

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

May 28, 2021

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

PSF No.: 21HD-041 (RP)

Hawaii

Approve Settlement of Rent and Performance Bond Defaults to Include Withdrawal of Golf Course Parcel Identified as Tax Map Key: (3) 2-1-001:012 from General Lease No. S-5844, WHR LLC, Lessee, Waiakea, South Hilo, Hawaii, Tax Map Keys: (3) 2-1-001:012 and 2-1-005:013, 016, 017, 027, 032, and 046; Issuance of Revocable Permit to WHR LLC for Golf Course Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-001:012; In the Alternative, Authorize Forfeiture of General Lease No. S-5844, WHR LLC, Lessee, Waiakea, South Hilo, Hawaii, Tax Map Keys: (3) 2-1-001:012 and 2-1-005:013, 016, 017, 027, 032, and 046.

APPLICANTS:

WHR LLC, Lessee under General Lease No. S-5844 (GL5844) and Land Division are jointly proposing the withdrawal of the golf course from the subject lease as a means of lowering the rent payable under the lease and, more importantly, to help address Lessee's continuing rent and performance bond defaults under the lease.

WHR LLC is the applicant for a revocable permit for golf course purposes covering Tax Map Key: (3) 2-1-001:012.

PURPOSES:

Withdrawal of golf course parcel from GL5844 and issuance of revocable permit to WHR LLC for golf course purposes. In the alternative, Land Division requests the forfeiture of General Lease No. S-5844, WHR LLC, Lessee, based on rent and performance bond defaults.

LEGAL REFERENCE:

Sections 171-6, -39, and -55, Hawaii Revised Statutes, as amended.

LOCATION:

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

AREA:

Area of Existing Lease Premises: 69.926 acres
Area of Golf Course: 62.576 acres

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 hotel-related uses. Golf course and golf course related uses and other recreational and parking uses.

TERM OF LEASE:

65 years, commencing on February 1, 2006 and expiring on January 31, 2071.

ANNUAL LEASE RENTAL:

\$580,270.44 due in semi-annual payments.

REVOCABLE PERMIT:

AREA:

62.576 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Open

May 28, 2021

CURRENT USE STATUS:

Currently, Tax Map Key: (3) 2-1-001:012 (Parcel 12) is a portion of the premises leased to WHR LLC under GL5844 for golf course and golf course related uses and other recreational and parking uses. The lease is scheduled to expire on January 31, 2071.

CHARACTER OF USE OF REVOCABLE PERMIT:

Golf course and golf course related uses and other recreational and parking uses purposes.

COMMENCEMENT DATE OF REVOCABLE PERMIT:

The first day of the month to be determined by the Chairperson.

MONTHLY RENTAL FOR REVOCABLE PERMIT:

To be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

COLLATERAL SECURITY DEPOSIT FOR REVOCABLE PERMIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states, "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," and Item 44 that states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing." See Exemption Notification attached as Exhibit B.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

May 28, 2021

JUSTIFICATION FOR REVOCABLE PERMIT:

The revocable permit for the golf course is an interim measure while Land Division plans and conducts environmental review necessary for other possible dispositions of the land. The option of leaving the land unencumbered is not viable because Land Division does not have the ability to manage, maintain or operate the facilities on the 62.576-acre parcel. Leaving the land and facilities vacant would likely lead to problems with vandalism and unauthorized use and occupancy of the land. Accordingly, staff believes the issuance of a revocable permit for golf course and parking uses is in the best interests of the State and recommends the revocable permit be issued to WHR LLC.

BACKGROUND ON LEASE DEFAULTS:

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980 and the breach provision contained in General Lease S-5844, WHR LLC Lessee, was served a Notice of Default by certified mail dated November 5, 2020 for:

- ☒ **Failure to keep lease rental payments current**
(\$290,135.22 lease rent 8/01/2020 – 1/31/2021) plus late fees and interest charges
- ☐ Failure to post required performance bond
- ☐ Failure to post required fire insurance policy
- ☐ Failure to post required liability insurance policy

Said notice for lease rent, accepted by the Lessee on November 10, 2020, offered the Lessee a thirty-day cure period to correct the default. This cure period expired on December 10, 2020. As of April 30, 2021, this default has not been cured.

A second Notice of Default was served by certified mail dated, April 30, 2021, for:

- ☒ **Failure to keep lease rental payments current**
(\$290,135.22 lease rent 2/01/2021 – 7/31/2021) plus late fees and interest charges
- ☐ Failure to post required performance bond
- ☐ Failure to post required fire insurance policy
- ☐ Failure to post required liability insurance policy

Said notice, accepted by the Lessee on May 3, 2021, offered the Lessee a thirty-day cure

May 28, 2021

period to correct the default. This cure period will expire on June 2, 2021. As of May 14, 2021, this default has not been cured.

Lessee was also served a Notice of Default by certified mail dated January 19, 2021 for:

- ☐ Failure to keep lease rental payments current
- ☒ **Failure to post required performance bond
(Expired: 11/07/2020)**
- ☐ Failure to post required fire insurance policy
- ☐ Failure to post required liability insurance policy

Said notice, accepted by the Lessee on January 25, 2021, offered the Lessee a sixty-day cure period to correct the default. This cure period expired on March 25, 2021. As of April 30, 2021, this default has not been cured.

As of April 30, 2021, the status of all lease compliance items is as follows:

RENT: The Lessee is **not** current with all rent obligations.
Semi-annual rent in the amount of \$290,185.22 plus late fees of \$50.00 per month and 1% service charge of \$2,901.35 per month for the initial rent period and \$5,802.70 per month for February through April 2021. Total amount owed is \$615,536.64¹ for the two semi-annual rent periods, 8/01/20 to 1/31/21 and 2/01/21 to 7/31/21.

INSURANCE: The Lessee has posted the required liability and fire insurance policy.

PERFORMANCE BOND: The Lessee has **not** posted the required performance bond. A surety bond in the amount of \$1,160,541.00 expired on 11/07/2020.

Section 18 of General Lease No. S-5844 requires the Lessee, at its own cost and expense, procure and deposit with the Lessor a performance bond to be kept in full force and effect during the term of this lease in an amount equal to two times the annual lease rent. This bond shall provide that in the case of a breach or default of any of the lease terms, covenants, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages.

¹ Lease rent of \$580,370.44 plus \$34,816.20 in interest charges and \$350.00 in late fees.

In addition to the defaults noted above, in the past three years default notices have been sent to General Lease No. S-5844 on two other occasions as indicated in the table below. Copies of the default notices were sent to the mortgagee via regular mail.

DATE	TYPE OF DEFAULT	RESULT
6/25/18	Unauthorized improvements ²	7/17/18 improvements were removed
11/13/20	Delinquent Wastewater account	12/28/20 – Repayment plan w/CoH WW Branch

REMARKS:

To recap the rent and performance bond defaults and delinquencies noted above, WHR LLC failed to make rental payments due on August 1, 2020 and February 1, 2021 in the amount of \$290,135.22 each, or a total of \$580,370.44 as of April 30, 2021. Interest in the amount of \$34,816.20 and late charges \$350.00 (at \$50 per month) have accrued through April 30, 2021 in accordance with the terms of the lease. Accordingly, the total rent, interest and late charges due under the lease as of April 30, 2021 is \$615,536.64. Additionally, a performance bond of \$1,160,541.00 is required to be posted under the lease and Lessee allowed the bond to lapse on November 7, 2020 without submitting a replacement bond to the Department. WHR LLC's total monetary obligation to the Department as of April 30, 2021 is therefore \$1,776,077.64.

On November 12, 2020, WHR LLC (Lessee) hand delivered a written request to the Hawaii District Land Office asking for a deferral of the ground rent under GL5844 from August 1, 2020 through January 31, 2021. Exhibit C. In the letter, Lessee explained that due to the COVID-19 pandemic, the resulting restrictions on travel and its effects on the tourism industry, the operation of its business has been severely impacted. Lessee requested a one-year deferral of the lease rent from August 1, 2020 through July 31, 2021 with a 5-year repayment plan for the deferred rent to begin August 1, 2021.

The Department responded on November 13, 2020 with a letter (Exhibit D) offering a two-month deferral of lease rent payment period beginning February 1, 2021. However, the deferral was conditioned on the lease rent being current. No response was received from the Lessee.

Then, on March 17, 2021, the Lessee submitted a new proposal explaining that it has

² On June 18, 2018, County of Hawaii, Planning Department notified the Hawaii District Land Office of a SMA violation resulting from the construction of a large deck along the shoreline fronting the Hula Hula restaurant. This action triggered a Notice of Default with the lease.

access to Paycheck Protection Program funds to cure its default (Exhibit E). The Lessee reiterated the severity of the economic hardship caused by the COVID-19 pandemic and its willingness to continue hotel operations while incurring financial losses in the millions of dollars.

This proposal offered to repay the outstanding lease rent³ over a 48-month period. The proposal included a monthly payment schedule for the current rent that was due on February 1, 2021.⁴ The Lessee also indicated that upon the State's acceptance of Lessee's repayment proposal, the security bond default would be resolved.

The Department engaged in further discussions on a possible workout agreement that resulted in Lessee submitting a revised proposal dated April 14, 2021 (Exhibit F). The main elements of this proposal is the withdrawal of the golf course parcel from the lease "for the benefit of public uses" in exchange for a rent reduction/credit, with Lessee continuing to manage the land (under a revocable permit), and repayment of delinquent rent over time.

GL5844 was sold by public auction and, as a result, it cannot be amended. However, the auction lease specifically provides for the withdrawal of the golf course:

12. Character of use. The Lessee shall use or allow the premises leased, on all parcels, except the golf course parcel, to be used solely for hotel and hotel-related uses (including retail, restaurant, banquet, commercial office, and spa facilities), but excluding condominium or hotel condominium uses. The golf course parcel (tax map key no. (3) 2-1-01:12) shall be used for golf course and golf course related uses (including clubhouse, restaurant and bar, cart barn and driving range) and other recreational and parking uses as may be permitted under the county zoning ordinances or land use permits obtained from the county; provided, however, that in the event the golf course parcel is withdrawn or deleted from the lease, any rights to use the golf course parcel to serve the hotel parcels shall terminate. The Lessee, with the consent of the Department of Land and Natural Resources, may sublease portions of the subject property for uses not permitted above (e.g., telecommunication antennas), provided that the Department of Land and Natural Resources shall have the right to revise the rent based on the rent to be charged the sublessee.

(Emphasis added.)

³ The amount of \$12,088.97 per month for the rental period, August 1, 2020 through July 31, 2021.

⁴ This payment schedule of \$48,355.87 per month for six months would cover the rental period August 1, 2021 through February 1, 2022.

May 28, 2021

As expressly stated in Section 12 of the lease, any rights Lessee has to use Parcel 12 in conjunction with the hotel terminates after withdrawal. The Department therefore responded with its letter dated April 16, 2021 clarifying that the withdrawal of the golf course would not be limited to public purposes only (Exhibit G). Rather, the Department would be permitted to withdraw the land for any purpose and Lessee would have no control over it after withdrawal. However, the Department noted that it would be agreeable to recommending to the Board the issuance of a revocable permit to Lessee for continued operation of the golf course pending such other disposition of the land as the Board may approve in the future.

Lessee responded with its email dated April 19, 2021 stating that the Department's proposal was acceptable in concept, but that the hotel requires parking on Parcel 12 to satisfy code compliance (Exhibit H).

The Department responded with its letter of April 22, 2021, reiterating that the golf course would have to be withdrawn free and clear from the lease without any obligation on the State to allow Lessee to continue to use it for parking or otherwise (Exhibit I). The Department additionally set forth other conditions that would be required as part of any settlement.

Lessee responded with its email of April 27, 2021 advocating for retention of parking for the hotel in Parcel 12 (Exhibit J).

Lessee and the Department then engaged in further discussions on a possible workout, which resulted in Lessee submitting a revised proposal to the Department that included a commitment to pay delinquent rent instead of seeking a payment plan with the State and acknowledged that the withdrawal of Parcel 12 from the lease would not involve a retention of parking rights in favor of Lessee. See Exhibit K attached.

The Department responded with its letter dated May 13, 2021 (Exhibit L), which clarified the Department's position on certain details of the proposal. Lessee responded that it agreed to the clarifications in the Department's letter. Based on this tentative agreement, and subject to the prior approval of the Board, the proposal involves the following terms and conditions:

1. Lessee and the Department agree to withdraw Parcel 12, consisting of 62.576 acres, from the Lease. The withdrawal of Parcel 12 shall be free and clear of any rights or obligations Lessee currently has to that parcel under the Lease. The Board will decide the future uses of Parcel 12 once withdrawn, whether for public, private, commercial, retail or any other use.
2. Lessee shall pay upon demand all costs for the appraisal required to determine the effect of the withdrawal of Parcel 12 on the fair market rent payable under

GL5844. The appraiser will be selected and contracted for by the State. The parties shall cooperate with any request by the appraiser for additional information in order to appraise the leasehold interest in Parcel 12. The appraisal contract shall also direct the appraiser to determine the rent to be charged under a 30-day Revocable Permit for Parcel 12 in the event the Board approves the issuance of a Revocable Permit to Lessee for the parcel (see item 7 below).

3. While Lessee has requested that use of adequate parking on Parcel 12, the State is unable to agree to any condition that commits the Board to a future use of Parcel 12 for Lessee's benefit. Nothing must interfere with the Parcel 12 being withdrawn free and clear, with all interest of Lessee in Parcel 12 being effectively terminated in accordance with paragraph 12 of the Lease.
4. Lessee shall pay all delinquent rent, plus interest at 12% per annum and late fees in accordance with the Lease. Late fees and interest will continue to accrue and shall be paid together with the delinquent rent. Lessee shall pay either on the day of the Board approval (May 28, 2021) or the next business day (June 1, 2021), but if the next business day (June 1, 2021), the Lessee shall pay any additional accrued interest and late fees. An appropriate credit will be applied to Lessee's account once the State's appraisal is completed, reviewed and accepted by the State.
5. Lessee shall pay all future rents due under the Lease on time as they become due.
6. Lessee shall deliver a performance bond in the full amount required under the lease to the Department on the Board approval date (May 28, 2021), or the next business day (June 1, 2021). Any additional time to comply with this term can only be granted by the Board in an open meeting.
7. Upon completion of the free and clear withdrawal of Parcel 12 as noted in paragraphs 1 and 3 above, and in compliance with paragraph 12 of the Lease, the Board, on an interim temporary basis (pending a long-term disposition or use of the golf course site), authorizes the issuance a 30-day Revocable Permit to Lessee for golf course and parking purposes on Parcel 12. The normal rent, insurance and other permit requirements shall apply. The Department will ask the appraiser procured for the withdrawal appraisal to also determine the fair market monthly rent under the 30-day Revocable Permit. During the period in which the rent is being determined, permittee shall pay an interim monthly rent set by the Board. Staff recommends the interim monthly rent be set at \$3,000, which represents a 5.2% rate of return on tax assessed value of Parcel 12 for land only.⁵ Upon the

⁵ Staff's understanding is that the improvements on Parcel 12 are in poor to fair condition and may not add to the rental value of the property. When the land and improvements are valued by appraisal in conjunction with this workout proposal, any necessary retroactive adjustment to the interim revocable permit rent can be made at that

determination of the monthly rent by the appraiser, the permittee shall immediately pay any deficiency owed, or the State will credit permittee's account for any overages paid prior to the appraiser's determination of fair market rent.

Land Division acknowledges that Lessee has invested substantial amounts of money into the Grand Naniloa Hotel since acquiring the lease in bankruptcy and the property has been significantly upgraded and improved under its management. In default situations like this, however, Land Division's standard procedure is to submit the matter to the Board with a recommendation for lease termination. In the event the Board does not approve the workout proposal above that includes the withdrawal of the golf course, Land Division is including an alternate recommendation below that the Board cancel the lease. Although staff appreciates the economic difficulties facing WHR LLC and other State lessees due to the COVID-19 pandemic, the only rent relief the Department has been able to offer other lessees is the two-month deferral presented to the Board at its meeting of April 9, 2020 under agenda Item D-8. Because Land Division does not have discretion to depart from the departmental policy on this matter, an alternative recommendation for termination is included below.

RECOMMENDATION: That the Board:

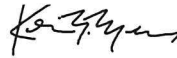
1. Approve the settlement of the rent and performance bond defaults under GL5844 to include withdrawal of the golf course parcel identified as Tax Map Key: 3rd/2-1-001:012 from General Lease No. S-5844, WHR LLC, Lessee, under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current withdrawal from lease easement document form, as may be amended from time to time;
 - B. Land Division shall procure an independent appraisal at Lessee's sole cost and expense to determine the impact of the withdrawal on the fair market rent payable under the lease;
 - C. Lessee shall post a performance bond in the amount of \$1,160,541.00 on or before June 1, 2021;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, the issuance of a revocable permit to WHR LLC for golf course and parking purposes will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
3. Authorize the issuance of a revocable permit to WHR LLC covering Tax Map Key: 3rd/2-1-001:012 for golf course and parking purposes upon the withdrawal of the parcel from General Lease No. S-5844 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 revocable permit 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.
4. In the alternative, authorize the cancellation of General Lease No. S-5844 in the manner specified by law;
 - A. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-5844 to be applied to any past due amount;
 - B. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of **May 28, 2021**, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law; and
 - C. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the

May 28, 2021

State of Hawaii under General Lease No. S-5844 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,



for: _____
Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:

RT 

Suzanne D. Case, Chairperson

EXHIBIT A



Tax Map Keys: (3) 2-1-001:012 and 2-1-005:013, 016, 017, 027, 032, and 046

EXHIBIT A



Tax Map Keys: (3) 2-1-001:012 and 2-1-005:013, 016, 017, 027, 032, and 046

EXHIBIT A

EXHIBIT B

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

May 28, 2021

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes (HRS), and Chapter 11-200.1, Hawaii Administrative Rules (HAR):

Project Title:	Request for Revocable WHR, LLC for Golf Course and Parking Purposes.
Project / Reference No.:	PSF No. 21HD-041.
Project Location:	Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-001:012.
Project Description:	The requested parcel is currently is anticipated to be withdrawn from General Lease No. S-5844 to WHR LLC. Upon completion of withdrawal, a month-to-month revocable permit will be issued to WHR LLC for continued golf course and parking purposes.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description:	In accordance with Hawaii Administrative Rules (HAR) §11-200.1-16 (a)(1) and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Type 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," Part 1, Item No. 44 that states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."
Cumulative Impact of Planned Successive Actions in Same Place Significant?	No, the subject land has been used for golf course and parking purposes for many years under various leases and will continue under a revocable permit.
Action May Have Significant Impact on	No, the subject land has been used for golf course and parking purposes for many years under various leases and will continue under a revocable

EXHIBIT B

Particularly Sensitive Environment?	permit.
Consulted Parties	Consultation is optional for de minimis actions pursuant to Section 1-200.1-16(b), HAR and the Department's Exemption List dated November 10, 2020. Because there is no change in use under a new revocable permit, Land Division believes the proposed action qualifies as de minimis and elected not to consult on the proposed disposition.
Recommendation:	It is anticipated the issuance of a new permit to WHR LLC in itself will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment. It is recommended that the Board of Land and Natural Resources find that the issuance of the permit is exempt from the preparation of an environmental assessment.

EXHIBIT B

EXHIBIT C



Grand Naniloa Resort, a DoubleTree by Hilton
99 Banyan Drive, Hilo, Hawaii 96720

2020 NOV 12 P 2:37

RECEIVED
LAND DIVISION
HILO, HAWAII

November 12, 2020

Via Hand Delivery and Email

Suzanne Case, Chairperson
Gordon C. Heit, Compliance Officer
Members, Board of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

Re: WHR, LLC ("Lessee") Request DLNR ("Lessor") to Defer Ground Rent from August 1, 2020 through January 31, 2021, Due to Covid-19, Tourism Restrictions & Shutdown of Tourism Relating to General Lease No. S-5844 ("Lease")

Aloha Chair Case and Mr. Heit and Board Members:

On behalf of WHR, LLC, as Lessee, we are in receipt of the Invoice Document Number G15844 for the Total Ground Rent Due \$290,135.22 for the six (6) month period from August 1, 2020 through January 31, 2021.

As you know, our goal in investing millions into Hilo was to serve the Hilo community with a great heart felt hula themed hotel supported by a national Hilton brand for not only guests of the State of Hawaii but equally important for the residents of Hilo, Big Island and State of Hawaii.

As you may also be aware, we stood up when times were very tough, and most hotels shut down, as we believed it was prudent as a leading hotel owner on the Big Island to elect to stay open for our employees, Hilo community, national guard needs and the Big Island. We have used up our PPP funds to remain open and keep Hilo personnel employed at the hotel. However, it has been at a significant cost to our ownership as we have sustained \$100,000s of losses per month since March 2020.

Due to the current Covid-19 state of affairs and the State of Hawaii travel restrictions that have shut down tourism, based on the average 25% occupancy and huge losses, Lessee is unable to continue to generate adequate revenues to cover all operational costs. We are covering the employee and standard operations. However, it is unfortunate, but until tourism is allowed to re-open and revenues are generated to allow rentals to be paid, we need assistance from the State and DLNR help to defer ground lease rent for a reasonable period of time.

EXHIBIT C

BLNR Meeting Agenda Request for Deferment Payment Plan:

Based on our request to defer rent for a reasonable period of time, we request to be placed on the next available meeting of the BLNR to discuss a reasonable deferment period. We believe deferment will need to be through August 2021, since we are hopeful that tourism will return sufficient to begin paying ground rent next August, 2021.

We thus respectfully request DLNR to consider a deferral of ground rent until August 1, 2021, which should be adequate time for the State of Hawaii to implement reasonable measures and trigger normal tourism to return to Hawaii.

Proposed Solution:

We propose a reasonable solution for the Project to allow the Total Deferment amount to be deferred and repaid over a 60 month period starting August 1, 2021:

Deferral Amount:

Deferral of the rental amount of for the period of August 1, 2020-February 1, 2021 - \$290,135.22

Deferral of the rental amount of for the period of February 1, 2021-August 1, 2021 - \$290,135.22

Total Deferment \$580,270.44

Repayment Plan Amount

Monthly Calculation of Deferred Payment Plan shall be as: $\$580,270.44/60 \text{ months} = \$9,617.17$

Commencement Date of Repayment of Deferment Payments:

Commencing August 1, 2021, the following deferment payments will begin \$9671.17 per month for a 5 year period, which shall be in addition to the standard ground lease rent, that will begin to be paid in full August 1, 2021. Thus, the Monthly Payments of \$9,617.17 shall be payable in addition to the ground rent, for the period commencing August 1, 2021, through and including September 2026.

We appreciate your consideration in this matter.

Aloha and warm regards,

WHR, LLC ("Lessee")

By: Tower Development, Inc., its Manager



Edward "Z" Bushor, CEO

cc: Robert Matsuda
Stuart Miller

EXHIBIT D

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

November 13, 2020

Ref: GL S-5844

WHR LLC,
Attn: Edward Bushor
1050 Bishop Street, Ste 530
Honolulu, HI 96720

Dear Mr. Bushor:

Subject: Request to Defer Lease Rent, General Lease No. S-5844, WHR LLC,
Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-01:12 and 2-1-05:13, 16, 17,
27, 32, 46

We are in receipt of your letter dated November 12, 2020 requesting deferment of ground rent for one year under the subject lease. However, we are unable to process your request at this time.

Upon review of the lease account, you had a semi-annual rent payment due on August 1, 2020 in the amount of \$290,135.22. This amount is currently past due and must be paid before we can offer any deferment on future rent. All defaults must be cured prior to any lessee entering into a deferred rental agreement.

Should your account be brought into good standing, the Department is currently offering a two-month deferral of your lease rent and offers the following.

The Department agrees to defer an amount representing two months of the semi-annual payment, or \$96,711.74. There are two options for taking the deferral:

- A. No payment on February 1, 2021, with the full payment of \$290,135.22 due on or before April 1, 2021; or
- B. Pay \$193,423.48 on or before February 1, 2021, with the deferred balance of \$96,711.74 due in six equal installments within a six-month period starting June 1, 2021 through December 31, 2021. Payments will be due on the 1st day of each month in the repayment period.

Under either option, no interest or late fees will be charged on the deferred amount. Please indicate your selected option in the space provided below. Please note that in addition to your past

EXHIBIT D

due lease rent, the semi-annual installment of \$290,135.22, due on August 2021 must be paid in full as scheduled.

We understand there may be other government programs designed to help small businesses. If you have information about your efforts to take advantage of such government programs, for example, an approval letter or accepted application etc., we would appreciate you providing a copy of these materials to us.

Please feel free to contact Gordon Heit of Hawaii District Land Office at (808) 961-9590 or email at [REDACTED] if you have further questions.

Sincerely,

Suzanne D. Case

RT Suzanne D. Case
Chairperson

Upon all defaults being cured:

Option A:

_____ No payment on February 1, 2021, with the full payment of \$290,135.22 due on or before April 1, 2021. No interest or late fees will be charged on deferred rent.

Option B:

_____ Pay \$193,423.48 on or before February 1, 2021, with the deferred balance of \$96,711.74 due in six equal installments within a six-month period starting June 1, 2021 through December 31, 2021. Payments will be due on the 1st day of each month in the repayment period. No interest or late fees will be charged on deferred rent.

Sign

Print Name:

Date: _____

EXHIBIT E



Grand Naniloa Resort, a DoubleTree by Hilton

93 Banyan Drive, Hilo, Hawaii 96720

March 17, 2021

Via Hand Delivery and Email

Suzanne Case, Chairperson
Gordon C. Heit, Compliance Officer
Members, Board of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

Re: General Lease No. S-5844 ("Lease") by and between WHR, LLC ("Lessee") and DLNR ("Lessor")

Aloha Chair Case and Mr. Heit and Board Members:

On behalf of WHR, LLC, as Lessee, we formally request to be placed on the BLNR agenda for April 23, 2021 for the proposal set forth below.

We have been a great neighbor in Hilo, have invested millions into State lands and the Hilo community and merely seek to remedy our Covid pandemic Lease issues. We have managed to have our Grand Naniloa stay open during Covid to continue to employ Hilo residents while incurring millions in losses since the pandemic started. We believed this was in the best interest of the State land and Hilo community, especially given the needs of the National Guard in Hilo. However, the decision to remain open came with a cost of millions in losses. We now need to resolve the impacts of these losses on a positive basis for the project and community. We plan to restore past payments while at the same time cure our defaults based on the reasonable plan set forth below.

Our proposal is our effort to evidence our continuing good faith in spite of the fact the State of Hawaii has been virtually shut down for normal tourism and Lessee was precluded from operating at pre-Covid income levels, and in fact, has been incurring significant monthly losses since the pandemic started.

PROPOSAL

1. **Installment Plan for Past Payments.** Installment Repayment Plan of \$12,088.97 times 48 months, to repay the outstanding Ground Rent that has not been paid during the last 12 months due to Covid Pandemic, which are for the amounts due under the August 2020 Invoice Document Ground Rent Due \$290,135.22 and the February 2021 Invoice Document Ground Rent Due \$290,135.22 totaling \$580,270.44.
2. **Future Lease Payments.** \$48,355.87 Good Faith Payments Monthly starting March 1, 2021, to pay in advance deposits toward rent due coming August 2021, and continuing these monthly payments of deposit amounts through February 2022. Thus, we plan to

EXHIBIT E

evidence our good faith attempt to pay in advance our future obligations by using PPP funds and commence paying immediately to insure payments under the Lease.

3. **Bond Cure.** Upon mutual approval by Lessee and BLNR of the proposed cures in Items 1 & 2 above, Lessee agrees to process the new bond and cure the bond requirement outstanding by evidencing to the bond company that the past delinquent payments are under an acceptable installment plan, which will allow us to restore the bond without any existing defaults under the Lease. We are unable to procure a bond if there are current defaults and, thus, we hope to enter into the payment plan above in order to restore the bond requirements under the lease and cure this issue as well.
4. **State and Federal Assistance.** We also seek to have both State and Federal assistance. It seems the State has received significant resources of which zero has been offered to hotel operators that have stayed open. We believe the State and Federal monies received should have been offered to hotels that stayed open for communities such as the Grand Nanihoa. A simple program that proposes providing even a grant of 25% of losses covered by State and Federal monies now in the coffers of the State of Hawaii would be appropriate. This would be a great start to contribute to the Hotels that have remained open for the communities despite our millions in losses.

As you may also be aware, we stood up when times were very tough, while most hotels shut down. We believed it was prudent to stay open for our employees, the Hilo community, National Guards and needs of the Big Island.

We appreciate your consideration in this matter.

Aloha and warm regards,

WHR, LLC ("Lessee")
By: Tower Development, Inc., its Manager



Edward "Z" Bushor, CEO

cc: Senator Kaiali'i "Kai" Kahele
Robert Matsuda
Stuart Miller

EXHIBIT F



Grand Naniloa Resort, a DoubleTree by Hilton

93 Banyan Drive, Hilo, Hawaii 96720

April 14, 2021

Via Hand Delivery and Email

Suzanne Case, Chairperson
Gordon C. Heit, Compliance Officer
Members, Board of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

Re: General Lease No. S-5844 ("Lease") by and between WHR, LLC ("Lessee") and DLNR ("Lessor")

Aloha Chair Case and Mr. Heit and Board Members:

On behalf of WHR, LLC, as Lessee, we formally request to be placed on the BLNR agenda to propose a plan to help the community of Hilo and Banyan Drive.

As you are aware, we have made significant efforts to be a community leader for the public good and benefit of Hilo, through investing millions into State lands and the Hilo community, but also assisting in promoting a clean prosperous environment along Banyan Drive. We even entered into a revocable permit to assist to manage Uncle Billy's to avoid a public detriment that could occur with vacant buildings. Based on the impacts from the Covid pandemic and needs that simultaneously exist for the Banyan Drive community, it seems to be in the best public interest to work together for the mutual benefit of the private/public interests related to the above referenced Lease No. S-5844.

Our proposal evidences our continuing good faith to work for the public benefit along Banyan Drive:

PROPOSAL

1. **Lease Withdrawal of Golf Course.** Lessor and Lessee will process a lease withdrawal of the golf course portion of the Lease for the benefit of public uses. Lessee has offered to provide the golf course for many types of uses such as a Hula and Cultural Arts Facility, convention space, general parking for the parks around Banyan Drive including Reeds Bay, Liliuokalani Gardens and the Bayfront walking paths and any other public uses needed in the Banyan Drive community.
2. **Appraisal & Rent Credits.** Lessor and Lessee would authorize the preparation of an appraisal and share in the cost 50/50 to obtain an appraisal for calculating a fair market rental credit for the withdrawal of the Golf Course. All rent credits for the withdrawal of the Golf Course would be applied against all Base Rents due in accordance with the Lessor and Lessee mutual understanding to be fairly agreed upon.

EXHIBIT F

3. **Base Rent Escrow.** Lessee would contribute all of the Base Rent for August 2021 immediately into an Escrow Account. The Escrow would pay the Base Rent for August 2021, to insure if the rental credit does not trigger any impact on the August 2021 Base Rent, then the Lessor would be able to use the Escrow monies as the Base Rent for August 2021.
4. **Bond for Lease.** Lessee shall implement a new bond for insurance of all obligations under the Lease.
5. **Continuing Management of Golf Lands Until used for Public Benefit.** To insure blight and deferred maintenance does not occur, Lessee shall continue to maintain and manage the golf course until such time as public use is implemented for the golf course areas.
6. **Conditions of No Defaults.** A condition to this proposal is that upon conclusion, Lessee commits to have no defaults under the Lease and remain in good standing with respect to the Lease and the Grand Naniloa Resort, a DoubleTree by Hilton.

As you may also be aware, we stood up when times were very tough, while most hotels shut down. We believed it was prudent to stay open for our employees, the Hilo community, National Guards and needs of the Big Island.

We appreciate your consideration in this matter.

Aloha and warm regards,

WHR, LLC ("Lessee")

By: Tower Development, Inc., its Manager

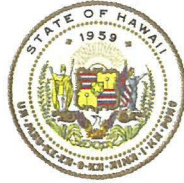


Edward "Z" Bushor, CEO

cc: Senator Kaiali'i "Kai" Kahele
 Kevin Moore, Esq.
 Robert Matsuda
 Stuart Miller

EXHIBIT G

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

April 16, 2021

Mr. Ed Bushor
WHR LLC
1050 Bishop St., Ste. 530
Honolulu, Hawaii 96813

Dear Mr. Bushor:

We are in receipt of your letter dated April 14, 2021 setting forth a proposal to address rent and performance bond defaults under General Lease No. S-5844 to WHR LLC (WHR), Lessee, for the Grand Naniloa Resort in Hilo.

As you know, WHR's rent delinquency as of March 31, 2021 is \$580,270.44 with late fees of \$350 and interest in the amount of \$29,013.50, for a total of \$609,633.94. A copy of the notice of default for rent dated November 5, 2020 for rent due on August 1, 2020 is enclosed (a notice of default for the payment due February 1, 2021 is in process in our office and will be issued soon). The current performance bond requirement under the lease is \$1,160,541.00. WHR's most recent bond expired on November 7, 2020 with no replacement posted to date. A copy of the notice of default dated November January 19, 2021 for the bond is enclosed. Accordingly, WHR's total monetary delinquency under the lease as of March 31, 2021 is \$1,770,174.94.

On April 9, 2021, the Department discussed with you the possibility of withdrawing the golf course in an effort to facilitate the cure of WHR's rent and bond delinquencies. Your letter of April 14 sets forth a proposal for the withdrawal of the golf course for public uses only and lists six conditions. The Department is not able to recommend your proposal to the Board of Land and Natural Resources as written. Below we provide the conditions under which the Department may be agreeable to presenting this matter to the Board (numbers correspond to the items as listed in your letter):

1. We cannot accept your proposal for a partial withdrawal of the golf course for public purposes only. Rather, we are willing to recommend to the Board that the entire golf course be withdrawn and that the State have full control over the future uses, whether public or commercial. The State would, of course, follow all applicable laws in any future disposition including, without limitation, observing the requirements under Chapter 171, Hawaii Revised Statutes, for issuance of new commercial leases through a competitive process.

EXHIBIT G

2. WHR must pay all costs for appraisal because the need for the appraisal arises out of WHR's defaults. The golf course portion of the lease will be appraised with the restricted use contemplated under the lease, which is golf course purposes. The fair market rental value of the golf course could be used to offset the outstanding delinquency, to be paid over a term of 5-years at the rate of 12% per annum. Please note that the auction lease specifically states that the interest rate on any unpaid or delinquent rentals shall be at one percent per month (12% per annum) plus a service charge of \$50.00 per month for each month of delinquency.¹ To the extent you have the financial wherewithal, we certainly encourage you to seek alternative sources of financing at more favorable loan terms and interest rates.
3. We do not understand the need for a "Base Rent Escrow Account." WHR's default is significant and any amount it can pay to the Department to decrease the delinquency should be paid promptly and not held in escrow.
4. We would expect WHR to post a performance bond in the full amount required under the lease as soon as it is able to do so but not later than May 14, 2021.
5. If the withdrawal of the golf course can be achieved on terms acceptable to the State, the Department would be willing to recommend to the Board that an interim revocable permit be issued to WHR to maintain the golf course until other dispositions can be made.
6. We would expect WHR to abide by the terms and conditions of the lease and avoid future defaults.

WHR is currently at risk of forfeiture of its lease. Please let us know whether WHR remains interested in a possible withdrawal of the golf course from the lease under terms and conditions acceptable to the State as noted above. If WHR declines, our next step will be to present a staff recommendation to the Board to terminate the lease. Please contact Land Division Assistant Administrator Kevin Moore at [REDACTED] if you have any questions.

Sincerely,

Suzanne D. Case

RT

Suzanne D. Case
Chairperson

Enclosures

¹ General Lease No. S-5844 was issued through the public auction process. Public auction leases cannot subsequently be amended by the parties. Applying a lower interest rate than the 12% set forth in the lease would essentially amount to an unauthorized amendment of lease.

EXHIBIT H

Moore, Kevin E

From: Ed [REDACTED]
Sent: Monday, April 19, 2021 9:12 AM
To: Moore, Kevin E
Cc: Case, Suzanne D; Masuda, Robert K; Tsuji, Russell Y; Heit, Gordon C; Stuart Miller
Subject: [EXTERNAL] Re: Golf Course Withdrawal for General Lease No. S-5844

Aloha all,

Mahalo for a reasonable solution to assist in the community efforts.

1. The letter received is acceptable in concept.
2. The only matter that was discussed that your letter left open without discussion the hotel parking needs to satisfy code compliance upon withdrawal, but we can leave that up to post appraisal discussion on how to make sure the hotel has adequate parking to satisfy current operations which is partially covered by the parking areas of the lease.
3. Appraisal Deposit. We are prepared to make a deposit for the appraisal. Please advise how.
4. Escrow Deposit. We are prepared to deposit monies into an escrow which would be used to calculate the actual payments due once the appraisal and withdrawal are complete, and the escrow would disburse amounts due and handle the transaction. We believe a deposit of a full lease payment would be adequate and I am willing to put up the money as a good faith gesture.
5. A bond can be granted based on the resolutions proposed. However, in the Covid era, the bonding company can't do it as fast as your time frames and it would be prudent to put in a reasonable time frame given Covid and the need to have all documentation of a resolution, which the bonding company will need as a condition to posting the bond. A fair time frame would be your date or such time as the bonding company is able to reasonably process and issue the bond not to exceed 30 days after approval by the BLNR of a resolution.

Mahalo for your consideration.

Aloha and blessings,

Ed "Z" Bushor
CEO
Tower Development, Inc.
1050 Bishop Street 530
Honolulu, Hawaii 96813
[REDACTED]
[REDACTED]
www.towerdevcon.com

From: Kevin Moore [REDACTED]
Date: Monday, April 19, 2021 at 8:38 AM

To: Edward Bushor [REDACTED]
Cc: Suzanne Case [REDACTED] Robert DLNR Masuda [REDACTED], "Tsuji, Russell Y" [REDACTED], "Heit, Gordon C" [REDACTED], Stuart Miller [REDACTED]
Subject: RE: Golf Course Withdrawal for General Lease No. S-5844

Good Morning Ed,

Attached please find our response to your letter of April 14, 2021. Thank you.

Kevin

From: Ed [REDACTED]
Sent: Wednesday, April 14, 2021 1:13 PM
To: Case, Suzanne D [REDACTED]; Heit, Gordon C [REDACTED]; Moore, Kevin E [REDACTED]; Masuda, Robert K [REDACTED]; Tsuji, Russell Y [REDACTED]
Cc: Stuart Miller [REDACTED]
Subject: [EXTERNAL] Golf Course Withdrawal for General Lease No. S-5844

Aloha all,

Attached is a proposed Golf Course Withdrawal proposal for your consideration. We continue to look forward to revitalizing Banyan Drive and assisting in providing further public benefit arising out of the Grand Naniloa Resort, a DoubleTree by Hilton.

Aloha and blessings,

Ed "Z" Bushor
CEO
Tower Development, Inc.
1050 Bishop Street 530
Honolulu, Hawaii 96813
[REDACTED]
[REDACTED]
www.towerdevcon.com

EXHIBIT I

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

April 22, 2021

Mr. Ed Bushor
WHR LLC
1050 Bishop St., Ste. 530
Honolulu, Hawaii 96813

Dear Mr. Bushor:

We are in receipt of your email dated April 19, 2021 written in response to our letter dated April 16, 2021. We want to address numbered items 2 through 5 set forth in your email to avoid any confusion or future dispute before seeking the Land Board's review and requesting approval of the settlement terms:

2. The golf course must be withdrawn free and clear from the lease without any obligation upon the State to allow WHR LLC (WHR) or its affiliates to use the golf course for parking or otherwise. Once withdrawn, the golf course will be under the complete control of the State. If WHR applies for a revocable permit to maintain the golf course or use portions of it for parking, we are willing to consider presenting such a request to the Board of Land and Natural Resources for consideration of a temporary use, pending a future longer term use and disposition for the land. But any such request and decision will be separate and distinct from the present settlement negotiations, which are intended to assist WHR in remedying its rent and performance bond delinquency and defaults.
3. Once the Department selects an appraiser for the golf course valuation, we will contact you with instructions on how to remit payment for the appraisal fee.
4. We will not agree to payment of rent into an escrow account pending the withdrawal and appraisal of the golf course. Any rent that becomes due must be timely paid while we complete the appraisal and withdrawal of the golf course, and other settlement documents. As explained in our letter of April 16, 2021, WHR's default is significant and any amount it can pay to the Department to decrease the delinquency should be paid promptly and not held in escrow.
5. The performance bond must be in place in order to cure the default prior to any execution of any settlement agreement covering the details of the proposed transaction. However, the State will not sign the settlement agreement unless and until the defaults have been either cured or resolved to the satisfaction of the State, such as by having (i) the new

EXHIBIT I

Ed Bushor
WHR LLC
April 22, 2021
Page 2

performance bond in place and effective and (ii) the execution of a 5-year promissory note at 12% interest per annum, or payment in full of the monetary delinquency/default from outside financial sources, all of which were described in our letter to you dated April 16, 2021, all of which must be delivered at or immediately prior to execution and closing of the settlement.

As to the timing on the delivery of the bond, please note that if the Board approves the withdrawal of the golf course from the lease and the other settlement terms, then as a practical matter it will take some time for the Department of the Attorney General to draft the settlement agreement and other closing documents connected with the settlement, which should allow sufficient opportunity for WHR to secure the bond.

As you know, any agreement WHR and the State make regarding the withdrawal of the golf course will require the consent of your mortgagee, Wells Fargo Bank, National Association. Please confirm your lender has no objection to the withdrawal of the golf course from the lease prior to the matter being presented to the Board for consideration.

If WHR remains interested in a possible withdrawal of the golf course from the lease under terms and conditions acceptable to the State as noted above and in our letter of April 16, 2021, our next step would be to present the matter to the Board at a public meeting. Please contact Land Division Assistant Administrator Kevin Moore at [REDACTED] if you have any questions.

Sincerely,

Suzanne D. Case

RT

Suzanne D. Case
Chairperson

EXHIBIT J

Moore, Kevin E

From: Ed [REDACTED]
Sent: Tuesday, April 27, 2021 6:43 AM
To: Moore, Kevin E
Cc: Case, Suzanne D; Masuda, Robert K; Tsuji, Russell Y; Heit, Gordon C; Stuart Miller
Subject: [EXTERNAL] Re: Golf Course Withdrawal for General Lease No. S-5844

Aloha all,

We do need a clarification and solution, as parking is not something that be "at risk" under a revocable permit.

Solutions:

1. Nothing in the General Lease prohibits a reservation of parking uses in the withdrawal of the golf course parcel.
2. Nothing in the General Lease prohibits a boundary adjustment for allowing parking uses for hotel uses, and withdrawal of the remaining golf course parcel.
3. Nothing in the General Lease prohibits DLNR to establish the boundaries of the Golf Course parcel.

Thus, our request for parking uses seems to be not only reasonable, required under Code to operate the hotel, but could easily be accomplished consistent the General Lease and applicable laws.

Aloha and blessings,

Ed "Z" Bushor
CEO
Tower Development, Inc.
1050 Bishop Street 530
Honolulu, Hawaii 96813
[REDACTED]
[REDACTED]
www.towerdevcon.com

From: Kevin Moore [REDACTED]
Date: Thursday, April 22, 2021 at 2:11 PM
To: Edward Bushor [REDACTED]
Cc: Suzanne Case [REDACTED], Robert DLNR Masuda [REDACTED], "Tsuji, Russell Y" [REDACTED], "Heit, Gordon C" [REDACTED], Stuart Miller [REDACTED]
Subject: RE: Golf Course Withdrawal for General Lease No. S-5844

Hi Ed,

Attached please find our letter of today's date in response to your email of April 19, 2021 below.
Thank you.

Kevin

From: Ed [REDACTED]
Sent: Monday, April 19, 2021 9:12 AM
To: Moore, Kevin E [REDACTED]
Cc: Case, Suzanne D [REDACTED]; Masuda, Robert K [REDACTED]; Tsuji, Russell Y [REDACTED]; Heit, Gordon C [REDACTED]; Stuart Miller [REDACTED]
Subject: [EXTERNAL] Re: Golf Course Withdrawal for General Lease No. S-5844

Aloha all,

Mahalo for a reasonable solution to assist in the community efforts.

1. The letter received is acceptable in concept.
2. The only matter that was discussed that your letter left open without discussion the hotel parking needs to satisfy code compliance upon withdrawal, but we can leave that up to post appraisal discussion on how to make sure the hotel has adequate parking to satisfy current operations which is partially covered by the parking areas of the lease.
3. Appraisal Deposit. We are prepared to make a deposit for the appraisal. Please advise how.
4. Escrow Deposit. We are prepared to deposit monies into an escrow which would be used to calculate the actual payments due once the appraisal and withdrawal are complete, and the escrow would disburse amounts due and handle the transaction. We believe a deposit of a full lease payment would be adequate and I am willing to put up the money as a good faith gesture.
5. A bond can be granted based on the resolutions proposed. However, in the Covid era, the bonding company can't do it as fast as your time frames and it would be prudent to put in a reasonable time frame given Covid and the need to have all documentation of a resolution, which the bonding company will need as a condition to posting the bond. A fair time frame would be your date or such time as the bonding company is able to reasonably process and issue the bond not to exceed 30 days after approval by the BLNR of a resolution.

Mahalo for your consideration.

Aloha and blessings,

Ed "Z" Bushor
CEO
Tower Development, Inc.
1050 Bishop Street 530
Honolulu, Hawaii 96813
[REDACTED]
[REDACTED]
www.towerdevcon.com

From: Kevin Moore [REDACTED]
Date: Monday, April 19, 2021 at 8:38 AM
To: Edward Bushor [REDACTED]
Cc: Suzanne Case [REDACTED] Robert DLNR Masuda [REDACTED] "Tsuji, Russell Y" [REDACTED], "Heit, Gordon C" [REDACTED], Stuart Miller [REDACTED]
Subject: RE: Golf Course Withdrawal for General Lease No. S-5844

Good Morning Ed,

Attached please find our response to your letter of April 14, 2021. Thank you.

Kevin

From: Ed [REDACTED]
Sent: Wednesday, April 14, 2021 1:13 PM
To: Case, Suzanne D [REDACTED]; Heit, Gordon C [REDACTED]; Moore, Kevin E [REDACTED]; Masuda, Robert K [REDACTED]; Tsuji, Russell Y [REDACTED]
Cc: Stuart Miller [REDACTED]
Subject: [EXTERNAL] Golf Course Withdrawal for General Lease No. S-5844

Aloha all,

Attached is a proposed Golf Course Withdrawal proposal for your consideration. We continue to look forward to revitalizing Banyan Drive and assisting in providing further public benefit arising out of the Grand Naniloa Resort, a DoubleTree by Hilton.

Aloha and blessings,

Ed "Z" Bushor
CEO
Tower Development, Inc.
1050 Bishop Street 530
Honolulu, Hawaii 96813
[REDACTED]
[REDACTED]
www.towerdevcon.com

EXHIBIT K



Grand Naniloa Resort, a DoubleTree by Hilton

93 Banyan Drive, Hilo, Hawaii 96720

May 11, 2021

Via Hand Delivery and Email

Suzanne Case, Chairperson
Gordon C. Heit, Compliance Officer
Members, Board of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

Re: General Lease No. S-5844 ("Lease") by and between WHR, LLC ("Lessee") and DLNR ("Lessor")

Aloha Chair Case and Mr. Heit and Board Members:

On behalf of WHR, LLC, as Lessee, we formally request to be placed on the BLNR agenda to propose and gain approval of a settlement of lease issues arising out of Covid that would be beneficial to all parties, State, County of Hawaii and DLNR.

Our proposal evidences our continuing good faith to work for the public benefit and to allow the use of the golf course for the benefit of public uses. Lessee has offered to provide the golf course for many types of uses such as a Hula and Cultural Arts Facility, convention space, general parking for the parks around Banyan Drive including Reeds Bay, Liliuokalani Gardens and the Bayfront walking paths and any other public uses needed in the Banyan Drive community

Settlement Proposal

Our settlement proposal is as follows:

- 1) Restructure the General Lease to allow withdrawal and separation of the non-hotel uses (meaning the golf course area) from the Lease. We agree to allow the process to commence on DLNR terms and procedures.
- 2) Immediately, WHR, LLC will pay for the appraisal and advance the deposit and or full payment required to retain and hire the appraiser selected by DLNR.
- 3) WHR, LLC merely request BLNR consider a "settlement provision" that in consideration of allowing the withdrawal of the "golf course parcel" that BLNR would allow use of adequate parking to allow Lessee to comply with applicable governmental regulations for parking requirements for the Grand Naniloa Resort.
- 4) Upon approval of this settlement proposal by BLNR, a check in the amount of all past due rent shall be paid in full, and a cashier's check shall be delivered to either DLNR at the approval hearing or no later than one (1) business day after BLNR approval, which

EXHIBIT K

shall be immediately placed into a DLNR controlled accounting/settlement Escrow Account held by DLNR for all past due rent and future rent. This account would allow a reconciliation accounting upon completion of the appraisal. Upon completion of the appraisal for calculating a fair market rental credit for the value of withdrawal of the golf course parcel, the rent credit for the withdrawal of the golf course parcel would be applied against all delinquent rent and if there is excess monies above the credited amount remaining in the Escrow Account, then it shall be immediately released to DLNR and credited against Rent next due under the General Lease until exhausted.

- 5) August 2021 Rent shall be paid in full without default.
- 6) The new Bond shall be processed by Lessee within a reasonable period of time not to exceed 90 days from the date of this Letter, and or no later than thirty days after BLNR approves of this settlement proposal. As you can imagine, a bonding company will require evidence of a settlement and no defaults to issue a new bond, and this procedure will allow the bond to be reissued with an approved settlement.
- 7) To insure blight and deferred maintenance does not occur, Lessee shall continue to maintain and manage the golf course until such time as public use is implemented for the golf course areas. We can't afford to have another Uncle Billy's situation at the golf course and need to have some type of assurance that the hotel may maintain the management of the golf course to insure blight does not infiltrate the golf course parcel.

As you may also be aware, we stood up when times were very tough, while most hotels shut down. We believed it was prudent to stay open for our employees, the Hilo community, National Guards and needs of the Big Island.

We now offer the golf course to the State, County and community for public benefit and hope we can all work toward a settlement of this matter and turn the economic fallout of Covid into a positive.

We appreciate your consideration in this matter.

Aloha and warm regards,

WHR, LLC ("Lessee")

By: Tower Development, Inc., its Manager



Edward "Z" Bushor, CEO

cc: Senator **Kaiali'i "Kai" Kaele**

Kevin Moore, Esq.

Robert Matsuda

Stuart Miller

EXHIBIT L

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
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M. KALEO MANUEL
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AQUATIC RESOURCES
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

May 13, 2021

Mr. Ed Bushor
WHR LLC
1050 Bishop St., Ste. 530
Honolulu, Hawaii 96813

Dear Mr. Bushor:

We are in receipt of your letter dated May 11, 2021 setting forth a revised proposal to address the rent and performance bond defaults under General Lease No. S-5844 (Lease) to WHR LLC (WHR). We respond to the specific items of your proposal as numbered in your letter:

1. Your letter references "separation of the non-hotel uses (meaning the golf course area" from the Lease." To be clear, our recommendation to the Board of Land and Natural Resources (Board or BLNR) would be for the withdrawal of the parcel identified as Tax Map Key: (3) 2-1-001:012 consisting of 62.576 acres (Parcel 12) from the Lease. The withdrawal of Parcel 12 would be free and clear of any rights or obligations WHR currently has to that parcel under the Lease. The Board will decide the future uses of Parcel 12 once withdrawn, whether for public, private, commercial, retail or any other use.
2. WHR will need to pay upon demand all costs for the appraisal with the appraiser to be selected and contracted for by the State. The parties shall cooperate with any request by the appraiser for additional information in order to appraise the leasehold interest in Parcel 12. The appraisal contract will also direct the appraiser to determine the rent to be charged under a 30-day Revocable Permit for Parcel 12 in the event the Board approves the issuance of a Revocable Permit to WHR for the parcel.
3. WHR requests that the "BLNR consider a 'settlement provision' that in consideration of allowing the withdrawal of the 'golf course parcel' that BLNR would allow use of adequate parking to allow Lessee to comply with applicable governmental regulations for parking requirements for the Grand Naniloa Resort." As previously explained, the State is unable to agree to any condition that commits the Board to a future use of Parcel 12 for WHR's benefit. Nothing must interfere with the Parcel 12 being withdrawn free and clear, with all interest of WHR being effectively terminated in accordance with paragraph 12 of the Lease.

EXHIBIT L

4. WHR's condition 4 provides for deposit of past due rent and future rent into some type of settlement escrow account to allow for reconciliation of any rent credit that may result from the withdrawal of Parcel 12 is from the lease premises. This condition is unacceptable. WHR is obligated to and shall pay all delinquent rent, interest (12% per annum) and late fees in accordance with the Lease. Late fees and interest will continue to accrue and must be paid on the payment date together with the delinquent rent. Lessee will pay either on the day of the Board approval or the next business day, but if the next business day, the Lessee will pay any additional accrued interest and late fees. An appropriate credit will be applied to WHR's account once the State's appraisal is completed, reviewed and accepted by the State.
5. WHR's letter states that the August 2021 rent payment will be made in full without default. We clarify that all future rents due under the Lease must be paid on time as they become due.
6. WHR specifically refers to "processing" the bond in 90 days. Merely "processing" is not acceptable. The performance bond must be "delivered" on the Board approval date, or the next business day. Any additional time to comply with this term can only be granted by the Board in an open meeting.
7. WHR's condition 7 states in part that, "To insure blight and deferred maintenance does not occur, Lessee shall continue to maintain and manage the golf course until such time as public use is implemented for the golf course areas." We clarify that only upon completion of the free and clear withdrawal of Parcel 12 as noted in paragraphs 1 and 3 above, and in compliance with paragraph 12 of the Lease, we will request the Board to consider, on an interim temporary basis (pending a long-term disposition or use of the golf course site), to issue a 30-day Revocable Permit to WHR for Parcel 12. The normal rent, insurance and other permit requirements will apply. We will ask the appraiser to also determine the fair market monthly rent under the 30-day Revocable Permit, and during the period in which the rent is being determined, permittee shall pay an interim monthly rent set by the Board. Upon the determination of the monthly rent by the appraiser, the permittee shall immediately pay any deficiency owed, or the State will credit permittee's account for any overages paid prior to the appraiser's determination of fair market rent.

Please let us know as soon as possible whether WHR agrees to the State's conditions above. If so, we will present the proposal to the Board at the next available meeting. If WHR does not agree to the State's conditions, then the alternative is to go to the Board with a request to cancel the Lease.

Ed Bushor
WHR LLC
May 13, 2021
Page 3

Please contact Land Division Assistant Administrator Kevin Moore at [REDACTED]
[REDACTED] if you have any questions.

Sincerely,

RT

Suzanne D. Case

Suzanne D. Case
Chairperson