

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

February 9, 2018

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

Ref. No.: 17HD-147
HAWAII

Consent to Sublease General Lease No. S-3961, Hilo-Hawaiian Associates, Inc., Lessee/Sublessor; to Banyan Mini Mart LLC dba Coco Gift Shop; Lornalee Karvas dba Jaymielee's Styling Salon; Original Big Island Shave Ice Co., Inc., also known as Reginald Ignacio dba Original Big Island Shave Ice Co., Inc.; and Hawaii Forest & Trail, Ltd.*, also known as Hawaii Forest & Trail, Ltd. dba Hawaii Forest & Trail Adventures and Activities, Sublessees, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-21-003:005 pors.

APPLICANT:

Hilo-Hawaiian Associates, Inc., a Hawaii corporation, as Lessee/Sublessor; to Banyan Mini Mart LLC, a Hawaii limited liability company, dba Coco Gift Shop; Lornalee Karvas dba Jaymielee's Styling Salon, a sole proprietorship; Original Big Island Shave Ice Co., Inc., a Hawaii corporation, also known as Reginald Ignacio dba Original Big Island Shave Ice Co., Inc.; Hawaii Forest & Trail, Ltd.*,¹ a Hawaii corporation, also known as Hawaii Forest & Trail, Ltd. dba Hawaii Forest & Trail Adventures and Activities, as Sublessees; Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-21-003:005 pors.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-21-003:005 pors., as shown on the attached map labeled Exhibit A.

LEASE AREA:

5 acres, more or less.

¹ The asterisk in the name of this sublessee is part of the official name of the company according to the records of the Department of Commerce and Consumer Affairs.

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:

Original Term: Sixty-five (65) years, commencing on April 15, 1966, and expiring on April 14, 2031.

Extension: Thirty-seven (37) years, commencing April 15, 2031, and expiring on April 14, 2068.

Last rental reopening: Occurred on July 12, 2013.

Next rental reopening: Scheduled for July 12, 2023.²

TERM OF SUBLEASE:

Banyan Mini Mart LLC dba Coco Gift Shop:

One (1) year, commencing on April 15, 2016 and expiring on April 14, 2017, extended for an additional one (1) year period commencing April 15, 2017 and ending on April 14, 2018.

Lornalee Karvas dba Jaymielee's Styling Salon:

One (1) year, commencing on July 1, 2016 and expiring on June 30, 2017, extended for an additional one (1) year period commencing on July 1, 2017 and ending on June 30, 2018.

² Pursuant to authorization by the BLNR at its meeting of July 12, 2013, item D-4, the rental reopenings for the extended term shall be as of the date of that Board action, and at the end of the 10th, 20th, 30th, 40th, and 50th years of the extended term.

Original Big Island Shave Ice Co., Inc.:

One (1) year, commencing on April 1, 2017 and ending on March 31, 2018.

Hawaii Forest & Trail, Ltd. dba Hawaii Forest & Trail Adventures and Activities:*

One (1) year, commencing on June 1, 2017 and ending on May 31, 2018.

ANNUAL RENTAL:

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

ANNUAL SUBLEASE RENTAL:

Banyan Mini Mart LLC dba Coco Gift Shop:

\$18,000.00 per annum (\$1,500.00 per month)

Lornalee Karvas dba Jaymielee's Styling Salon:

\$4,464.00 per annum (\$372.00 per month)

Original Big Island Shave Ice Co., Inc.:

\$18,432.00 per annum (\$1,536.00 per month)

Hawaii Forest & Trail, Ltd. dba Hawaii Forest & Trail Adventures and Activities:*

\$9,600.00 per annum (\$800.00 per month or 10% of gross sales made on property for all Hawaii Forests & Trails, Ltd.*'s tours and 10% of net commissions collected on the sale of all other tours, whichever amount is greater.)

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

At its meeting of August 22, 2014, item D-14, the BLNR approved, as submitted, the rent determination for the first ten years of the extended, amended and restated lease under GLS-3961. The appraisal report of John Child & Company, Inc. dated June 25, 2014, set the rent at \$185,400.00 per annum, or 2% of gross revenues, whichever is higher³.

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

³ Due to the one year gap between the Board's approval of the lease extension on July 12, 2013 and the approval of the rent determination of the first ten years of the extension on August 22, 2014, the Lessee was also required to pay the difference between the old rent and the new rent under the extended lease for the payments made during this gap.

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, Hilo-Hawaiian Associates, Inc. (HHA) has included the sublease rents in its gross receipts reports, on which its percentage rent is calculated. Significantly, HHA has paid \$611,974.07 in percentage rent for the period from July 12, 2013 through December 31, 2017, since the Extended, Amended and Restated lease went into effect.

-	Percentage rent paid for 2013:	\$45,338.00
-	Percentage rent paid for 2014:	\$159,844.99
-	Percentage rent paid for 2015:	\$162,738.62
-	Percentage rent paid for 2016:	\$185,341.20
-	Percentage rent paid for 2017:	\$58,711.26 ⁴
Percentage Rent Paid (7/12/2013-12/31/2017)		\$611,974.07

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, 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

⁴ The figure \$58,711.26 is the percentage rent reported by HHA for the first six months of 2017 only. HHA's percentage rent report for the second half of 2017 is pending submission.

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, including the percentage of gross receipts from their subleases, 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:

LESSEE/SUBLESSOR:

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 __

SUBLESSEE(S):

Banyan Mini Mart LLC dba Coco Gift Shop:

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 __

Lornalee Karvas dba Jaymielee's Styling Salon:

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 __

Original Big Island Shave Ice Co., Inc.:

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 __

Hawaii Forest & Trail, Ltd. dba Hawaii Forest & Trail Adventures and Activities:*

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:

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 Associates, Inc. (HHA).

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 the lessee committed 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). This extension brings the termination date of the subject lease to April 14, 2068.

At its meeting of December 11, 2015, Item D-2, the BLNR approved the Extension, Amendment and Restatement of GLS-3691, adding non-standard provisions regarding a development agreement, assignment of lease, breach, improvements, improvement bond and withdrawal.

SUBLEASES

Banyan Mini Mart LLC dba Coco Gift Shop is utilizing approximately 727 square feet, more or less, of what is known as Building B (aka Cabana 2) to operate a gift shop. Building B is an existing improvement and was previously approved by the Board for a sublease to Jama Enterprises, LLC for a specialty coffee, retail and gift shop from January 1, 2013 to December 31, 2014. The premises have been vacant since. No substantial improvements are planned to be made during the term of this sublease.

Lornalee Karvas dba Jaymielee's Styling Salon is utilizing approximately 150 square feet, more or less, of a portion of what is known as Building D (aka Cabana 4b) to operate a beauty salon. Building D is an existing improvement and was previously approved by the Board for a sublease to Jaymielee's Styling Salon from July 1, 2012 to June 30, 2014. The Sublessee had taken a break and is now in operation again. No substantial improvements are planned to be made during the term of the sublease.

Original Big Island Shave Ice Co., Inc. is utilizing approximately 768 square feet, more or less, of what is known as Building A (aka Cabana 1) to operate a specialty shave ice shop. Building A is an existing improvement and no plans have been made to improve the premises during the term of the sublease. Building A was previously approved by the Board for a sublease to The Travel Professionals, Inc. from October 1, 2012 to September 30, 2014 to operate a travel agency.

Hawaii Forest & Trail, Ltd. dba Hawaii Forest & Trail Adventures and Activities* is utilizing approximately 200 square feet, more or less, of the front lobby area to operate a kiosk (aka the Desk) to sell recreation and sightseeing activities, conduct tour registrations and related activities.

Attached, as Exhibit B, are photos of the subleased areas for this request.

The Lessee is compliant with all lease terms and conditions including rent, insurance and performance bond. The Lessee has had several Notices of Default issued for "Failure to Post Performance Bond" and once for "Failure to Post Liability Insurance Policy" but all defaults were timely cured.

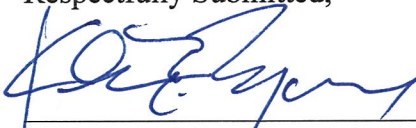
RECOMMENDATION:

That the Board consent to the sublease under General Lease No. S-3961 between Hilo-Hawaiian Associates, Inc., as Lessee/Sublessor, and Banyan Mini Mart LLC dba Coco Gift Shop; Lornalee Karvas dba Jaymielee's Styling Salon; Original Big Island Shave Ice Co., Inc., also known as Reginald Ignacio dba Original Big Island Shave Ice Co., Inc.; Hawaii Forest & Trail, Ltd.*, also known as Hawaii Forest & Trail, Ltd. dba Hawaii Forest & Trail Adventures and Activities, 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

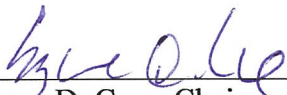
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Dan K. Gushiken
Land Agent

APPROVED FOR SUBMITTAL:

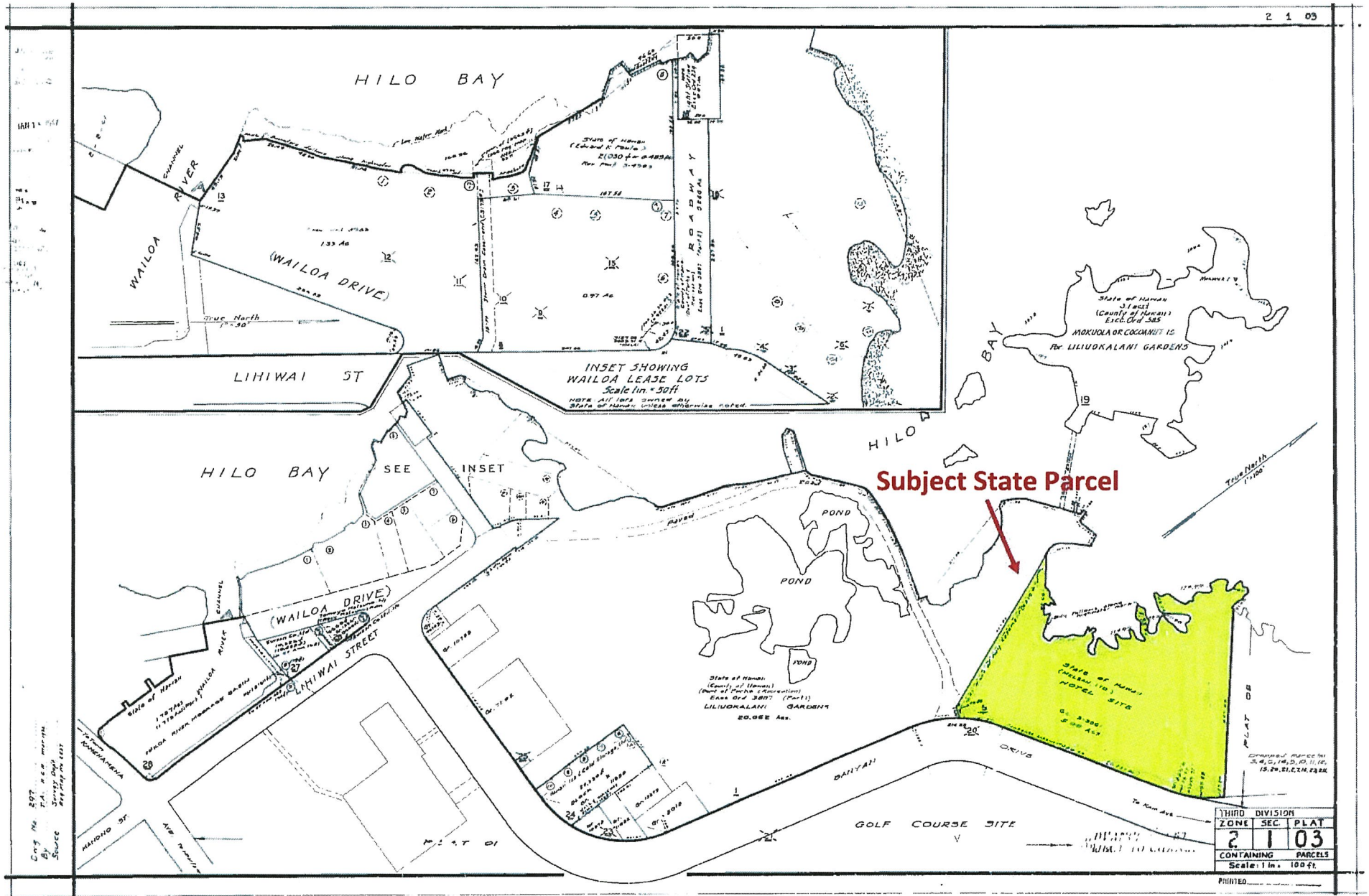


Suzanne D. Case, Chairperson

EXHIBIT A

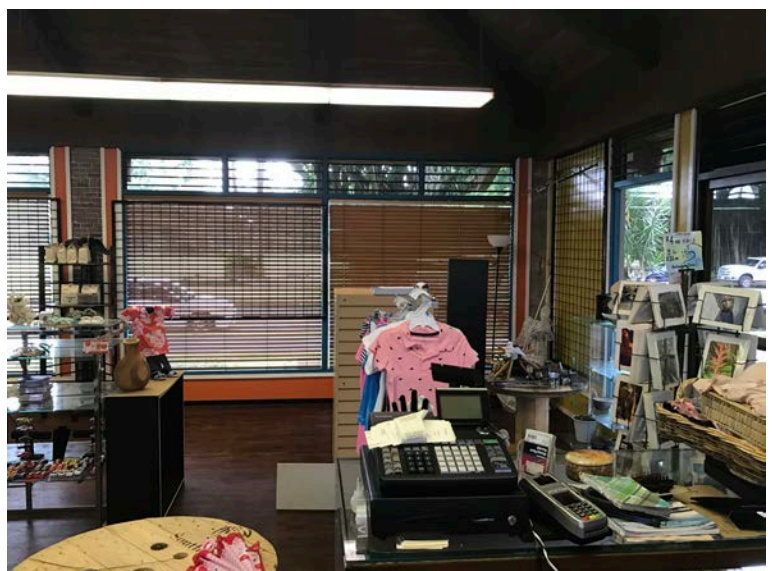
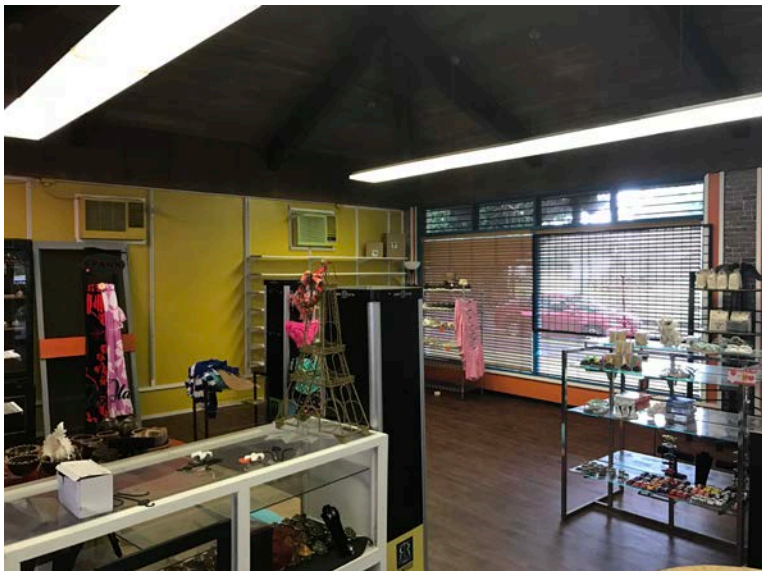
General Lease No. S-3961 (Hilo-Hawaiian Associates, Inc.) – Consent to Sublease

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

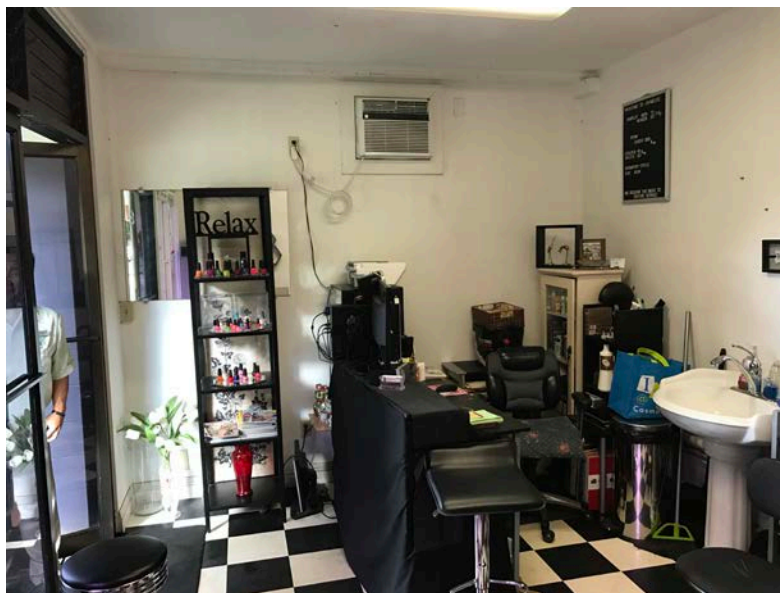
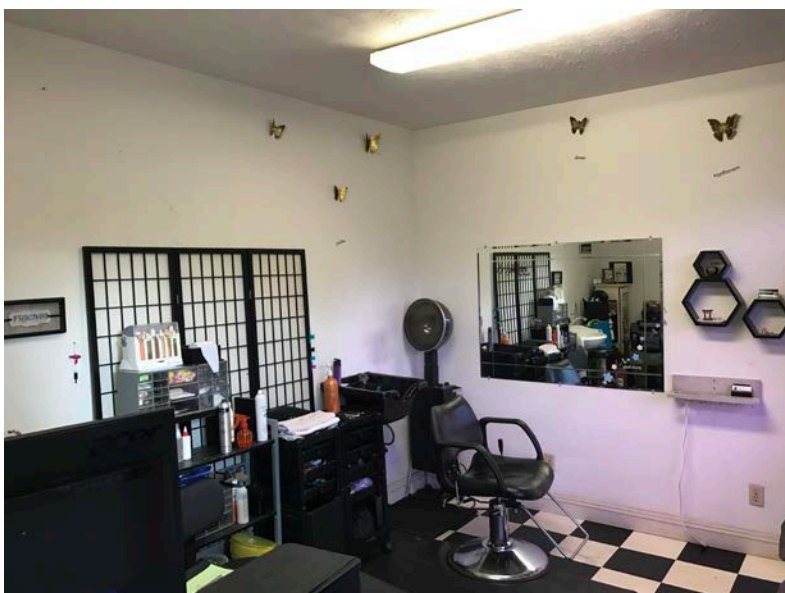


**GLS-3961 Hilo-Hawaiian Associates dba Hilo Hawaiian Hotel
Consent to Sublease (BLNR meeting January 12, 2017, item D-X)**

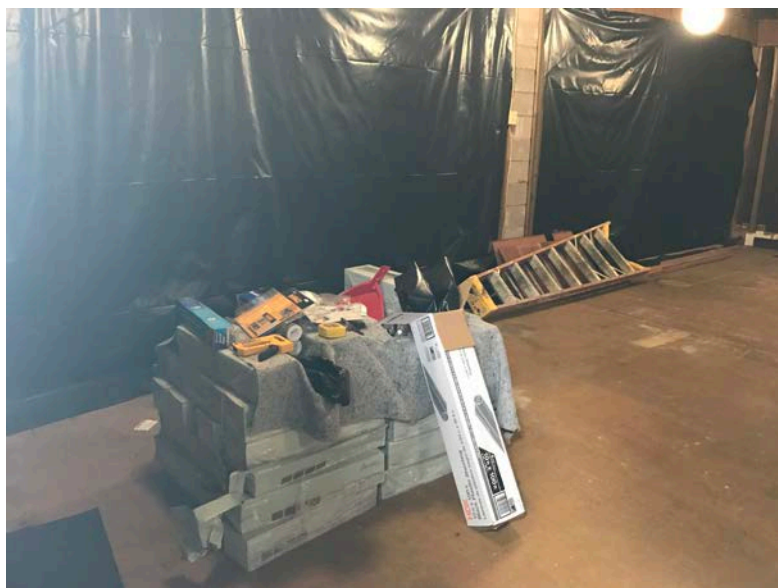
**Building B (Cabana 2)
Banyan Mini Mart LLC dba Coco Gift Shift**



Building D (Cabana 4b)
Lornalee Karvas dba Jaymielee's Styling Salon



Building A (Cabana 1)
Reginald Ignacio dba Original Big Island Shave Ice Co., Inc.



Main Lobby Area (aka “the Desk”)

Hawaii Forest & Trail, LTD dba Hawaii Forest & Trail Adventures and Activities



EXHIBIT B