

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

February 24, 2017

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

HAWAII

Consent to Sublease General Lease No. S-3961, Hilo-Hawaiian Associates, Inc., dba Hilo Hawaiian Hotel, as Sublessor; to Banyan Mini Mart LLC, Banyan Gallery, KHNL/KGMB, LLC, as Sublessees, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-003:005.

APPLICANT:

Hilo-Hawaiian Associates, Inc., dba Hilo Hawaiian Hotel, as Sublessor.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-003:005, as shown on the attached map labeled Exhibit A.

AREA:

5 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:

YES ____ NO X

LEASE CHARACTER OF USE:

Resort-hotel purposes and uses accessory or incidental thereto and customarily conducted within resort-hotel areas.

SUBLEASE CHARACTER OF USE:

Commercial retail purposes and special events services.

TERM OF LEASE:

65 years, commencing on April 15, 1966, and expiring on April 14, 2031. Last rental reopening occurred on April 15, 2011; next rental reopening is scheduled for April 15, 2021.

TERM OF SUBLEASE:

Banyan Mini Mart LLC:

Five (5) years, commencing on July 1, 2015 and expiring on June 30, 2020 with the option to renew after this term for an additional period of one year, ending June 30, 2021.

Banyan Gallery:

Month-to-month, commencing on November 15, 2016 and subject to termination by either party with a 60-day written cancellation notice.

KHNL/KGMB, LLC

Five (5) years, commencing on January 1, 2017 and expiring on December 31, 2021.

* This request is after-the-fact due to pending various pending documents and permits outside of our jurisdiction required by the Sublessee throughout the information gathering process.

ANNUAL RENTAL:

\$185,400.00 per annum or two per cent (2%) of gross revenues, whichever is higher.

ANNUAL SUBLEASE RENTAL/ANNUAL INCREASE:

Banyan Mini Mart LLC: \$19,293.60 (\$1,607.80 monthly) w/5% annual increase.

Banyan Gallery: \$12,000.00 (\$1,000.00 monthly) w/5% annual increase.

KHNL/KGMB, LLC: \$29,058.48 (\$2421.54 monthly) w/3% annual increase.

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

The provision for subleasing in Extended, Amended and Restated General Lease No. S-3961 is as follows:

Subletting. The Lessee shall not rent or sublet the whole or any portion

of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed Sublessee and that in the case where the Lessee is required to pay rent based on a percentage of the gross receipts, the receipts of the Sublessee or any subsequent Sublessee shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent for the premises based on the rental rate charged to the Sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward. For good cause, the Board may waive the requirement that the Lessee obtain prior written approval to rent or sublet all or any portion of the premises.

Under this provision, HHA must include the sublease rents in its gross receipts reports, on which its percentage rent is calculated. Significantly, HHA recently paid \$547,505.34 in percentage rent for the period from July 12, 2013 through December 31, 2016, or an average of approximately \$158,315 in additional rent per year since the Extended, Amended and Restated lease went into effect.

Further, as determined by the Board's sublease rent participation policy, most recently amended on August 24, 2012, agenda Item D-14, the subject subleases are for improved property only and the improvements are not owned by the State and the Lessee pays fair market rent. In part, the policy states:

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

In this case, Hilo-Hawaiian Associates, Inc. (HHA) is subleasing improvements not owned by the State. General Lease No. S-3961 does not specifically state the method of sublease rent participation in the lease. Although the buildings on the lease premises are approximately 46 years old, HHA invested more than \$5,500,000 in hotel renovations as part of the August 8, 2013 lease extension agreement between HHA and the Board. HHA has not yet amortized these investments. The standard depreciation for commercial property is 39 years. HHA's expenditures to renovate the hotel far exceed the amount of revenues generated by the subleases, even when considered over the full terms of the subleases. Additionally, HHA does occupy the majority of the premises for its hotel operation.

Accordingly, in view of the significant percentage rents HHA already pays under lease, and pursuant the Board's current sublease rent participation policy, staff does not believe

that further State participation in the sublease rents is warranted under the circumstances.

DCCA VERIFICATION:

SUBLESSOR:

Hilo Hawaiian Associates, Inc.

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

SUBLESSEE:

Banyan Mini Mart LLC:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

Banyan Gallery:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

KHNL/KGMB, LLC:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

REMARKS:

At its meeting of February 11, 1966, Item F-8, the BLNR authorized the sale of a lease of the subject land at public auction for resort and hotel purposes. The successful bidder for this sixty-five (65) year lease was Melsan, Ltd. Due to difficulties in obtaining financing for construction of the hotel structure, the original principals of Melsan, Ltd. entered into an agreement with International Management Corporation, whereby the latter assumed full corporate ownership of Melsan, Ltd.

At its meeting on September 23, 1973, the BLNR consented to the extension of construction deadline and consent to mortgage for General Lease No. S-3961 (GL S-3961). Construction of the hotel was completed and it opened for business in October 1975.

At its meeting of June 13, 1986, Item F-1-c, the BLNR consented to the assignment of the lease with assumption of mortgage from Melsan, Ltd. to Hilo Hawaiian Associates, a Hawaii Limited Partnership.

At its meeting of July 8, 2010, Item D-3, the BLNR consented to the transfer of 100%

stock ownership of parent company of Hilo Hawaiian Associates, Lessee, to Hilo Hawaiian Associates, LLC, as transferee.

Effective January 1, 2012, Hilo Hawaiian Associates, together with its general and limited partners, merged with and into the common parent of these companies, TN Group Hawaii, Inc. Effective September 10, 2012, TN Group Hawaii, Inc. changed its name to Hilo-Hawaiian Associated, Inc.

At its meeting of October 26, 2012, Item D-11, the BLNR approved in concept an extension of GL S-3961 pursuant to Act 219, 2011 Session Laws of Hawaii, which allowed hotel/resort leases to be extended up to 55 years, provided there is a commitment to substantial upgrades to the existing improvements.

At its meeting of July 12, 2013, Item D-4, the BLNR approved a negotiated development agreement and authorized the extension of GL S-3961 for an aggregate of 55 years (18 years remaining on lease plus an additional 37 years).

SUBLEASES

Banyan Mini Mart LLC will be utilizing approximately 727 square feet, what is described as Building C (aka Cabana 3), to operate a Gift Shop. At its meeting of August 9, 2013, Item D-2, the BLNR approved the consent to sublease Building C to Banyan Gift Shop, LLC for the term July 1, 2012 to June 30, 2017. Banyan Gift Shop, LLC has since changed its title to Banyan Mini Mart LLC, therefore, requesting a new term under its new name.

Banyan Gallery will be utilizing approximately 618 square feet, what is described as Building D (aka Cabana 4), to operate an Art & Unique Gifts Retail Shop. This portion of Building D was previously subleased to Aaron and Vinel Sugino dba Blue Kalo from February 15, 2012 to February 14, 2014, approved by the BLNR at its meeting of July 12, 2013, Item D-5.

KHNL/KGMB, LLC will be utilizing Room #802 for television broadcasting station purposes and a portion of the rooftop necessary for the maintenance of a transmitting tower.

*Please see Exhibit B, attached, for reference photos of subject areas. No improvements are foreseen at this time.


The Lessee is compliant with all lease terms and conditions including rent, insurance and performance bond. The Lessee has had several Notice of Defaults issued for "Failure to Post Performance Bond" and once for "Failure to Post Liability Insurance Policy" but complied in the given time allowed for all violations.

RECOMMENDATION:

That the Board consent to the subleases under General Lease No. S-3961 between Hilo Hawaiian Associates Inc., dba Hilo Hawaiian Hotel, as Sublessor, and Banyan Mini Mart LLC, Banyan Gallery, and KHNL/KGMB, LLC, as sublessees, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:

1. The standard terms and conditions of the most current consent to sublease 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,



Dan K. Gushiken
Land Agent

APPROVED FOR SUBMITTAL:

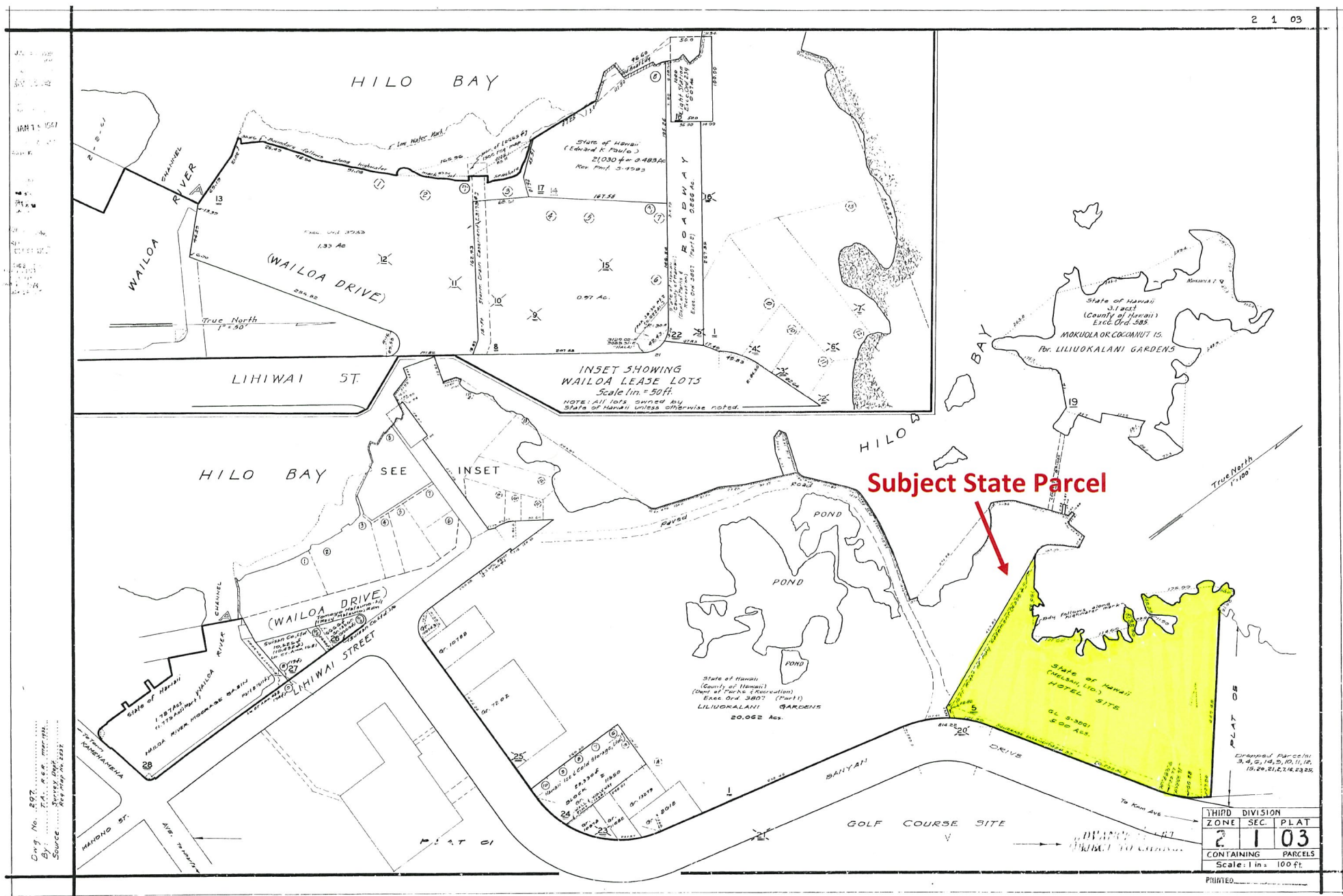


Suzanne D. Case, Chairperson

EXHIBIT A

General Lease No. S-3961 (Hilo Hawaiian Associates, Inc.) – Consent to Sublease

TMK: (3) 2-1-003-005



General Lease No. S-3961 (Hilo Hawaiian Associates, Inc.) – Consent to Sublease

Banyan Mini Mart LLC - Building C (Cabana 3)



