibit "C"
Item No. F-6



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
FIRST AMENDMENT TO GENERAL LEASE NO. 275

THIS FIRST AMENDMENT TO GENERAL LEASE NO. 275 (this-"Amendment"), dated this ___ day of _____, 2015, is made by and between the State of Hawaii, by its DEPARTMENT OF HAWAIIAN HOME LANDS ("LESSOR"), whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose mailing address is P. O. Box 1879, Honolulu, Hawaii 96805, and MILLENNIUM HI CARBON, LLC, a Hawaii limited liability company ("LESSEE"), whose principal place of business and mailing address is 61-3260 Maluokalani Street, Kawaihae, Hawaii 96743.

RECITALS

WHEREAS, the State of Hawaii, Department of Hawaiian Home Lands, as LESSOR, and KonaCarbon, LLC, as lessee, entered into that certain State of Hawaii Department of Hawaiian Home Lands General Lease No. 275 dated March 1, 2009 ("Lease"); a Memorandum of Lease dated March 23, 2009 was recorded at the State of Hawaii Bureau of Conveyances ("Bureau") as Document No. 2009-112379 on July 22, 2009; and

WHEREAS, the Lease was assigned to Big Island Carbon, LLC, a Delaware limited liability company, by that certain Assignment of Lease dated August 18, 2009, and recorded at the Bureau as Document No. 2009-133295 on August 31, 2009; and Consent to Assignment of Lease was recorded at the Bureau as Document No. 2009-133296 on August 31, 2009; and

WHEREAS, the Lease was further assigned to LESSEE by that certain instrument dated _____, 2015, and recorded at the Bureau as Document No. 2015-_____, on _____, 2015; and Consent to Assignment of Lease was recorded at the Bureau as Document No. 2015-_____, on _____, 2015; and

WHEREAS, the LESSOR and LESSEE desire and agree to amend the Lease to modify the ground lease rent schedule, and impose additional conditions relating to terms and conditions of the Lease.

NOW THEREFORE, for and in consideration of the foregoing and mutual covenants, terms and conditions hereinafter provided, the parties hereto, for and on behalf of themselves, their successors and assigns, do hereby modify, amend, and alter certain terms of the Lease as follows:

1. ANNUAL BASE RENTAL. Notwithstanding the provisions of Article 3, Section 1 of the Lease, LESSOR and LESSEE agree that the annual base rental payable under the Lease shall be modified to reflect the fair market annual ground lease rent conducted by a third-party appraiser which shall be as follows:

- a. For the ten-year period commencing as of the Effective Date, the annual base rental rent shall be \$168,000; and



- b. Thereafter, for the next ensuing ten-year period, the annual base rental shall be \$201,600.

2. **RE-DETERMINATION OF ANNUAL BASE RENTAL.** Notwithstanding the dates set forth for the reopening and redetermination of the annual base rental set forth in Article 3, Section 2 of the Lease, annual base rental shall be reopened and re-determined (a) at the expiration of the ten-year period described in Section 1.b above for the next ensuing ten-year period, (b) again at the expiration of the ten-year period described in clause (a) above for the next ensuing ten-year period, and (c) again at the expiration of the ten-year period for the remainder of the term of the Lease (i.e., through February 29, 2064). In no event shall the annual base rental determined by appraisal for any ensuing reopened period be less than the annual base rental for the preceding period. The manner of determining the new annual base rental for each period shall be as described in Article 3, Section 2 of the Lease.

3. **DEFERMENT OF ANNUAL BASE RENTAL.** The annual base rental for the two-year period commencing as of the Effective Date shall be deferred to allow LESSEE time to upgrade and improve the plant facility on the Premises to production standard, so that operation of the plant facility can commence. The deferred annual base rental shall be paid no later than March 1, 2024.

4. **PERCENTAGE RENT.** Notwithstanding anything to the contrary in the Lease or in Section 2 above, commencing as of March 1, 2024, LESSEE shall pay as rent under the Lease, the higher of the following amounts:

- a. The annual base rental determined in accordance with Section 2 above; or
- b. In lieu of the annual base rental determined in accordance with Section 2 above, a rental amount based upon the percentage of gross revenues generated by LESSEE at the Premises, such percentage and amounts being determined by and limited to the percentage of gross revenues and amounts of rents payable by comparable lessees of premises with comparable leases with comparable uses for comparable production facilities in the general vicinity of the Premises (if such comparable leases exist).

5. **COMMITMENT TO INVEST INVESTMENT.** LESSEE shall commit to expend no less than \$7.5 million as additional capital investment and/or working capital within 24 months of the Effective Date to upgrade and improve the plant facility on the Premises to LESSEE'S production standards, so that commercial operation can commence.

6. **CLEAN UP OF PREMISES AT COMMENCEMENT OF LEASE.** LESSOR has caused Environmental Resources Management ("ERM") to conduct a supplemental Phase 1 environmental site assessment ("Supplemental Phase 1 Report") of the Premises. The purpose of the Supplemental Phase 1 Report was to identify any new environmental issues that may have arisen after the date of the original Phase 1 environmental report prepared by ERM dated May 2008. If LESSOR does not, to LESSEE's reasonable satisfaction, address new issues,



recommendations or requirements identified in the Supplemental Phase 1 Report that, in LESSEE's determination, need further investigation or remediation, LESSEE shall have the option to terminate the Lease upon thirty (30) days' prior written notice to LESSOR.

7. LEASE PERFORMANCE BOND AND SECURITY DEPOSIT. LESSEE shall be required to comply with this provision.

8. INTEREST COSTS AND FEES AND PRIOR DEFAULTS. Payment of any and all costs incurred due to defaults and subsequent bankruptcy, prior to the Effective Date, shall be waived and not be LESSEE'S responsibility. LESSOR agrees that any prior defaults under the Lease, as amended, are waived.

9. NOTICE. The notice provision under Article V shall be amended to reflect LESSEE'S address and notification requirement as follows:

Millennium HI Carbon, LLC
61-3260 Maluokalani Street
Kawaihae, Hawaii 96743
Attn: David Lesser

A copy of all notices shall also be delivered to LESSEE at:

C/O Millennium Investment & Acquisition Company, LLC
301 Winding Road
Old Bethpage, NY 11804
Attn: David Lesser

10. COUNTERPARTS. The parties hereto agree that this Amendment may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts.

11. INITIAL CONSTRUCTION OF LESSEE'S PLANT. Notwithstanding the provisions of Article 4, Section 7(a)(ii) of the Lease, LESSOR shall not have any option to terminate the Lease unless LESSEE fails to invest the additional capital pursuant to Section 5 within two (2) years of the Effective Date of this Amendment.

12. COSTS OF LITIGATION. Article 4, Section 14 of the Lease shall be amended in its entirety to read as follows:

14. Costs of Litigation. In case either party shall, without fault on its part, be made a party to any litigation commenced by the other party against a third party or against the other party by a third party (other than condemnation proceedings), the other party shall pay all costs, including reasonable attorneys' fees and expenses incurred by or imposed on the party joined without fault on its part.



13. SURRENDER. Article 4, Section 16 of the Lease shall be amended by inserting the following after the phrase "all applicable law or orders" in the second paragraph thereof: "relating to the use of the Premises, removal of trade fixtures or restoration of the property".

14. SUBLEASE RENT PARTICIPATION POLICY. With respect to the Sublease Rent Participation Policy, a copy of which is attached hereto as Exhibit 1, LESSOR acknowledges that the "Investment Amount" is \$40,000,000 as of the Effective Date and any future investment by LESSEE will be added to this amount.

15. MEMORANDUM OF AMENDMENT. The parties agree that this Amendment shall not be recorded, however, upon the request of either party, the parties shall execute and record a memorandum of this Amendment in the Bureau of Conveyances of the State of Hawaii.

EXCEPT AS AMENDED HEREIN, all terms and conditions contained in the Lease, as previously amended, continue in full force and effect. Unless specifically defined herein, all capitalized terms used in this Amendment shall have the meanings given them in the Lease.

[Signature Page to Follow]



IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

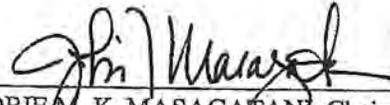
Approved by the HHC at its last meeting
held on November 17, 2014

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

APPROVED AS TO FORM:



Deputy Attorney General
State of Hawaii

By: 

JOBIE M. K. MASAGATANI, Chairman
Hawaiian Homes Commission

LESSOR

MILLENNIUM HI CARBON, LLC,
a Hawaii limited liability company

By: _____
DAVID H. LESSER, Manager

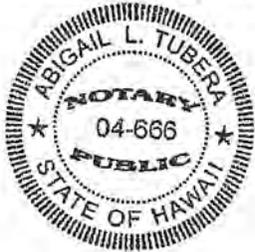
LESSEE



STATE OF HAWAII
CITY & COUNTY OF HONOLULU

)
) SS.
)

On this 20th day of January, 2015, before me appeared _____, to me personally known, who, being by me duly sworn, did say that she is the person who executed the foregoing instrument and acknowledged to me that she executed the same freely and voluntarily for the use and purposes therein set forth.



Abigail L. Tubera

Notary Public, State of Hawaii

Printed Name: ABIGAIL L. TUBERA

My commission expires: 11.21.16

NOTARY CERTIFICATION STATEMENT

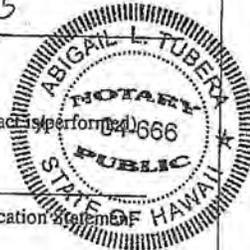
Document Identification or Description: 1st Amendment to GL 275

Doc. Date: _____ or Undated at time of notarization.

No. of Pages: 9 Jurisdiction: 1st Circuit (in which notarial act is performed)

Abigail L. Tubera
Signature of Notary

01.20.15
Date of Notarization and Certification



Printed Name of Notary: ABIGAIL L. TUBERA

EXHIBIT 1

DHHL Sublease Participation Policy

[to be attached]



Company, LLC (KHPC). KHPC is a joint venture between Hawaii DeBartolo, LLC (HD) and OPTrust KMA, Inc. in the development and operation of Ka Makana Alii Shopping Center (KMA). HD is responsible for the development and management of the KMA project on behalf of KHPC. The development cost of the Mall Phase of KMA is estimated at \$285 million.

KHPC has informed the Department of Hawaiian Homes Lands (DHHL) of its intention to take down the lease on November 28, 2014 (to be effective as of December 1, 2014) and commence payment of the monthly ground lease rent as agreed to in the general lease at the rate of approximately \$292,400 per month (assuming the Phase 1 (Mall Phase) area is 50 acres).

L. Chinn stated they have a lender and will close on the lease in the next month or so.

ACTION

Motion carried unanimously.

ITEM F-7 Approval for an Assignment and Amendment of general Lease No. 275 to Millennium HI Carbon, LLC Kawaihae, Hawaii.

RECOMMENDED MOTION/ACTION

Land Management Administrator Linda Chinn presented the following:

That the Hawaiian Homes Commission ("HHC") grants its approval to the following:

- 1) Assignment of General Lease No. 275, to Millennium HI Carbon, LLC, as ASSIGNEE, subject to the approval by the HHC and the United States Bankruptcy Court for the District of Delaware, for the premises located in the Kaei Hana II Industrial Subdivision in Kawaihae, Hawaii, further identified by TMK No. (3) 6-1-006:007; and
- 2) Amendment to the following terms and conditions of General Lease No. 275:
 - a. The annual ground lease rent for the ten-year period commencing from the date of the closing on the acquisition of the assets of Big Island Carbon by ASSIGNEE, which is anticipated to be approximately December 1, 2014, shall be \$168,000.00.
 - b. The annual ground lease rent for the next ensuing ten-year period shall be \$201,000.00.
 - c. The annual ground lease rent shall be reopened and redetermined on December 1, 2034 and 2044 for the ensuing ten-year periods, and on December 1, 2054 for the period ending February 29, 2064.
 - d. The annual ground lease rent for the two years from the date of the closing on the acquisition of the assets of the Big Island Carbon by ASSIGNEE, in the total amount of \$336,000.00 shall be deferred to allow ASSIGNEE time to upgrade and improve the plant facility on the leased premises to production standard so that operation can commence. ASSIGNEE agreed that the deferred ground lease rent of \$336,000.00 shall be paid no later than March 1, 2024.
 - e. ASSIGNEE shall pay a percentage rent, beginning on March 1, 2024, calculated at the going rate of comparable leases OR the annual ground lease rent then established for that period, whichever is higher.
 - f. ASSIGNEE shall commit to expend no less than \$7.5 Million as an additional capital investment and/or working capital within 24 months of the lease assignment to upgrade and improve the plant facility on the leased premises to production standard, so that commercial operation can commence.
 - g. LESSOR acknowledges that the leased premises is cleaned based on the "No Further Action" letter issued by the Department of Health. ASSIGNEE may conduct a Phase 1 update and LESSOR agrees to credit ASSIGNEE for the expenses against the ground lease rent, provided that the scope of service and cost received prior approval by LESSOR.

- h. The assignment is subject to the approval of the United States Bankruptcy Court for the District of Delaware and shall be of no force and effect unless signed by the Parties and approved by a final, non-appealable order of the Court.
- i. With respect to the Sublease Rent Participation Policy, LESSOR acknowledges that the initial Investment Improvement Amount is \$40 Million and any future investment by ASSIGNEE will be added to this amount.
- j. All documents related to this request shall be subject to the review and approval by the Department of the Attorney General.
- k. Except as changed or modified in the amendment document, all other terms and conditions of General Lease No .275 shall continue and remain in full force and effect.

MOTION

Moved by Commissioner Kahikina, seconded by Commissioner Ishibashi to approve the motion as stated in the submittal.

DISCUSSION

Millennium HI Carbon, as well as another group, put in an offer with the Bankruptcy Trustee to purchase the assets, subject to certain amendment to the terms of the general lease.

At the June 2014 special meeting, the Hawaiian Homes Commission set forth certain terms and conditions that are acceptable to the Commission. The Department updated the appraisal for the current fair market ground lease rent for the subject property, and the newly established annual ground lease rent was provided to the two groups. Both were given time to work out their respective issues relating to the lease terms. One group gave notice on the 18th of September that they will not move forward because their two major issues were not resolved.

ACTION

Motion carried unanimously.

ITEM D-21 Request for Relocation - YVETTE S. PEREZ, Lease No. 9970, Lot No.6, Kurtistown, Hawaii

RECOMMED MOTION/ACTION

Acting Homestead Services Division (HSD) Administrator Dean Oshiro recommended that the Hawaiian Homes Commission authorize the Department to relocate Kurtistown residential lessee, Yvette S. Perez, from Lot No. 6 on the island of Hawaii, to another residential lot on Hawaii, subject to financial qualification.

MOTION

Moved by Commissioner Canto, seconded by Commissioner Davis to approve the motion as stated in the submittal.

DISCUSSION

Residential Lot Lease No. 9970, Lot No. 6, Kurtistown, Hawaii, commenced on September 15, 2003 and, was awarded to Yvette S Perez. Ms. Perez is now requesting that she be allowed to relocate to another residential homestead lot.

D. Oshiro stated once the Commission approves the relocation, HSD will look at available homes in the DHHL inventory.

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

November 17-18, 2014

TO: Chairman and Members, Hawaiian Homes Commission

FROM: Linda Chinn, Administration
Land Management Division 

SUBJECT: Approval for an Assignment and Amendment of General Lease
No. 275 to Millennium HI Carbon, LLC, Kawaihae, Hawaii

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission ("HHC") grants its approval to the following:

- 1) Assignment of General Lease No. 275, to Millennium HI Carbon, LLC, as ASSIGNEE, subject to the approval by the HHC and the United States Bankruptcy Court for the District of Delaware, for the premises located in the Kaei Hana II Industrial Subdivision in Kawaihae, Hawaii, further identified by TMK No. (3) 6-1-006:007; and
- 2) Amendment to the following terms and conditions of General Lease No. 275:
 - a. The annual ground lease rent for the ten-year period commencing from the date of the closing on the acquisition of the assets of Big Island Carbon by ASSIGNEE, which is anticipated to be approximately December 1, 2014, shall be \$168,000.00.
 - b. The annual ground lease rent for the next ensuing ten-year period shall be \$201,000.00.
 - c. The annual ground lease rent shall be reopened and re-determined on December 1, 2034 and 2044 for the ensuing ten-year periods, and on December 1, 2054 for the period ending February 29, 2064.
 - d. The annual ground lease rent for the two years from the date of the closing on the acquisition of the assets of the Big Island Carbon by ASSIGNEE, in the total amount of \$336,000.00 shall be deferred to allow ASSIGNEE time to upgrade and improve the plant facility on the leased premises to production standard so that operation can commence.

d. ASSIGNEE agreed that the deferred ground lease rent of \$336,000.00 shall be paid no later than March 1, 2024.

e. ASSIGNEE shall pay a percentage rent, beginning on March 1, 2024, calculated at the going rate of comparable leases OR the annual ground lease rent then established for that period, whichever is higher.

f. ASSIGNEE shall commit to expend no less than \$7.5 Million as an additional capital investment and/or working capital within 24 months of the lease assignment to upgrade and improve the plant facility on the leased premises to production standard, so that commercial operation can commence.

g. LESSOR acknowledges that the leased premises is cleaned based on the "No further Action" letter issued by the Department of Health. ASSIGNEE may conduct a Phase 1 update and LESSOR agrees to credit ASSIGNEE for the expenses against the ground lease rent, provided that the scope of service and cost received prior approval by LESSOR.

h. The assignment is subject to the approval of the United States Bankruptcy Court for the District of Delaware and shall be of no force and effect unless signed by the Parties and approval by a final, non-appealable order of the Court.

i. With respect to the Sublease Rent Participation Policy, LESSOR acknowledges that the initial Investment Improvement Amount is \$40 Million and any future investment by ASSIGNEE will be added to this amount.

j. All documents related to this request shall be subject to the review and approval by the Department of the Attorney General.

k. Except as changed or modified in the amendment document, all other terms and conditions of General Lease No. 275 shall continue and remain in full force and effect.

DISCUSSION

Background

In June 2006, the Department of Hawaiian Home Lands ("DHHL") procured the professional service of an independent third party appraiser to determine the fair market value of the subject parcel. The summary appraisal report concluded that the ground lease rent for the 12.961-acre parcel was \$122,500.00 on 6/1/2006, \$153,125.00 on 6/1/2016, and \$172,266.00 on 6/1/2021. The conclusion was based on a

November 2014

rate of return of 7% of the fee simple land value established at \$1.75 Million.

The public auction conducted for this parcel brought on some competitive bidding from three different groups of developers, with the winning ground lease rent bid of \$450,000.00, approximately 3 times the fair market ground rent established.

General Lease No. 275 was issued to KonaCarbon LLC on 3/1/2009 for a term of 55 years. The lease was subsequently assigned to Big Island Carbon, LLC, and recorded at the State of Hawaii Bureau of Conveyances.

The project was to construct and operate an activated carbon processing plant, which will produce high-quality and high-value activated carbon products for the specialized ultra capacitor market. The plant was in the final stages of construction.

The following are salient information:

General Lease No.: GL 275:

General Lessee: Big Island Carbon, LLC, a Delaware limited liability company

Location: 61-3277 Maluokalani Street, Kaei Hana II Industrial Subdivision, Kawaihae, Island of Hawaii

Tax Map Key No.: (3) 6-1-006:007 (see Exhibit "A")

Land Area: 12.961 acres (564,581 sq.ft.)

Term: 55 years; 3/1/2009 - 2/29/2064

Annual Ground Lease Rent: \$450,000.00; 3/1/2009 - 2/28/2019
\$562,500.00; 3/1/2019 - 2/28/2024
\$632,812.50; 3/1/2024 - 2/28/2029

Reopening: The annual ground lease rent shall be reopened and be re-determined on March 1, 2029, 2039, and 2049

Character of Use: General Industrial (MG-1a) District

Site Improvements: A carbon activation plant facility which is 95% complete at a cost of \$45 Million. Total completion of the facility is estimated to require an additional \$10-15 Million investment

November 2014

Big Island Carbon LLC (BIC)

BIC filed a voluntary petition for relief under Chapter 7 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on November 5, 2012. On November 6, 2012, Charles A. Stanziale, Jr. was appointed as the Chapter 7 Trustee in this bankruptcy case.

Synergy Bank, S.S.B ("Synergy") is the primary secured creditor with a lien in an amount of not less than \$5 Million. Kona Investment Holdings LLC ("Kona") is a junior secured creditor with a lien of not less than \$11 Million. Synergy is using the bankruptcy sale process to liquidate its collateral and satisfy its claim to the extent possible. Kona is waiving its claims pursuant to a separate agreement with the Chapter 7 Trustee.

After an extensive marketing effort, the Chapter 7 Trustee determined that retention of Tiger Remarketing Services and Aaron Equipment Company, Inc. (collectively "Tiger") was in the best interest of the bankruptcy estate. An Agency and Sale Agreement was executed between Chapter 7 Trustees and Tiger on January 27, 2014 and approved by the Bankruptcy Court on February 27, 2014. Tiger was granted until July 31, 2014 to conduct (a) a sealed bid offering of the turnkey facility, or if that is not successful within 12 weeks, (b) a public online auction of all assets piecemeal at approximately four (4) weeks following the expiration of turn-key bidding period.

DHHL is owed approximately \$407,500.00 from November 5, 2012, the date the Chapter 7 petition was filed, to September 30, 2013. From October 1, 2013 to July 31, 2014, DHHL is owed another \$375,000.00, for a total of \$782,500.00. DHHL did receive the payment of \$300,000.00 as agreed under the Stipulated Agreement approved by the HHC in February 2014.

Current Status

Millennium HI Carbon, as well as another group, put in an offer with the Bankruptcy Trustee to purchase the assets, subject to certain amendment to the terms of the general lease.

At the June 2014 Special meeting, the Hawaiian Homes Commission set forth certain terms and conditions that are acceptable to the Commission. The department updated the appraisal for the current fair market ground lease rent for the subject property and the new established annual ground lease rent were provided to the two groups. Both were given time to work out their respective issues relating to the lease terms. One group gave notice on the 18th of September that they will not move forward because their two major issues were not resolved.

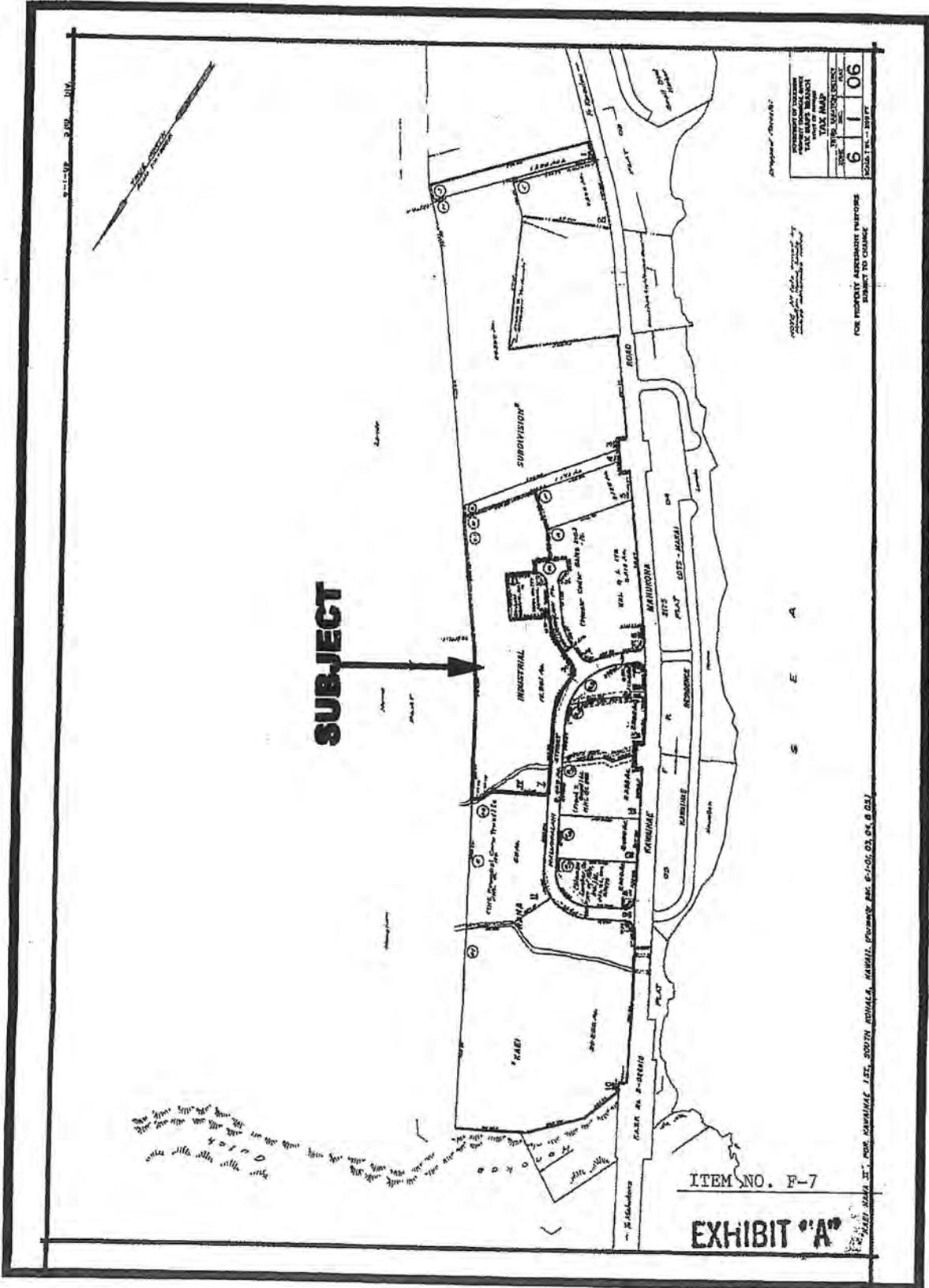
November 2014

Millennium HI Carbon LLC worked out the final concern relating to the insurance requirement and requested that the Hawaiian Homes Commission grant its approval to the proposed assignment and amendment. The Trustee of this Bankruptcy case will proceed with the court approval once the HHC granted approval.

A copy of the proposed draft of the Second Amendment to General Lease No. 275 is attached herewith as Exhibit "B".

RECOMMENDATION

Land Management Division requests approval of the recommended motion subject to conditions as stated in the motion.



SUBJECT

DEPARTMENT OF LAND AND NATURAL RESOURCES	
TAX MAPS BRANCH	
TAX MAP	
DATE	1961
SCALE	1" = 100 FT.
PROJECT NO.	6106

FOR PROPERTY ASSESSMENT PURPOSES
SUBJECT TO CHANGE

S E A

ITEM NO. F-7

EXHIBIT "A"

KAWAIAE 3E, POS. KAWAIAE 1ST, SOUTH KAWAIAE, HAWAII. FORMER NO. 61-01, 02, 04, 05

TAX MAP

SECOND AMENDMENT TO GENERAL LEASE NO. 275

Between

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS,
as LESSOR,

and

MILLENNIUM HI CARBON, LLC
a Hawaii Domestic Limited Liability Company
as LESSEE

ITEM NO. F-7

EXHIBIT "B"

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

SECOND AMENDMENT TO GENERAL LEASE NO. 275

THIS SECOND AMENDMENT TO GENERAL LEASE NO. 275, dated this ___ day of _____, 2014, is made by and between the State of Hawaii, by its DEPARTMENT OF HAWAIIAN HOME LANDS ("LESSOR"), whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose mailing address is P. O. Box 1879, Honolulu, Hawaii 96805, and MILLENNIUM HI CARBON, LLC, a Hawaii domestic limited liability company ("ASSIGNEE/LESSEE"), whose principal place of business and mailing address is 61-3260 Maluokalani Street, Kawaihae, Hawaii 96743

RECITALS

WHEREAS, the State of Hawaii, Department of Hawaiian Home Lands, as LESSOR, and KonaCarbon, LLC, as lessee, entered into that certain State of Hawaii Department of Hawaiian Home Lands General Lease No. 275 instrument dated March 1, 2009 ("LEASE"); a Memorandum of Lease dated March 23, 2009 was recorded at the State of Hawaii Bureau of Conveyances as Document No. 2009-112379 on July 22, 2009; and

WHEREAS, the LEASE was assigned to Big Island Carbon, LLC, a Delaware limited liability company, by that certain Assignment of Lease dated August 18, 2009, and recorded at the State of Hawaii Bureau of Conveyances as Document No. 2009-133295 on August 31, 2009; and Consent to Assignment of Lease was recorded as Document No. 2009-133296 on August 31, 2009; and

WHEREAS, the LEASE is hereby assigned to MILLENNIUM HI CARBON, LLC, a Hawaii domestic limited liability company ("ASSIGNEE"), and by that certain Commissioner's Assignment of Ground Lease instrument dated _____, recorded at the State of Hawaii Bureau of Conveyances as Document No. _____ on _____, 2014; and

WHEREAS, the LESSOR and ASSIGNEE/LESSEE desire and agree to amend the Lease to modify the ground lease rent schedule, and impose additional conditions relating to terms and conditions of the LEASE.

NOW THEREFORE, for and in consideration of the foregoing and mutual covenants, terms and conditions hereinafter provided, the parties hereto, for and on behalf of themselves, their successors and assigns, do hereby modify, amend, and alter certain terms of the Lease as follows:

1. ANNUAL BASE RENT. LESSOR has agreed that the Annual Base Rent shall be modified to reflect the fair market annual ground lease rent conducted by a third-party appraiser as follows:

- a. The annual ground lease rent shall be \$168,000 for ten-year period commencing from the date of the closing on the acquisition of the assets of Big Island Carbon by ASSIGNEE which is anticipated to be approximately December 1, 2014; and
- b. The annual ground lease rent shall be \$201,600 for the next ensuing ten-year period.

2. RE-DETERMINATION OF GROUND LEASE RENT. The annual ground lease rent shall be reopened for the remaining term of the lease on 12/1/2034 and 12/1/2044 for the ensuing ten-year period, and on 12/1/2054 for the period ending 2/29/2064, the expiration date of the lease term. In no event shall the annual ground lease rent determined by appraisal for any ensuing reopened period be less than the annual base rent for the preceding period.

3. DEFERMENT OF GROUND LEASE RENT. The annual ground lease rent for the two-year period from date of the closing on the acquisition of the assets of the Big Island Carbon by ASSIGNEE shall be deferred to allow ASSIGNEE time to upgrade and improve the plant facility on the leased premises to production standard, so that operation can commence. The deferred ground lease rent shall be paid no later than 3/1/2024.

4. PERCENTAGE RENT. ASSIGNEE shall pay percentage rent, beginning 3/1/2024, calculated at a going rate of comparable leases OR the annual ground lease rent then established for that period, whichever is higher.

5. COMMITMENT TO INVEST INVESTMENT. ASSIGNEE shall commit to expend no less than \$7.5 million as additional capital investment and/or working capital within 24 months of the lease assignment to upgrade and improve the plant facility on the leased premises to production standard, so that commercial operation can commence.
6. CLEAN UP OF PREMISES AT COMMENCEMENT OF LEASE. LESSOR acknowledges that the leased premises is cleaned based on the "No Further Action" letter issued by State of Hawaii Department of Health. ASSIGNEE may conduct a Phase 1 update and LESSOR agrees to reimburse the expenses, provided that, the scope of service and cost received prior approval by LESSOR. In the event the Phase 1 environmental assessment raises issues that need further investigation or remediation, LESSOR agrees to cover the costs related thereto, subject to availability of funds.
7. LEASE PERFORMANCE BOND AND SECURITY DEPOSIT. The ASSIGNEE shall be required to comply with this provision.
8. INTEREST COSTS AND FEES AND PRIOR DEFAULTS. Payment of any and all costs incurred due to defaults and subsequent bankruptcy, prior to the Assignment, shall be waived and not be ASSIGNEE'S responsibility. LESSOR agrees that any prior defaults under the Lease, as amended, are waived.
9. NOTICE. The Notice Provision under Article V shall be undated to reflect the ASSIGNEE'S address and notification requirement as follows:

Millennium HI Carbon, LLC
61-3260 Maluokalani Street
Kawaihae, Hawaii 96743

A copy of all notices shall also be delivered to ASSIGNEE at:

C/O Millennium Investment & Acquisition Company
301 Winding Road
Old Bethpage, NY 11804

10. EFFECTIVENESS. This Second Amendment is subject to the approval of the United States Bankruptcy Court for the District of Delaware and shall be of no force and effect unless signed by the Parties and approval by a final, non-appealable order of said Court.

11. The Parties hereto agree that this Amendment may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the Parties hereto, notwithstanding all of the Parties are not signatory to the original or the same counterparts.

12. All relevant references to time-frames in Section 7(a) of the Lease shall be adjusted to reflect the same time period from the Closing Date of the purchase of the assets of Big Island Carbon by ASSIGNEE.

13. With respect to the Sublease Rent Participation Policy, LESSOR acknowledges that the Investment Amount is \$40,000,000 and any future investment by ASSIGNEE will be added to this amount.

EXCEPT AS AMENDED HEREIN, all terms and conditions contained in the Lease, as previously amended, continue in full force and effect.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

Approved by the HHC at its last meeting
held on _____

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

APPROVED AS TO FORM:

By: _____
JOBIE M. K. MASAGATANI, Chairman
Hawaiian Homes Commission

Deputy Attorney General
State of Hawaii

LESSOR

MILLENNIUM HI CARBON, LLC
a Hawaii domestic limited liability company

By: _____
DAVID H. LESSER, Manager

ASSIGNEE/LESSEE

STATE OF HAWAII)
) SS.
CITY & COUNTY OF HONOLULU)

On this _____ day of _____, 2014, before me appeared _____, to me personally known, who, being by me duly sworn, did say that she is the person who executed the foregoing instrument and acknowledged to me that she executed the same freely and voluntarily for the use and purposes therein set forth.

Notary Public, State of Hawaii

Printed Name: _____
My commission expires: _____

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description: _____	
Doc. Date: _____ or <input type="checkbox"/> Undated at time of notarization.	
No. of Pages: _____ Jurisdiction: _____ Circuit (in which notarial act is performed)	
_____ Signature of Notary	_____ Date of Notarization and Certification Statement
Printed Name of Notary: _____	

LAND COURT REGULAR SYSTEM
AFTER RECORDATION, RETURN TO:

BY (x) MAIL () PICK-UP
Affects Tax Map Key No.: (3) 6-1-006-007

LIMITED POWER OF ATTORNEY

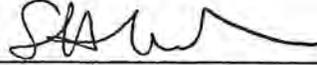
KNOW ALL MEN BY THESE PRESENTS that, DAVID H. LESSER, Manager of MILLENNIUM HI CARBON, LLC, a Hawaii limited liability company with a mailing address of 301 Winding Road, Old Bethpage, New York 11804, does hereby constitute and appoint Randolph P Freitas, whose mailing address is PO Box 7674, Hilo, Hawaii 96720, the true and lawful Attorney-In-Fact, for MILLENNIUM HI CARBON, LLC, place and stead, and for MILLENNIUM HI CARBON, LLC's use and benefit with full power and authority to:

1. Negotiate new lease terms pertaining to or affecting the leased real property more particularly described in Exhibit "A" attached hereto (the "Property") which include the time period of the lease and monthly rental amount, but not to include finalization of a Lease Agreement or execution of a Lease Agreement, for the Property referenced herein and pursuant to General Lease No. 275 between the State of Hawaii Department of Hawaiian Home Lands, Lessor ("Lessor") and KonaCarbon, LLC, Lessee, made March 10, 2009, the Memorandum of Lease dated March 23, 2009 being recorded with the State of Hawaii Bureau of Conveyances on July 22, 2009, Document No.: 2009-112379 ("Lease"); and, which Lease was assigned to Big Island Carbon, LLC by that certain Assignment of Lease dated August 18, 2009 and recorded with the State of Hawaii Bureau of Conveyances on August 31, 2009, Document No.: 2009-133295 and, the Consent to Assignment of Lease recorded with the State of Hawaii Bureau of Conveyances on August 31, 2009, Document No. 2009-133296; and, the State of

Exhibit "D"
Item No. F-6

same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

SUSAN HOLLANDER
NOTARY PUBLIC, State of New York
No. 01HO6398092
Qualified in Nassau County
Commission Expires September 23, 20²³



Notary Public, State of New York

Print Name: _____

My Commission Expires: _____