

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

January 25, 2019

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

GLS-5001

Hawaii

**After-the-Fact Consent to Sublease under General Lease No. S-5001,
Pubtime, Inc., Lessee/Sublessor, to JKL & Associates, LLC dba E Komo Mai
Diner Bar & Grill, Sublessee, Waiakea, South Hilo, Hawaii, Tax Map Key:
(3) 2-2-032:010.**

APPLICANT:

Pubtime, Inc., a Hawaii corporation, as Sublessor, and JKL & Associates, LLC, a Hawaii limited liability company, doing business as E Komo Mai Diner Bar & Grill, as Sublessee

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-032:010 as shown on the attached map labeled Exhibit A.

AREA:

43,048 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:

Business purposes.

SUBLEASE CHARACTER OF USE:

Bar and Restaurant purposes.

TERM OF LEASE:

55 years, commencing on March 31, 1967 and expiring on March 30, 2022. A 10-year lease extension was authorized on September 8, 2017 extending the expiration date to March 30, 2032. Last rental reopening occurred on March 31, 2012; next rental reopening is scheduled for March 31, 2022.

TERM OF SUBLEASE:

2 years + 1 month, commencing on 11/01/2018 and expiring on 12/01/2020.

ANNUAL RENTAL:

\$29,640.00. Payable in quarterly installments of \$7,410.00 due on the 31st day March, June, September and December.

ANNUAL SUBLEASE RENTAL:

\$42,000.00. Payable in monthly installments of \$3,500.00 due on the 1st day of each month in advance.

DCCA VERIFICATION:

PUBTIME, INC:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Good standing confirmed:	YES

JKL & ASSOCIATES, LLC:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Good standing confirmed:	YES

REMARKS:

At its meeting of November 19, 1965, Item F-8, as amended on April 15, 1966, Item F-20, the Board of Land and Natural Resources (Board) authorized the sale of a lease at public auction covering the subject parcel. One of the conditions of the lease was the new lessee must complete improvements on the property of a minimum cost of \$75,000 within 18 months of the lease date. The successful bidders were Kiyomi and Fumie Kobata, husband and wife. General Lease No. S-5001 (GLS-5001) was subsequently executed on March 31, 1967. The Kobatas built a restaurant and bar on the premises.

On July 22, 1969, the Board consented to an assignment of the lease to the Kobatas' closely held corporation, K. Kobata & Sons, Inc., a Hawaii corporation.

At its meeting of December 15, 1995, Item F-1-b, the Board consented to an assignment of the lease from K. Kobata & Sons, Inc. to Rus Sho Den, Inc., a Hawaii corporation. Rus Sho Den, Inc. entered bankruptcy in September 1999. At its meeting of October 8, 1999, Item D-7 as amended, the Board consented to an assignment of the lease from Mary Loo Woo, Bankruptcy Trustee for Rus Sho Den, Inc. to Pubtime, Inc. (Pubtime).

Pubtime has held the lease since the 1999 assignment. At its meeting of July 22, 2009, the Board consented to an After the Fact 100% stock transfer in Pubtime, Inc. from Louis Santiago to Elaine Nakatani.

At its meeting of September 8, 2017, Item D-2, the Board authorized a 10-year extension of GLS-5001, pursuant to Act 207, Session Laws of Hawaii 2011,¹ which extended the lease expiration date to March 30, 2032 for a total of 65 years.

Elaine Nakatani, President of Pubtime, Inc. (Lessee), is experiencing serious health issues and has subleased the premises in order to obtain necessary medical care on the mainland. Jalyn K. Like, manager of JKL & Associates, LLC (JKL), started the E Komo Mai Lounge in Hilo five years ago. The owner of the land upon which the lounge was located sold the property and it is now being redeveloped, forcing Ms. Like to relocate her business. Ms. Nakatani and Ms. Like have entered into a sublease agreement for the subject premises and Ms. Like has moved her business there; expanding her operation to include a diner, now known as "E Komo Mai Diner Bar & Grill".

The Lessee is compliant with all lease terms and conditions with regards to rent, insurance and performance bond.

The Sublessee has not had a lease, permit, easement or other disposition of State lands

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.

terminated within the last five years due to non-compliance with such terms and conditions.

The last rental reopening was March 31, 2012. The next rental reopening will be March 31, 2022. There are no outstanding rental reopening issues at this time.

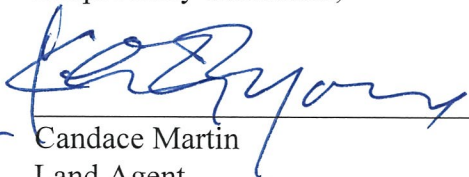
Staff is recommending that the State not receive a portion of the sublease rents. The sublease rent received does not exceed the combined total of the ground rent and amortization costs, annual ground rent is at fair market value and the improvements are owned by the lessee. Refer to attached Exhibit B for the full analysis.

RECOMMENDATION:

That the Board consent after-the-fact to the sublease of General Lease No. S-5001, by Pubtime, Inc., as lessee/sublessor, to JKL & Associates, LLC dba E Komo Mai Diner Bar & Grill, as sublessee, subject to the following:

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,



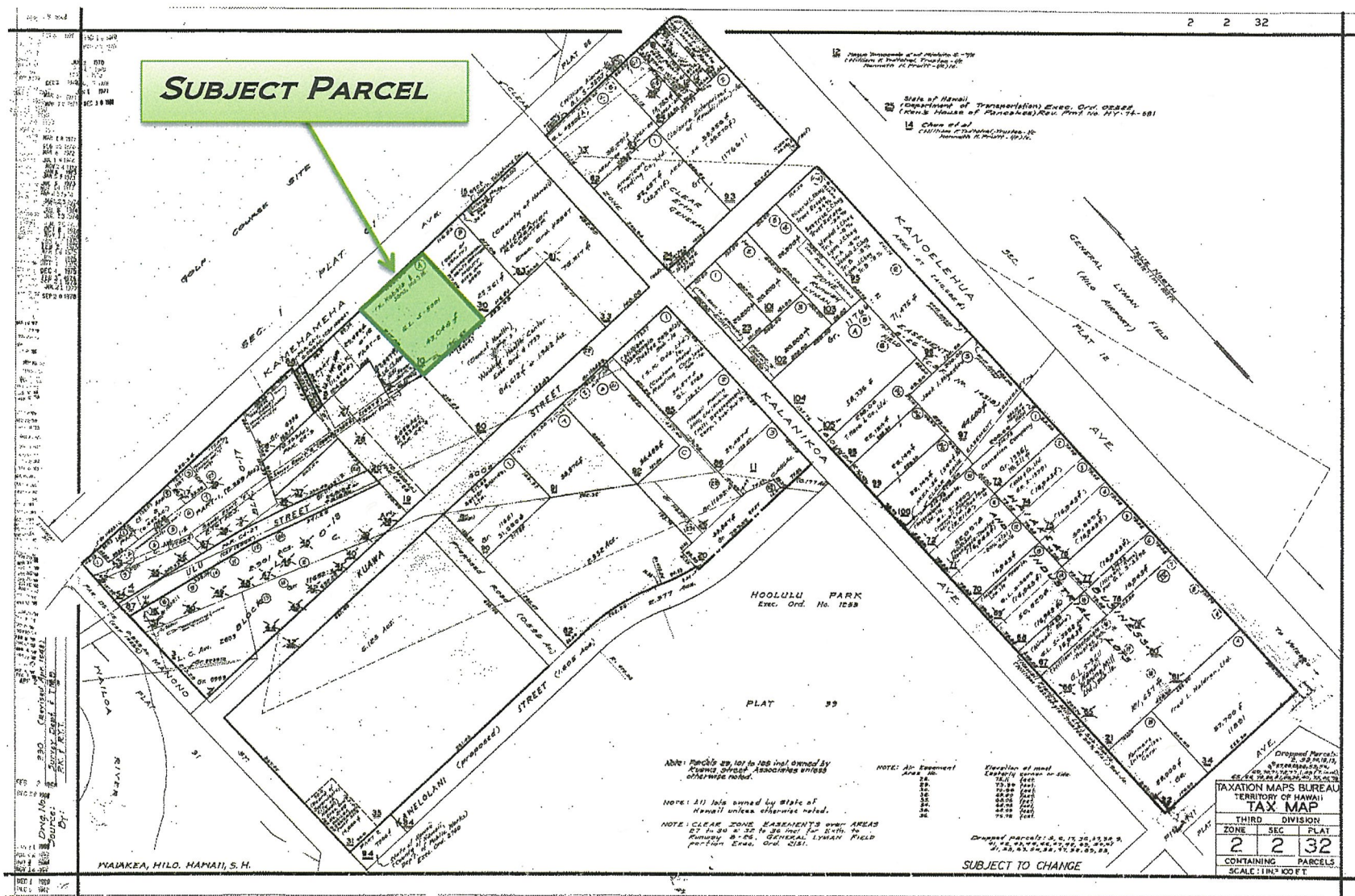
Candace Martin
Land Agent

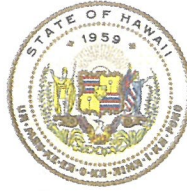
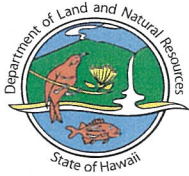
APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

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**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION**


POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 2, 2019

MEMORANDUM

TO: Suzanne D. Case, Chairperson

THROUGH: Russell Y. Tsuji, Division Administrator

FROM: Candace Martin, Land Agent 

SUBJECT: In-House Recommendation – Sublease Participation Calculation

GL No.:	S-5001
Lessee/Sublessor:	Pubtime, Inc.
Sublessees:	JKL & Associates, LLC dba E Komo Mai Diner Bar & Grill
Location:	Waiakea, South Hilo, Hawai'i
Lease area:	0.988 acres (43,048 sf)
Sublease Area:	43,048 sf. more or less
Tax Map Key:	(3) 2-2-032:010
Character of Use:	Business purposes
Sublease Use	Bar & Restaurant

We have been requested to provide an in-house evaluation of the sublease premium due to the State for the subleasing of GL S-5001, Pubtime, Inc., Lessee/Sublessor to JKL & Associates, LLC dba E Komo Mai Diner Bar & Grill, Sublessee. The sublease document and information provided by Lessee were analyzed and staff applied the formula approved by the Land Board on January 26, 2001, agenda item D-8, and modified by the Board at its meeting on August 24, 2012, agenda item D-14, comprising the Rent Participation Policy.

In May 2008, Elaine Nakatani purchased Pubtime, Inc. for \$380,000.00, which included the corporation, lease and all improvements. Then in 2016, Ms. Nakatani invested an additional \$65,000.00 in improvements to the premises and received a 10-year extension of the lease. Our analysis allows for the amortization expense of the Lessee's initial purchase price over the 14 years that remained on the lease at the time of purchase (2008-2022) and on the improvement expenses over the 16 years remaining on the lease (2016-2032; includes the extension period) as follows:

2008 purchase price \$380,000 / 14 yrs remaining = \$27,143 per year amortization.
2016 improvement cost \$65,000 / 16 yrs remaining = \$4,063/ per year amortization.

Annual Amortization Allowances for the following periods:

2008-2016 = \$27,143/yr.

2017-2022 = \$31,206/yr. (2022 is end of amortization for purchase price)

2023-2032 = \$ 4,063/yr. (extension period of lease)

The sublease period falls within the 2017-2022 cycle and therefore we allow an annual amortization expense of \$31,206.00.

Improvements to the property include a ~7,000 sf bar/restaurant complex, 12,000 sf of asphalt paved parking and an additional 7,500 sf of gravel parking area. Property is landscaped and well maintained. Water and electric service provided to the property. Improvements are owned by the lessee until expiration of the lease.

The sublessee is required to pay for fire & liability insurance, repairs & maintenance (except for major mechanical systems or roof repairs) and real property taxes or any special assessments due during the sublease period. General Excise Tax is included in the monthly rental rate of \$3,500.

The lease allows the Board to review and approve the sublease rent and, if necessary, to revise the rent of the demised premises based on the rent charged to the sublessee; provided that the rent may not be revised downward. However, the lease does not provide a method for calculating the rent revision.

ANNUAL SUBLEASE CALCULATIONS: GL No. S-5001

Annual Sublease Income	\$ 42,000.00
LESS Annual Amortization	<u>31,206.00</u>
Net Annual Sublease Income	\$ 10,794.00
LESS Annual Ground Rent	<u>29,640.00</u>
Annual Sublease Income:	\$ (18,846.00)

The approved Rent Participation Policy item 1(c) for lessees paying fair market rent 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 (including but not limited to the extent to which the improvements have been depreciated or amortized), 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."

The lease does not specifically state a method for calculating sharing of sublease rents. The Lessee purchased the business, lease and improvements at foreclosure and has made additional improvements which must be amortized over the remaining years of the lease. The Lessee is not occupying the property for its own business due to unforeseen health issues. The sublease rent received does not exceed the combined total of the ground rent and amortization costs.

Based on the above analysis, staff does not believe circumstances warrant the State sharing in the sublease rents at this time.

DLNR Rent Participation:	0%
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DLNR portion of Sublease Rents	\$ 0.00
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