

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

July 24, 2020

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

Hawaii

Consent to Assign Sublease of General Lease No. S-5844, Neighborhood GP, LLC, Sublease Assignor, to Hilo Hotel PV, LLC, Sublease Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, 46.

APPLICANT:

Neighborhood GP, LLC, as Sublease Assignor, to Hilo Hotel PV, LLC, a Hawaii limited liability company, as Sublease Assignee.

LEGAL REFERENCE:

Section 171-36 (a) (5) (6), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Island of Hawaii, identified by Tax Map Key: (3) 2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, 46, as shown on the attached map labeled Exhibit A.

LEASE AREA:

56,502 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

LEASE CHARACTER OF USE:

Hotel and golf course purposes.

SUBLEASE CHARACTER OF USE:

Solar panel (photovoltaic) generating system purposes.

TERM OF LEASE:

65 years, commencing on February 1, 2006 and expiring on January 31, 2070. Next rental reopening is scheduled for February 1, 2036.

TERM OF SUBLEASE:

Commencing on August 24, 2016 and expiring on August 23, 2041.

ANNUAL LEASE RENTAL:

\$580,270.44

ANNUAL SUBLEASE RENTAL:

\$1.00.

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

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.

DCCA VERIFICATION:

ASSIGNOR:

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>

ASSIGNEE:

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:

General Lease No. S-5844 (Lease) was issued at public auction on September 30, 2005 to Hawaii Outdoor Tours, Inc. (HOTI) for a term of 65 years commencing on February 1, 2006. The Lease character of use is for hotel and golf course purposes.

In November 2012, the HOTI filed for bankruptcy protection and initially managed the Lease as a debtor in possession. Later, a bankruptcy trustee was appointed to manage the assets, including the lease. In September 2013, the bankruptcy trustee filed a motion with the court for an order authorizing the assumption of Lease.

The Lease was then sold through the bankruptcy court by sealed bid to WHR, LLC (WHR) and closing occurred on December 17, 2013. The bankruptcy court confirmed the sale based solely on high bid.

WHR is compliant with all lease terms and conditions. WHR is current with the lease rent, insurance and performance bond.

Sublease - Neighborhood GP LLC

By letter dated August 30, 2016, WHR submitted a request for consent to sublease portions of the rooftops on the main structures of the Grand Naniloa Hotel to Neighborhood GP LLC (NGP). NGP agreed to install and operate a solar photovoltaic (PV) generating facility. NGP would then enter into an agreement to sell energy produced by the PV system to WHR through a Power Purchase Agreement (PPA).

The PPA has an initial term of twenty-five (25) years effective upon completion of the installation. There will be up to two (2) additional terms of five (5) years each. All environmental incentives and attributes accrue to WHR.¹ The contract price for the system is at the rate of \$0.19/kwh.

At its meeting of January 27, 2017, under agenda item D-2, the Board consented to the sublease of the PV system by WHR, as lessee and sublessor, and NGP, as sublessee (Exhibit B).

Assignment of Sublease: Neighborhood GP, LLC - Hilo Hotel PV, LLC

Under the assignment, NGP will be turning over all management and operation control to the assignee of the sublease, Hilo Hotel PV, LLC who will then operate the solar PV system and continue to sell power to WHR (Exhibit C).

¹ These include rebates and/or federal and state tax incentives.

Neighborhood Power Corporation, the parent company of Neighborhood GP, LLC, has been developing these types of solar projects for several years. Neighborhood GP, LLC signed the Site Lease and Power Purchase Agreement (PPA) with the lessee, WHR, LLC on 8/24/2016.

For each project Neighborhood Power develops that uses tax equity investments they set up new holding companies to accommodate the tax equity investments, Hilo Hotel PV, LLC is one of these new holding companies, created 9/3/2017. It is managed by the same manager that does all of Neighborhood Power projects in Hawaii: Hilo Hotel PV, LLC. The company has no previous operating history and was set up solely to hold the Grand Naniloa solar project. The Site Lease and PPA were assigned to Hilo Hotel PV, LLC on 3/5/2018.

RECOMMENDATION:

That the Board consent to the Assignment of Sublease of General Lease No. S-5844 from Neighborhood GP, LLC, as Sublease Assignor, to Hilo Hotel PV, LLC, Sublease Assignee, subject to the following:

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

Gordon C. Heit

Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case

RT

Suzanne D. Case, Chairperson

EXHIBIT B

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

January 27, 2017

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

Hawaii

Consent to Sublease General Lease No. S-5844, WHR, LLC, Lessee, to Hawaii Performance Partners LLC, and Neighborhood GP LLC, Sub-lessees, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, 46.

APPLICANT:

WHR, LLC, a Hawaii Limited Liability Company, as Sublessor, to:

1. Hawaii Performance Partners, LLC
 2. Neighborhood GP LLC
- As Sub-lessees.

LEGAL REFERENCE:

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

LOCATION AND AREA:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-001:012 and 2-1-005:013, 016, 017, 027, 032, 046, as shown on the attached map labeled Exhibit A.

- | | | |
|------------------------------------|-------------|----------------|
| 1. Hawaii Performance Partners LLC | Lease area, | 1,508 sq. ft. |
| 2. Neighborhood GP LLC | Lease area | 56,502 sq. ft. |

As shown on the attached maps labeled Exhibit B-1 & B-2.

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:

Hotel and golf course purposes.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

January 27, 2017 *WHR*

SUBLEASE CHARACTER OF USE:

- | | | |
|----|---------------------------------|---|
| 1. | Hawaii Performance Partners LLC | Tourist activity sales purposes |
| 2. | Neighborhood GP LLC | Solar panel (photovoltaic) generating system purposes |

TERM OF LEASE:

65 years, commencing on February 1, 2006 and expiring on January 31, 2070. Next rental reopening is scheduled for February 1, 2036.

TERM OF SUBLEASE:

		<u>Begin Date</u>	<u>End Date</u>
1.	Hawaii Performance Partners LLC	08/15/16	08/14/2021
2.	Neighborhood GP LLC	08/24/16	08/23/2041

ANNUAL RENTAL:

\$580,270.44 minimum base rent, or 2% of gross revenues, whichever is greater, due in semi-annual payments.

ANNUAL SUBLEASE RENTAL:

1.	Hawaii Performance Partners LLC	\$40,200.00 base rent ¹
2.	Neighborhood GP LLC	\$1.00

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

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, WHR LLC is subleasing improvements not owned by the State. Further, General Lease No. S-5844 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, at least \$5,000,000 was invested in hotel renovations under the prior lessee, Hawaii Outdoor Tours, Inc., and at least \$10,000,000 has been invested in renovations by the current lessee, WHR LLC, with at least another \$4,000,000-5,000,000 anticipated in the near future. WHR LLC has not yet amortized these investments. The standard depreciation for commercial property is 39 years.

¹ Sublease rental agreement also includes a percentage rent of 6% above Gross Receipts of \$700,000

WHR LLC'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, WHR LLC does occupy the majority of the premises for its hotel operation.

Accordingly, under the Board's current rent participation policy, the State does not share in the rents WHR LLC will collect from its two proposed sublease tenants.

DCCA VERIFICATION:

SUBLESSOR:

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: Hawaii Performance Partners, 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: Neighborhood GP 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>

BACKGROUND:

General Lease No. S-5844 (Lease) was issued at public auction on September 30, 2005 to Hawaii Outdoor Tours, Inc. (Lessee) for a term of 65 years commencing on February 1, 2006. The Lease character of use is for hotel and golf course purposes.

In November, 2012, the Lessee filed for bankruptcy protection and initially managed the lease as a debtor in possession. Later, a bankruptcy trustee was appointed to manage the assets, including the lease. In September, 2013, the bankruptcy trustee filed a motion with the court for an order authorizing the assumption of lease.

The lease was then sold through the bankruptcy court by sealed bid to WHR, LLC (WHR) and closing occurred on December 17, 2013. The bankruptcy court confirmed the sale based solely on high bid, without requiring all defaults to be cured or at least requiring reasonable assurances by the proposed buyer it would cure with a reasonable period of time the outstanding defaults under the lease.

The Lessee is compliant with all lease terms and conditions. The Lessee is current with the lease rent, insurance and performance bond. However, there are several outstanding violations with the County of Hawaii Department of Public Works (DPW) from the previous Lessee that have been either corrected or are currently being resolved to the satisfaction of the County building inspectors and the State.

SUBLEASES

Sublease 1. Performance Partners, LLC

By letter dated July 25, 2016, the Lessee submitted a request to sublease a portion of the main structure to Hawaii Performance Partners, LLC, dba KapohoKine Adventures (HPP). HPP intends to operate a retail outlet promoting their tourist activities business.² HPP will be occupying a portion of the common area just off from the hallway leading from the main lobby to the elevators.

In addition to the retail outlet and booking desk, HPP will also be managing the Made Market store adjacent to their business. The Made Market store will provide hotel guests with convenience items and sundry goods.

Sublease 2. Neighborhood GP LLC

By letter dated August 30, 2016, the Lessee submitted a request to sublease portions of the roof tops on the main structures to Neighborhood GP LLC (NGP). NGP intends to install and operate a solar photovoltaic (PV) generating facility. NGP will then enter into an agreement to sell energy produced by the PV system to the Sublessor through a Power Purchase Agreement (PPA).

The PPA will have an initial term of twenty-five (25) years effective upon completion of the installation. There will be up to two (2) additional terms of five (5) years each. All environmental incentives and attributes will accrue to the Sublessee.³ The contract price for the system will be at the rate of \$0.19 /kwh.

The PV system will involve the mounting and installation of 1,074 solar panels (Phono Solar 325 Watt Modules) on the Grand Naniloa Hotel structures. The proposal is to install most of the panels on the rooftops of the existing buildings with additional panels to be mounted on a covered parking structure to be constructed.⁴ The total area required for the solar panels is approximately 56,502 square feet and is shown on Exhibit B-2.

The system is anticipated to generate 349 kilowatts of energy. It is projected that the installation of the PV system will reduce a portion of the energy cost of the hotel's current monthly expense.

RECOMMENDATION:

That the Board consent to the sublease under General Lease No. S-5844 between WHR, LLC, as Sublessor, and Performance Partners, LLC and Neighborhood GP, LLC, as Sub-lessees, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:

² Activities include guided tours, zip line rides and kayak rentals from the hotel. A separate permit has been issued by the Division of Boating and Ocean Recreation for the kayak launching site from the hotel.

³ These include rebates and/or federal and state tax incentives.

⁴ The proposed location is the parking area adjacent to the multi-purpose building known as the Crown Room.

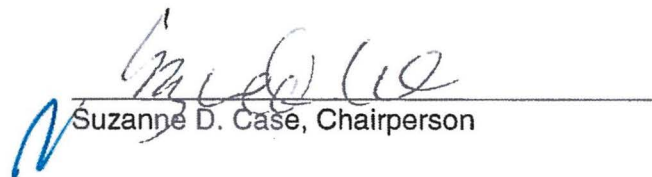
1. The Lessee shall submit construction plans for both Sublessees' improvements to the Land Division for the Chairperson's approval prior to constructing any improvements on the demised premises;
2. The standard terms and conditions of the most current consent to sublease form, as may be amended from 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,

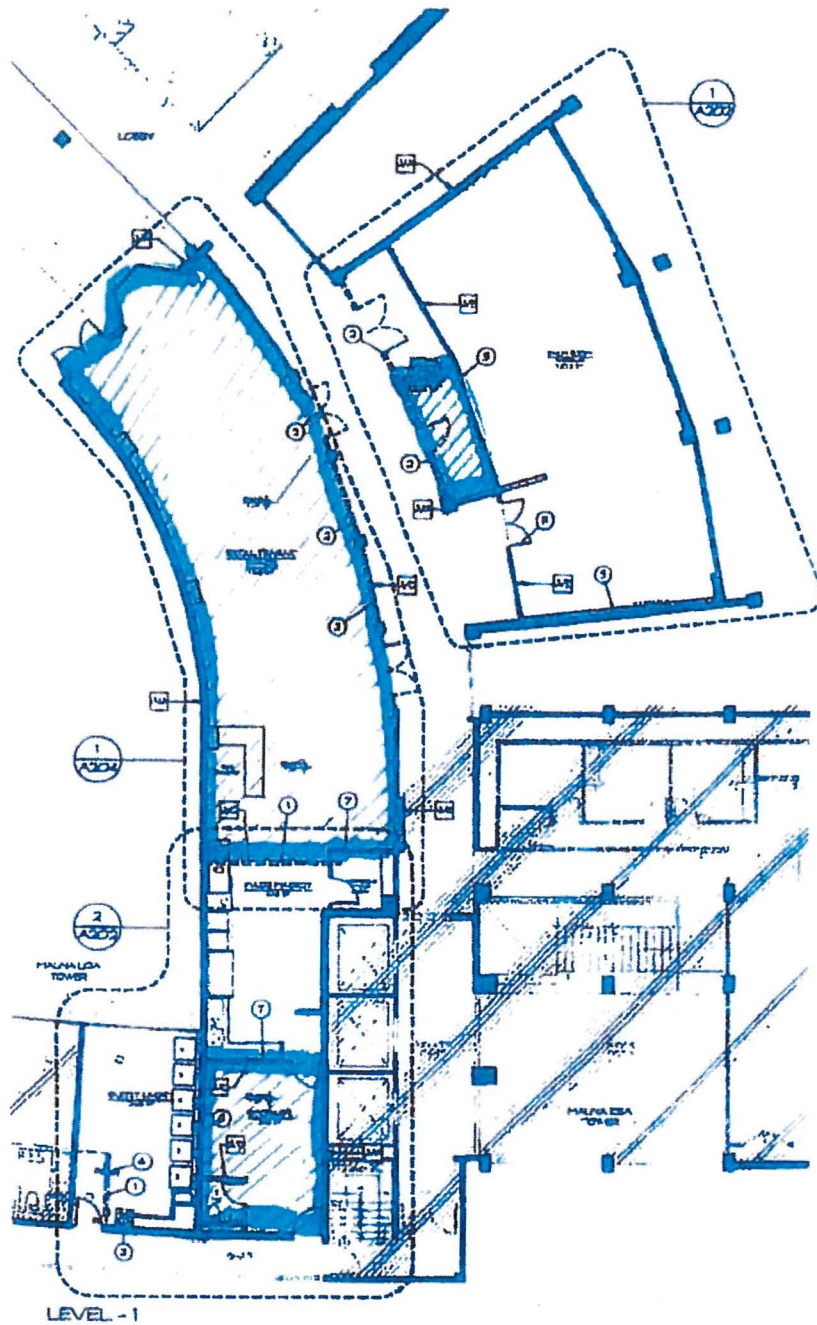


Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



1 DEMO / NEW FLOOR PLAN
 A-001 SCALE 1/8" = 1'-0"

EXHIBIT B - 1

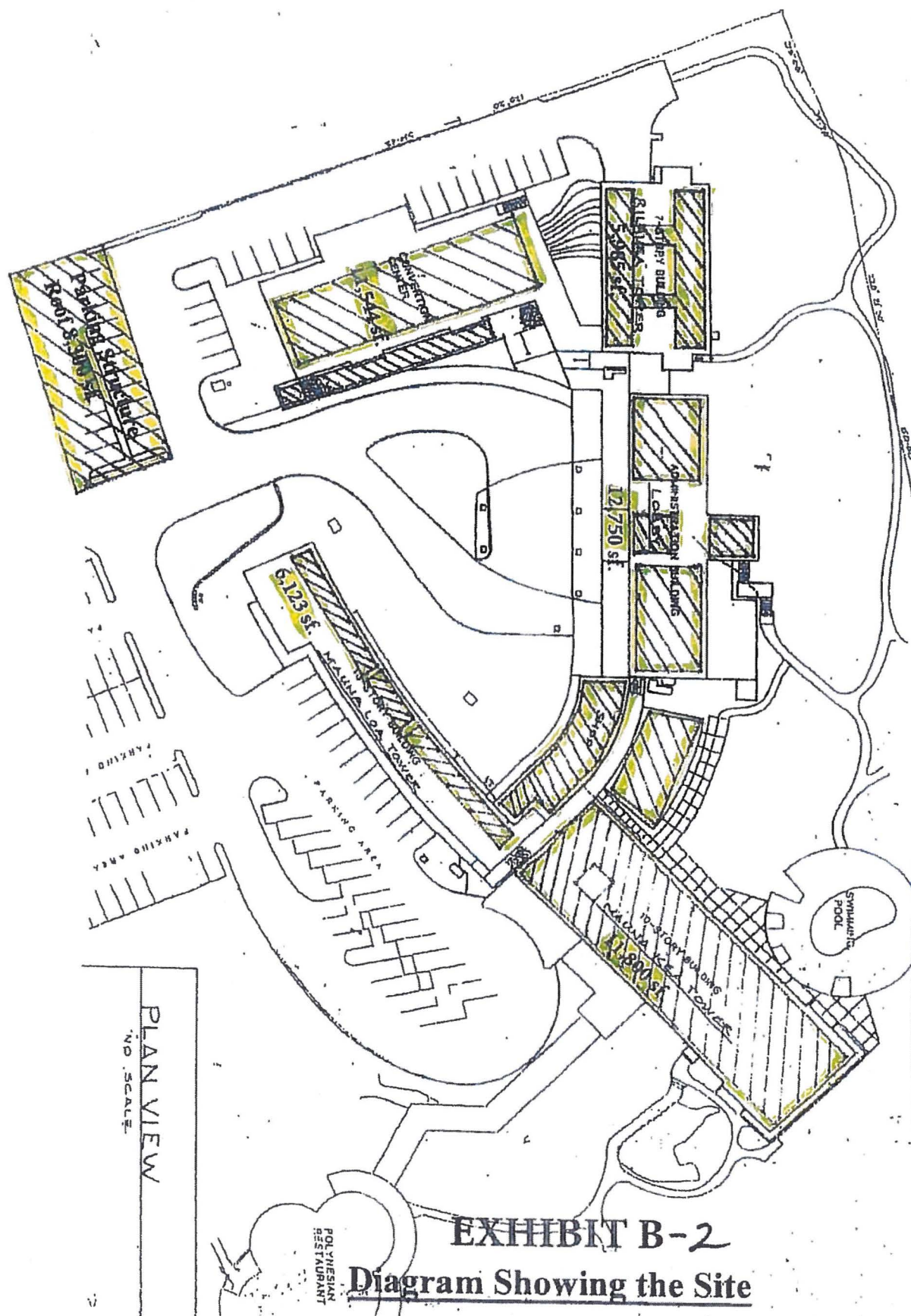


EXHIBIT C

Assignment and Assumption Agreement

This Assignment and Assumption Agreement ("**Agreement**") dated as of March 5th, 2018, ("**Effective Date**"), is entered into by and between Neighborhood GP, LLC a Hawaii limited liability company solely owned by Neighborhood Power Corporation, a California corporation, with offices located at 415 Dairy Rd #E-216, Kahului, HI 96732 ("**Assigning Party**"), Hilo Hotel PV, LLC a Hawaii limited liability company, with offices located at 415 Dairy Rd #E-216, Kahului, HI 96732 . (Collectively "**Assuming Party**").

WHEREAS, Assigning Party desires to assign to Assuming Party all of its rights and delegate to Assuming Party all of its obligations under the Power Purchase Agreement and Space Lease Agreement both dated August 24, 2016, between WHR, LLC and Assigning Party, as amended from time to time (the "**Assigned Contract**");

WHEREAS, Assuming Party desires to accept such assignment of rights and delegation of obligations under the Assigned Contract; and

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set out herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption.

1.1 Assignment. Assigning Party irrevocably assigns, grants, conveys and transfers to Assuming Party all of Assigning Party's right, title and interest in and to the Assigned Contract.

1.2 Assumption. Assuming Party unconditionally accepts such assignment and assumes all of Assigning Party's duties, liabilities and obligations under the Assigned Contract, and agrees to pay, perform and discharge, as and when due, all of the obligations of Assigned Party under the Assigned Contract accruing on and after the Effective Date.

2. Novation.

2.1 Substitution. The parties intend that this Agreement is a novation and that the Assuming Party be substituted for the Assigning Party. Assuming Party by this Agreement becomes entitled to all right, title and interest of Assigning Party in and to the Assigned Contracts in as much as Assuming Party is the substituted party to the Assigned Contracts as of and after the Effective Date. Assuming Party shall be bound by the terms of the Assigned Contract in every way as if Assuming Party is named in the novated Assigned Contract in place of Assigning Party as a party thereto.

3. Entire Agreement. This Agreement is the sole and entire agreement of the parties to this Agreement regarding the subject matter contained herein and therein, and supersedes all

prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

4. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together is deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

NEIGHBORHOOD POWER
CORPORATION

By 

Name: Stephen Gates

Title: President

HILO HOTEL PV, LLC

By 

Name: Stephen Gates

Title: Manager