

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

August 26, 2016

PSF No.: 16HD-077
Ref. No.: GLS-5188

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

HAWAII

Consent to Assign General Lease No. S-5188, Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson, Assignors, to Kona ABC LLC, Assignee, Auhaukeae 2nd, North Kona, Hawaii, Tax Map Key: (3) 7-5-009: 043.

Consent to Limited Assignment of LLC Interest (Kona ABC LLC), Lessee under General Lease No. S-5188, by Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson, Assignors, to LSREF2 OREO (DIRECT), LLC, Assignee, Auhaukeae 2nd, North Kona, Hawaii, Tax Map Key: (3) 7-5-009: 043.

APPLICANTS:

Brad Radcliffe Anderson, Cord Dominis Anderson, and D. G. Anderson, tenants in common, as individuals.

Kona ABC LLC, a Hawaii limited liability company.

LSREF2 OREO (DIRECT), LLC, a Delaware limited liability company.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Auhaukeae 2nd, North Kona, Hawaii, identified by Tax Map Key: (3) 7-5-009: 043, as shown on the attached map labeled Exhibit A.

AREA:

0.338 acres, more or less.

TRUST LAND STATUS:

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

CHARACTER OF USE:

Lessee shall use or allow the premises leased to be used solely for commercial purposes as may be permitted under the zoning ordinances of the County of Hawaii.

TERM OF LEASE:

50 years, commencing on May 19, 1989 and expiring on May 18, 2039. Last rental reopening occurred on May 19, 2009; next rental reopening is scheduled for May 19, 2019.

ANNUAL RENTAL:

\$ 31,150.00

CONSIDERATION:

Assignors Brad Radcliffe Anderson, Cord Dominis Anderson, and
D.G. Anderson to Assignee Kona ABC, LLC: \$10.00

Assignor Kona ABC, LLC to Assignee, LSREF2 OREO (DIRECT), LLC: \$175,000.00

RECOMMENDED PREMIUM:

None. See Exhibit C attached.

DCCA VERIFICATION:

| | |
|---------------------------------|---|
| <u>ASSIGNOR:</u> (Andersons) | Not applicable. Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson as individuals are not required to register with DCCA. |
|---------------------------------|---|

| | |
|---|---|
| <u>ASSIGNEE/ASSIGNOR:</u> (Kona ABC LLC) | Place of business registration confirmed: YES <u>x</u> NO__ |
| | Registered business name confirmed: YES <u>x</u> NO__ |
| | Good standing confirmed: YES <u>x</u> NO__ |

| | |
|------------------------------|---|
| <u>ASSIGNEE:</u> (LSREF2) | Place of business registration confirmed: YES <u>x</u> NO__ |
| | Registered business name confirmed: YES <u>x</u> NO__ |
| | Good standing confirmed: YES <u>x</u> NO__ |

REMARKS:

General Lease No. S-5188 covering Tax Map Key: (3) 7-5-09:43 (Parcel 43) was sold at public auction held on May 18, 1989. Lanihau Partners L.P. (Lanihau), as the successful bidder, was issued a 50-year lease for commercial purposes. Through mesne assignments with consent of the Board of Land and Natural Resources, the lease was assigned to Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson (Andersons), pursuant to Board action of January 8, 2010, Item D-15, and the Chairperson's signed consent thereto dated August 31, 2010.

Parcel 43 is centrally located in Kailua-Kona, and is surrounded by a commercial development known as the Coconut Grove Marketplace (Marketplace) currently owned by LSREF2 OREO (DIRECT), LLC, a Delaware limited liability company (LSREF2), and others. The Marketplace occupies Tax Map Keys: (3) 7-5-009:025, 027 & 028 (the Marketplace Parcels). See Exhibit A.

The original lessee under the subject lease, Lanihau, was also the owner/developer of the Marketplace. Lanihau and/or its successors and assigns developed and maintained Parcel 43 as a landscaped open parcel with a sand volleyball court on it. The volleyball court is a component of a larger drainage system for the Marketplace. In heavy rains, an underground system of drains and pipes collects surface runoff at the surrounding Marketplace, as well as Kuakini Highway, and directs it to a discharge point on Parcel 43. Water exits the discharge point and enters the sand volleyball court and surrounding area, which functions as a detention basin. Staff understands that beneath the sand of the volleyball court is a porous lining over an aggregate base that allows the water to percolate into the ground.

After a mortgage foreclosure on the prior owner of the Marketplace in 2010, the Marketplace and Parcel 43 wound up with different owners who were at odds over the continued use of Parcel 43 as a component of the Marketplace. This situation has persisted since 2010. By letter dated February 16, 2016, the attorney for LSREF2 advised Land Division that the parties had settled their dispute, with LSREF2 agreeing to pay the Andersons \$892,000. See Exhibit B attached. As the initial step of that settlement, the Andersons have agreed to assign their interest in the lease to Kona ABC LLC (Kona ABC), a Hawaii limited liability company owned by them.

The second step of the settlement agreement involves the Andersons assigning their membership interests in Kona ABC to LSREF2 for a consideration of \$175,000. For purposes of expediting this transaction, the two assignments of General Lease No. S-5188 will be processed concurrently.

The Andersons stated that the cost of improvements on the leased area for grading, utility lines, landscaping, pathways, rock walls, drainage system, and sand volleyball court, totaled \$1,135,000. The cost of trade fixtures is \$50,000.

Kona ABC has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

LSREF2 has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The last rental reopening was conducted on May 19, 2009. There are no outstanding rental reopening issues.

No agency or interest groups were solicited for comment, as there will be no new disposition or change in land use with this request.

Staff supports the request based on the representation by the attorney for LSREF2 that the assignment will facilitate the settlement of the longstanding dispute between the parties regarding Parcel 43.

RECOMMENDATION: That the Board:

- A. Consent to the assignment of General Lease No. S-5188 from Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson, as Assignors, to Kona ABC LLC, as Assignee, subject to the following:
 - 1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 - 2. Review and approval by the Department of the Attorney General; and
 - 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Consent to Limited Assignment of LLC Interest (Kona ABC LLC), Lessee under General Lease No. S-5188, by Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson, Assignors, to LSREF2 OREO (DIRECT), LLC, Assignee, subject to the following:
 - 1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 - 2. Review and approval by the Department of the Attorney General; and

3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



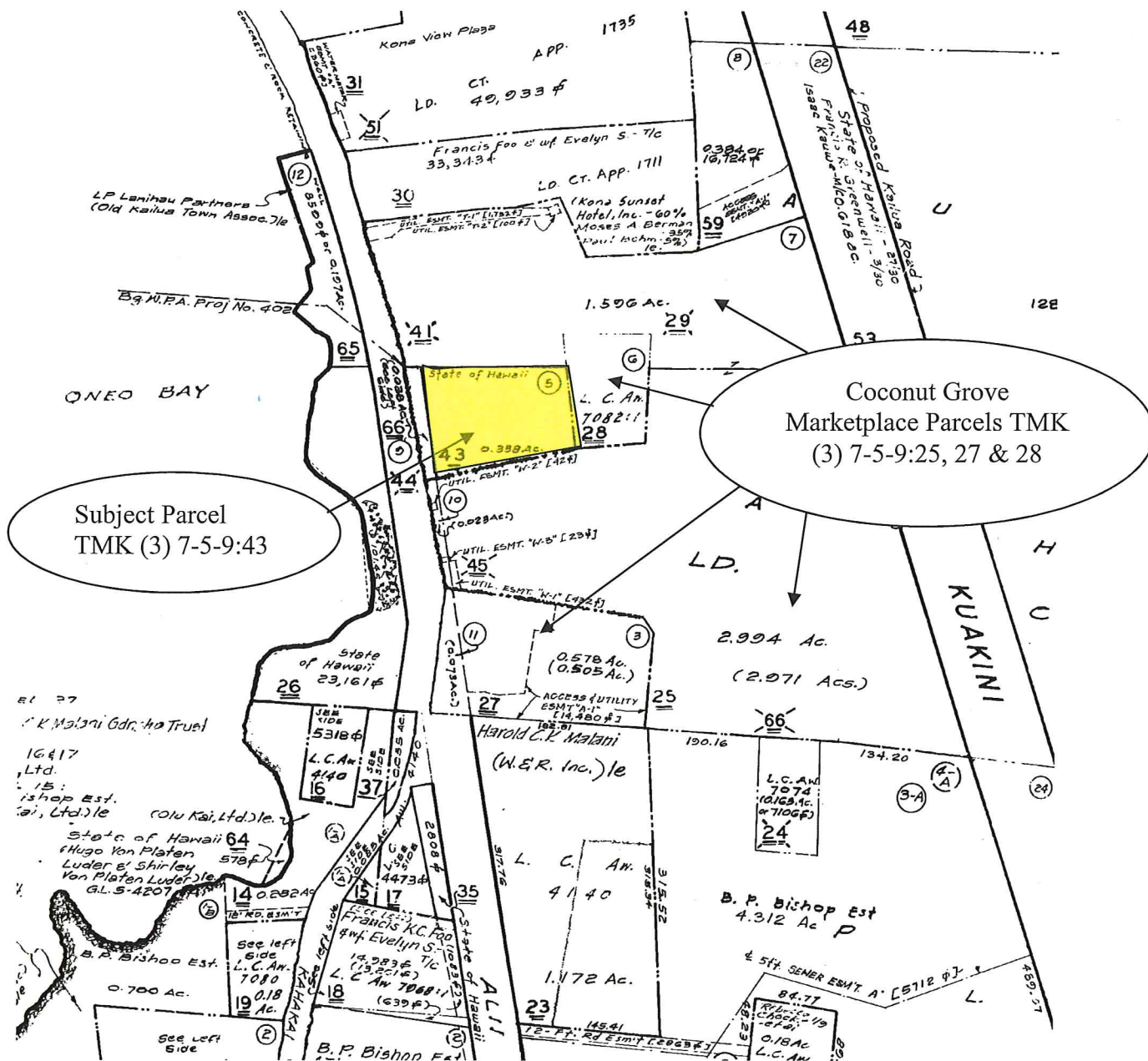
Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson







ASHFORD + WRISTON

GL 5788
Kevin W. Herring
Connie C. Chow

February 16, 2016

Department of Land and Natural Resources
Land Division
Attention: Mr. Russell Y. Tsuji
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

2016 FEB 18 AM 11:11

RECEIVED
LAND DIVISION

Re: General Lease No. S-5188; TMK No.s (3) 7-5-009:43;
Settlement of Dispute with the Andersons

Dear Mr. Tsuji,

We are happy to report that our client, LSREF2 OREO (DIRECT), LLC ("LSREF2") has resolved and settled its dispute with D.G. Anderson, Brad Radcliffe Anderson and Cord Dominis Anderson (collectively the "Andersons") regarding the property that is the subject of General Lease No. S-5188 (the "Leased Property").

The Leased Property, which is nominally described as a "sand volleyball court," is located on Alii Drive in Kona. It is surrounded on three sides by the Coconut Grove Marketplace, which is owned by LSREF2.

Under the salient terms of the settlement, *inter alia*, as an initial step, the Andersons will, subject to Board of Land and Natural Resources consent, assign their interest in the Lease to an LLC wholly owned by the Andersons.

Based on our prior discussions, and a subsequent discussion with Gordon Heit, it appears that the first step in moving forward with the settlement would be to request an Application for Assignment of Lease. In that regard, please send the necessary form to the Andersons' legal counsel at the following address:

Peter Hamasaki, Esq.
Five Waterfront Plaza, 4th Floor
500 Ala Moana Boulevard
Honolulu, Hawaii 96813

2.18.16 cy: HDLO

EXHIBIT B

Mr. Russell Y. Tsuji
February 16, 2016
Page 2

Kevin W. Herring
Connie C. Chow
808.539.0400
kherring@awlaw.com
cchow@awlaw.com

We sincerely appreciate the Department of Land and Natural Resources' assistance with this matter. If you have any questions or concerns, please do not hesitate to contact us at (808) 539-0400 or by email at kherring@awlaw.com or cchow@awlaw.com.

Very Truly Yours,

ASHFORD + WRISTON,
A Limited Liability Law Partnership LLP

By



Kevin W. Herring
Connie C. Chow

cc: Mr. Gordon Heit
Mr. Peter Hamasaki, Esq.

Assignment of Lease Premium Calculation
GL 5188; Kona ABC LLC to LSREF2 OREO (DIRECT), LLC

Lease
 5/19/1989- 5/18/2039

Net Consideration \$ 175,000 *

Year Blt. 1989

| | | |
|-------------------|-------------|---------------------------|
| Improvement Cost | \$1,135,000 | Value as of July 30, 2016 |
| CCI (most recent) | 285.5 | 2016 |
| CCI (base year) | 93.5 | 1989 |
| Expired Term | 324 | mos. |
| Whole Term | 600 | mos. |

Cost \$1,135,525

Adjusted Cost of Improvements or
 1 Renovations

Actual Cost x $\frac{\text{CCI (most recent)}}{\text{CCI (base year)}}$

\$1,135,000 x $\frac{285.0}{93.0}$ = \$3,484,328

3.064516

2 Depreciation

\$3,484,328 x $\frac{324 \text{ mos.}}{600 \text{ mos.}}$ = \$1,881,537

0.54

3 Adjusted Depreciated Cost of Improvements or Renovations

\$3,484,328 - \$1,881,537 = \$1,602,791

4 Premium Calculation

| | | |
|-------------------------------|--|--|
| Net Consideration | | \$ 175,000 * |
| Adjusted Cost of Imp. | \$3,484,328 | |
| Depreciation | \$(1,881,537) | |
| Adjusted Deprec. Cost of Imp. | | <u>\$ 1,602,791</u> |
| Excess | | \$(1,427,791) |
| Premium Percentage | x | <u>30%</u> |
| Premium | | <u>\$ (428,338)</u> |

* Cost of improvements amount submitted by Lessee less current depreciated value provided

EXHIBIT C