

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

March 22, 2019

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

Ref. No. 19OD-023

OAHU

After-the-fact Consent to Two (2) Subleases under General Lease No. S-4588, Insite Towers Development, LLC, Sublessor, to Blow Up, LLC and United States Secret Service as Sublessees, Kalawahine and Opu, Honolulu, Oahu, Tax Map Key: (1) 2-5-019: portion of 013.

APPLICANT:

Insite Towers Development, LLC, a Delaware limited liability company, as Sublessor, to (a) Blow Up, LLC, a Hawaii limited liability company, and (b) United States Secret Service, a federal government agency, as Sublessees.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Kalawahine and Opu, Honolulu, Oahu, identified by Tax Map Key: (1) 2-5-019: portion of 013, as shown on the attached map labeled **Exhibit A.**

MASTER LEASE AREA:

4.329 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

LEASE CHARACTER OF USE:

For maintenance and operation of radio-telephone transmission facilities purposes.

SUBLEASE CHARACTER OF USE:

Transmission and reception of communications signals, including wireless communication purposes and uses incidental thereto.

TERM OF LEASE:

65 years, commencing on June 6, 1973 and expiring on June 5, 2038. Last rental reopening occurred on June 6, 2018; next rental reopening is scheduled for June 6, 2028.

TERM OF SUBLEASE and RENT:

Blow Up, LLC

Five (5) years, commencing on October 15, 2018 and expiring on October 14, 2023, at monthly rent of \$1,000. Additionally, the sublease provides for a renewal term of five (5) additional periods of five (5) years each that will commence automatically without further action on the part of Licensor or Licensee extending the sublease term, if all options are exercised, the sublease term would extend beyond the expiration date of the master lease terms. Staff states that this subject request pertains only to the terms of the remaining years of the master lease.

United States Secret Service

Five (5) years, commencing on March 1, 2019 and expiring on February 29, 2024 at a monthly rent of \$550. Additionally, the sublease provides for a renewal term of two (2) additional periods of five (5) years each that will commence automatically without further action on the part of Licensor or Licensee, extending the sublease term, if not terminated, to February 28, 2034.

ANNUAL RENTAL:

\$39,300.¹

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

Lessee is required to pay 50% of the prevailing rent for the subleases covered in this submittal to the State, during the effective term of such subleases.

DCCA VERIFICATION:

SUBLESSOR (InSite Towers Development, 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>

¹ Land Division and the tenant will soon starting on the mediation of the annual rent [\$39,000] pursuant to the lease.

SUBLESSEE (Blow Up, 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>

SUBLESSEE (U.S. Secret Service):

As a government agency, United States Secret Service is not required to register with DCCA.

REMARKS:

The subject lease ("GL 4588") was issued to Hawaiian Telephone Company by direct negotiation in 1973. At its meeting of October 24, 2014, item D-9, the Board gave its consent to the assignment of various leases, one of them being GL 4588, to InSite Towers Development, LLC. Both Sublessees, Blow Up, LLC and United States Secret Service, have installed their communication equipment at the site for their respective purposes.

At the October 24, 2014 meeting, the Board also authorized the amendment of GL 4588 regarding the sublease provision. The language pertaining to the subletting in the amendment document, which was executed on May 16, 2016, is provided below.

"14. Subletting. The Lessee shall not rent, license, 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 licensee and that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee and licensee or any subsequent sublessees and licensees 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 upon the rental rate charged to the sublessee and licensee 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, license, or sublet all or any portion of the premises.

The Lessor will share in the gross revenues from subleases and licenses at the rate of thirty percent (30%) for the first sublease and license, forty percent (40%) for the second sublease and license, and fifty percent (50%) for the third and subsequent sublease and licenses."

Currently, Hochman Hawaii-Three, Inc. and Hawaiian Telecom, Inc. are the first and second sublessees respectively. Therefore, the two (2) sublessees mentioned in this request, Blow Up, LLC and United States Secret Service are the third and fourth sublessees, which trigger a sandwich rent of 50% to be collected by the State pursuant to the above-mentioned amendment regarding the subletting. The Sublessor should remit \$500 for Blow Up, LLC and \$275 for United States Secret Service per month to the State.

Notwithstanding the amendment executed in 2016 clearly states that prior written approval from the Board is required for every sublease, the Division did not receive communication regarding any prospective sublease from the Sublessor until fully executed copies of such subleases were sent by the Sublessor's counsel to the Division. Under such circumstances, staff asks the Board for after-the-fact consent to the subleases described above. The Lessee is compliant with all lease terms and conditions.

There are no other pertinent issues or concerns regarding the subject issue.

RECOMMENDATION:

That the Board consent to the sublease under General Lease No. S-4588 between InSite Towers Development, LLC, as Sublessor, and (a) Blow Up, LLC and (b) United States Secret Service, 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:

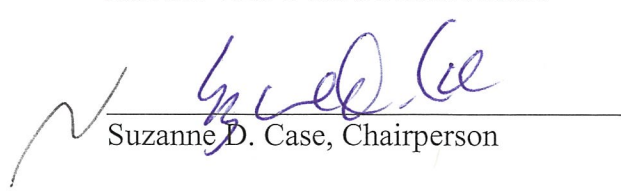
1. The Lessee shall remit 50% of the prevailing rent collected under the subleases to the State;
2. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
3. Review and approval by the Department of the Attorney General; and
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



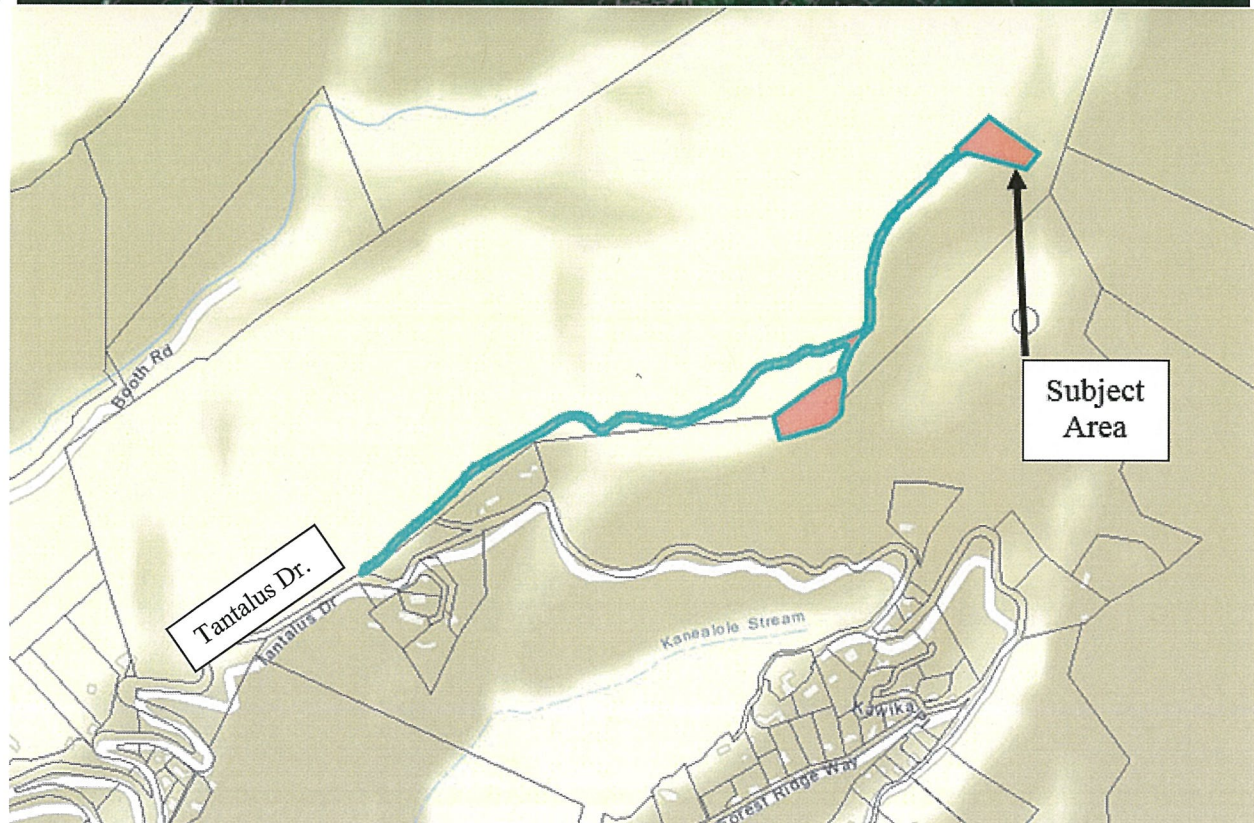
Darlene Bryant-Takamatsu
Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



Subject
Area



Subject
Area

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Exhibit A