

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

April 13, 2018

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

Hawaii

Approve a 10-year Lease Term Extension Pursuant to Act 207, Session Laws of Hawaii 2011, General Lease No. S-3750, Jieyu Shepard, Lessee; Amendment of Terms and Conditions Regarding Character of use, Assignment and Sublease Provisions, Kanoelehua Industrial Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-050:076.

APPLICANT AND REQUEST:

Jieyu Shepard, lessee, tenant in severalty.

Improvements to leasehold property financed by lessee pursuant to Act 207, Session Laws of Hawaii 2011 and Section 171-36, Hawaii Revised Statutes in an amount of approximately \$72,000.00.

In order for the Lessee to amortize this expenditure, Lessee is requesting an extension of General Lease No. S-3750 of 10 years, commencing on April 26, 2018 and expiring on April 25, 2028 for an aggregate term of 65 years (initial 55 year term plus the 10 year extension).

LEGAL REFERENCE:

Sections 171-36, Hawaii Revised Statutes, as amended.
Act 207, Session Laws of Hawaii 2011

LOCATION:

Portion of Government lands of Kanoelehua Industrial Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-050:076, as shown on the attached map labeled Exhibit A.

AREA:

11,914 square feet, 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:

Electrical contracting and allied services

TERM OF LEASE:

Original term of 55 years, commencing on April 26, 1963 and expiring on April 25, 2018.

Requested extension of 10 years commencing on April 26, 2018 and expiring on April 25, 2028.

ANNUAL RENTAL:

Current rent is \$13,550.00, due in quarterly installments of \$3,387.50 on the 25th day of January, April, July and October of each year. The last rental reopening occurred on April 26, 2013 and was for the remaining term of the lease. Staff is recommending an immediate rental reopening for the 10-year extension period.

PROPOSED IMPROVEMENTS:

The lessee proposes to replace roof with new 26 gauge metal and make necessary repair or replacement of rusted purlins, replace gutters along front and add gutters to rear of building, repave approximately 1500 sf of parking areas, update plumbing pipes and fixtures and update electrical as necessary. The building will be primed and painted with rust areas receiving pre-treatment. The cost of the improvements is estimated to be \$72,224.00

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 47, and Class No. 4, Item 4. See Exhibit D.

DCCA VERIFICATION:

Applicant is a sole proprietor and therefore is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant will be required to provide receipts for payment of proposed improvements to Land Division staff no later than April 25, 2019.

REMARKS:

Act 32, Session Laws of Hawaii 1962, authorized the Department to enter into direct negotiation of leases, or leases with option to purchase, of public lands with victims of natural disasters. Under this authority, on April 26, 1963 General Lease No. S-3750, was issued to Jiro Tanaka d.b.a. Tanaka Electrical Services as a lease with option to purchase.

At its meeting of January 24, 1997, under Agenda Item D-15, the Board approved the assignment of GL S-3750 from Jiro Tanaka, Assignor, to J. T. Family Partners and Yukie Tanaka, Trustee of the Yukie Tanaka trust, Assignee, as tenants in common, each having an undivided one-half (1/2) interest.

At its meeting of April 25, 2003, under Agenda Item D-2, the Board approved the assignment of lease from J. T. Family Partners and Yukie Tanaka, Trustee of the Yukie Tanaka Trust, Assignor, to Art K.K. Wong and Cynthia L. Wong as husband and wife, Tenants by the entirety, Assignee.

At its meeting of April 25, 2008, under agenda item D-7, the Board approved the assignment of GL S-3750 from Arthur K.K. Wong and Cynthia L. Wong, Assignor, to Jieyu Shepard, Assignee.

The current 55-year lease is set to expire on April 25, 2018 and the lessee is requesting a 10 year extension pursuant to Act 207, Session Laws of Hawaii 2011¹ to amortize the cost of planned improvements to the property, including roof replacement, repaving of the parking areas, repainting and updated plumbing and electrical, at a cost in excess of \$72,000.00. An appraisal evaluation performed by a certified appraiser (Exhibit B) has determined that the economic life of the proposed improvements will exceed the 10 year extension period requested to amortize the cost of the improvements.

The subject property is located in an area served by aging, but well maintained infrastructure. The area also includes numerous other DLNR properties currently encumbered by long-term leases which are scheduled to expire around the same time in 2028.

¹ Act 207, Session Laws of Hawaii 2011 amends Section 171-36(b) of the Hawaii Revised Statutes by allowing the Lessee to: Extend or modify the fixed rental period of the lease: provided that the aggregate of the initial term and any extension granted shall not exceed sixty-five years.

The Lessee utilizes approximately 1/3 of the building for warehousing of inventory for her retail cabinet, countertop and fixture business. The remaining 2/3 of the building is currently subleased to 3 other businesses: T-shirt Printing Shop, Vape Shop and Auto Body Repair Shop. These subleases are coterminous with the current 55-year lease and will not be renegotiated.

The Lessee is in compliance with the terms and conditions of the lease. The Lessee is current with rent, insurance and performance bond. A recent inspection showed that the existing structures would benefit from the proposed property improvements (photos attached as Exhibit C).

Since the lease was issued by direct negotiation instead of public auction, the Board has discretion to amend the lease to change the character of use provision and make other amendments. An amendment to the character of use provision is recommended in this case because the Assignee's use of the premises is potentially inconsistent with the use restriction in the lease.² The lease provides in part that:

“the lessee shall be required to use the leased land for the first five (5) years of the term of the lease for the same business use or undertaking in which the Lessee was engaged at the time of the natural disaster or a use designated by the Board; provided, however, that the Lessee may devote or place said demised premises to a use or uses other than electrical contracting and allied services in character, with the prior written consent of the Board, which consent shall not be unreasonably or arbitrarily withheld; provided, further, that should the Lessor consent to a change in the character of the use, it shall be upon such terms and conditions as set by the Lessor.”

A change in the character of use from “electrical contracting and allied services” to “uses allowed under the County of Hawaii zoning code, ML-20, limited industrial”, would allow the lessee to continue current operations resolving any potential conflict with the lease provision.

Also, the lease contains language which allows the Lessee to sublease portions of the property without Board approval, consent or knowledge. Staff believes the better practice is to require prior Board consent for all subleases. Therefore, Staff is recommending the assignment/sublease provision in the lease be amended to reflect the current language for assignments and subleases.

Staff is recommending that the rent payable for the 10-year extension period commencing April 26, 2018 be determined by immediate appraisal.

² Although the use restriction in the lease only applied to the first five years of the lease, it is unclear what the allowed use was intended to be after the first five years. Amending the character of use provision will resolve this ambiguity.

The County of Hawaii Planning Department was consulted on the appropriateness of the exemption from the preparation of an environmental assessment, and stated that it had no objection.

RECOMMENDATION:

That the Board:

1. Declare that, after considering the potential effects of the proposed extension of lease, in accordance with Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and therefore exempt from preparation of an environmental assessment.
2. Authorize the extension of General Lease No. S-3750 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current lease extension form, as may be amended from time to time;
 - B. Jieyu Shepard shall complete the warehouse renovations as proposed and submit to Land Division staff, receipts verifying payment for the improvements by April 25, 2019, or the lease extension shall be subject to cancellation.
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other conditions as may be prescribed by the Chairperson which are in the best interests of the State.
2. Authorize the amendment of General Lease No. S-3750 to change the character of use from “electrical contracting and allied services” to “uses allowed under the current County of Hawaii Zoning Code, ML-20, limited industrial”, and to update the lease provision titled “Assignments, etc.” (section 22 of the lease) with the current language used by the Department of the Attorney General for assignment and subleasing provisions. The amendment of the lease shall further be subject to the following:
 - A. The standard terms and conditions of the most current amendment of lease document form, as may be amended from time to time;
 - B. Review and approval by the Department of the attorney general; and

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

Respectfully Submitted,


Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:

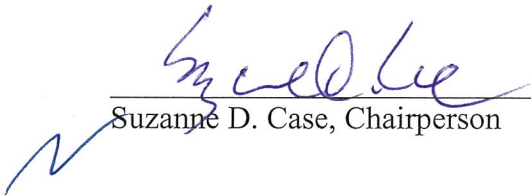

Suzanne D. Case, Chairperson

EXHIBIT A



EXHIBIT A

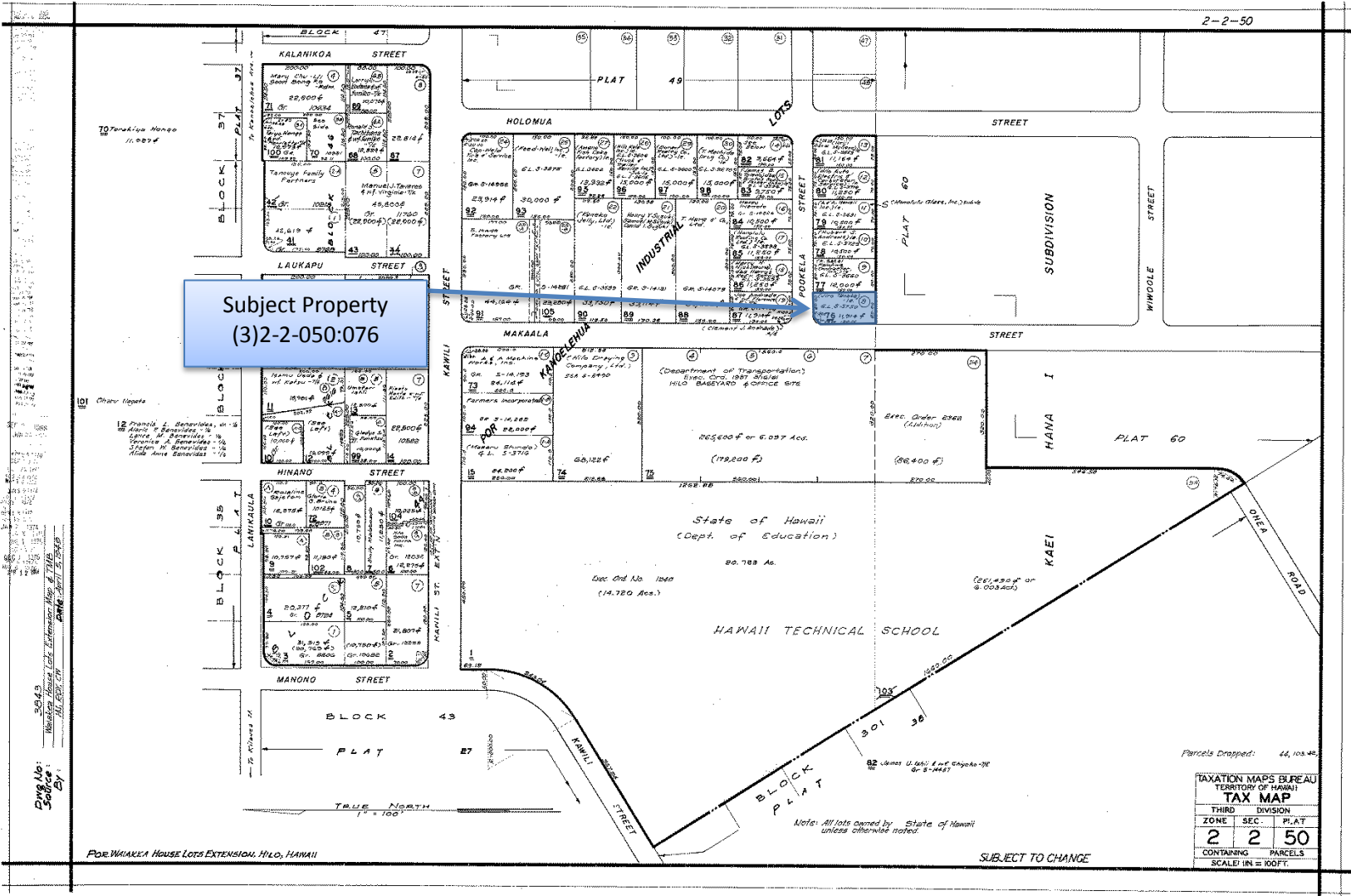


EXHIBIT A

Bloom Appraisers Inc.
Real Estate Appraisers and Consultants
Bank of Hawaii Building
120 Pauahi Street, Suite 205
Hilo, Hawaii 96720
Phone: (808) 961-3704
Fax: (808) 961-4600
Email-bodhi@hawaii.rr.com

February 19, 2017

State of Hawaii Department of Land and Natural Resources
Land Division
75 Aupuni Street, Room 204
Hilo, Hawaii 96720

Attention: Candace Martin

Re: Extension of General Lease No. S-9750. Lessee Jieyu Shepard
Subjects Tax Map Key is: (3) 2-2-050-076 and address is 085 Makaala Street Hilo, Hawaii 96720

Consulting Letter regarding the Economic Life of the existing improvements without repairs and being completed. This is referred to as is value with Hypothetical or Extra Ordinary Assumptions of improvement that will be completed with approval within 1 year. This methodology has been approved by Federal and State lending institution for proposed construction projects.

Economic Life of the multipurpose warehouse complex was estimated by Robert G. Bloom, Jr., CGA-162 as of April 26, 2018. The condition, at the time of inspection February 19, 2017, will be in similar condition than it was when we last visited the subject on February 19, 2017. This is considered a hypothetical condition. The estimated effective age was estimated will be 55 years in 2018 with an economic life of 60 years. Deprecation from all sources was estimated to be 92% in 2018. The estimated economic life of the warehouse after the following improvements are completed by a licensed contractor will increase the life expectancy by 15 to 20 years.

Repairs that will be completed by Dennis Delfin Contracting (Licensed Contractor LIC#BC-14473 with the State of Hawaii)

- A) Replace roofing with same pre-painted 27 gauge metal roofing
- B) Repair/replace rusted purlins as needed
- C) Replace/repair gutters as needed.
- D) Parking lot will be repaired with approximately 1500 s.f. concrete; formed compacted fill, wire

CONSULTING LETTER

mesh, and 3000 psi concrete poured.

In addition to the above items the following areas need to be addressed:

- a) Electrical being upgraded to meet the County of Hawaii 2017 standards.
- b) Exterior painted.
- c) Licensed Plumber to check the current status and determine if the plumbing meets the 2017 standards.

We have included one written estimate in the addendum of this consulting letter.

Thank you for a most interesting assignment

Respectfully submitted,



Robert G. Bloom, Jr. CGA-162
Certified General Appraiser
License No. CGA-162
License Renewal 12/31/2017

Signature: _____
Jaime Ortiz Nava, CRA-845
Certified Residential Appraiser
License No. CRA-845
License Renewal 12/31/2017

RGB/JON

Site Inspection of GL S-3750 Jieyu Shepard
March 9, 2018



Front side of building facing Makaala St. Orange area indicates portion of building used as warehouse space by Lessee.



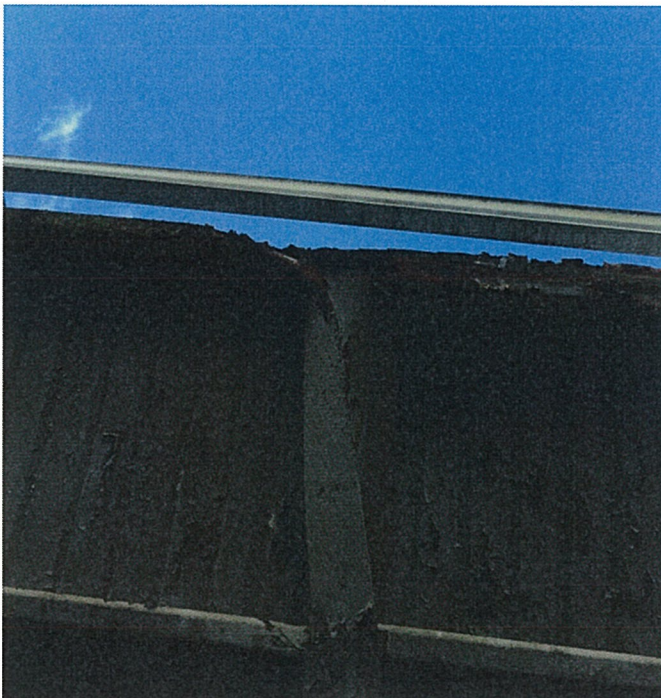
Front side of building facing Makaala St. Red bracket indicates portion of building subleased to three different tenants. Parking area fronting entire building is to be repaved.



End of building fronting Pookela St. This area of the warehouse is utilized by the Lessee for inventory warehousing.



Rear side of building from Pookela St.



Condition of roofing and eaves of building. Roof and gutter replacement is needed.

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Approve a 10-year Lease Term Extension Pursuant to Act 207, Session Laws of Hawaii 2011, General Lease No. S-3750, Jieyu Shepard, Lessee; Amendment of Terms and Conditions Regarding Character of use, Assignment and Sublease Provisions

Project / Reference No.: General Lease No. S-3750

Project Location: Kanoelehua Industrial Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-050:076.

Project Description: 10-year lease extension based on planned improvements to an existing structure on the leasehold premises.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," Item 47, which states "Leases of state land involving negligible or no expansion or change of use beyond that previously existing", and Class No. 4, "Minor alteration in the conditions of land, water, or vegetation," Item 4, which states "Improvements of previously existing graded parking and storage yard areas, including paving, infilling, grading and compacting."

The proposed action involves the 10-year extension of an existing industrial lease based on planned improvements to existing structures on the leasehold premises including roof replacement, repaving of the parking areas, repainting and updated plumbing and electrical. No expansion of the footprint or density of structure is proposed. In the past, extensions of state leases in this area based on similar improvements have resulted in no known significant impacts to the natural and environmental resources in the area. As such staff believes that the proposed lease extension and improvements would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties: County of Hawaii Planning Department.

Recommendation: It is recommended that the Board find that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.