

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

May 14, 2021

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

Hawai'i

Consent to Quitclaim Assignment of an Undivided 20% interest in General Lease No. S-3611 from Kandy J. Carlsmith, Successor Trustee under that Certain Indenture of Trust Created March 26, 1955 by Nelle Wood Carlsmith for the Benefit of Carl Wendell Carlsmith, Edith Mattson Carlsmith and Donn Wendell Carlsmith, as Assignor, to Hawaii Planing Mill, Ltd. dba HPM Building Supply, a Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-032:021.

APPLICANT:

Kandy J. Carlsmith, Successor Trustee under that Certain Indenture of Trust Created March 26, 1955 by Nelle Wood Carlsmith for the Benefit of Carl Wendell Carlsmith, Edith Mattson Carlsmith and Donn Wendell Carlsmith 1955 (undivided 20% interest in GL S-3611), as Assignor, to Hawaii Planing Mill, Ltd. dba HPM Building Supply, a Hawaii corporation, as Assignee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Lots 7, 8, 9, 16, 17 and 18, Waiakea Business and Industrial Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-032:021, as shown on the attached map labeled Exhibit A.

AREA:

2.334 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

CHARACTER OF USE:

Industrial purposes.

TERM OF LEASE:

Original term of 55 years, commencing on January 16, 1961 and expiring on January 15, 2016.

Requested extension of 10 years commencing on January 16, 2016 and expiring on January 15, 2026.

ANNUAL RENTAL:

\$80,799.00.

CONSIDERATION:

\$125,000.00.¹

RECOMMENDED PREMIUM:

As originally issued, General Lease No. S-3611 did not allow for a premium to the State on assignment. The Extension and Amendment of General Lease No. S-3611 dated April 23, 2021 (but effective as of January 16, 2016) amended the lease to include the standard Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989. However, according to that policy, beginning in year 51 of the lease term the premium percentage of the consideration for the assignment (less the depreciated cost of improvements and trade fixtures being transferred to the assignee) payable to the State decreases to 0%. General Lease No. S-3611 is currently in its 61st year. As a result, there is no assignment of lease premium due to the State on the assignment.

DCCA VERIFICATION:

ASSIGNEE:

Place of business registration confirmed:	YES <u>X</u>	NO ___
Registered business name confirmed:	YES <u>X</u>	NO ___
Good standing confirmed:	YES <u>X</u>	NO ___

¹ Aggregate consideration for the quitclaim assignment of Assignor's undivided 10% interest in GL S-3611.

Assignor is a trustee of a trust and, as such, is not required to register with DCCA,

REMARKS:

A review of the file reveals the following transactions concerning the subject lease.

1. General Lease No. S-3611 was issued to Hawaii Planing Mill, Ltd. for a term of fifty-five (55) years pursuant to Act 4, First Special Session of 1960, which authorized the direct issuance of leases to victims of a natural disaster (tsunami).
2. Assignment of lease from Hawaii Planing Mill, Ltd., as Assignor, to: (i) WILLIAM MACKENZIE, Trustee under that certain Indenture of Trust created March 26, 1955 by Nelle Wood Carlsmith for the benefit of Carl Wendell Carlsmith, Edith Mattson Carlsmith and Donn Wendell Carlsmith, (ii) DONN W. CARLSMITH, Trustee under that certain Trust Agreement dated October 10, 1969 created by Hiroaki Kono for the benefit of Elaine K. Kono and Lawrence H. Kono, (iii) DONN W. CARLSMITH, Trustee under that certain Trust Agreement dated December 30, 1955 created by Takeyo Fujimoto for the benefit of Fred Y. Fujimoto, (iv) DONN W. CARLSMITH, Trustee under that certain Trust Agreement dated December 30, 1955 created by Takeyo Fujimoto for the benefit of Robert M. Fujimoto, and (v) HAILI INVESTMENT CORPORATION, a Hawaii corporation, as Assignees (approved by the Land Board, June 28, 1974, under agenda item F-1-b). The assignment assigned an undivided 20% interest in the lease to each of the foregoing Assignees.
3. Consent was granted for Sub-Sublease from William MacKenzie, Trustee, et al., to Hawaii Planing Mill, Ltd. (approved June 28, 1974, under agenda item F-1-b)
4. Consent was granted to Mortgage between William MacKenzie, Trustee, et al., and Bank of Hawaii (approved June 28, 1974, agenda item F-1-b).
5. Consent was granted to an amendment to Sublease Agreement dated April 1, 1982 (approved October 22, 1982 under agenda item F-1-b).
6. Amendment to General Lease No. S-3611 dated June 28, 1983.
7. Consent was granted to an assignment of a 20% undivided interest in a sublease and an assumption of mortgage between the Kono Trust by its trustee, Donn W. Carlsmith, Assignor and Elaine K. Kono, Assignee (approved November 8, 1985 under agenda item F-1-e).
8. At its meeting of October 22, 1993, under agenda item F-8, the Board consented to the partial assignment of sublessees' interest in the sublease and of sub-sublessor's interest in the sub-sublease of General Lease No. 3611 from ROBERT M. FUJIMOTO and GEORGE ICHIKAWA, Co-Trustees under that certain Trust Agreement dated December 30, 1955, created by Takeyo Fujimoto for the benefit of Fred Y. Fujimoto, GEORGE ICHIKAWA

and MARGARET F. GOTA, Co-Trustees under that certain Trust Agreement dated December 30, 1955, created by Takeyo Fujimoto for the benefit of Robert M. Fujimoto and HAILI INVESTMENT CORPORATION, a Hawaii corporation, Assignors to HAWAII PLANING MILL, LTD., a Hawai'i corporation, Assignee.

9. At its meeting of October 22, 1993, under agenda item F-9, the Board consented to the partial assignment of lessees' interest in General Lease No. 3611 and of sublessors' interest in the sublease, by: (i) ROBERT M. FUJIMOTO and GEORGE ICHIKAWA, Co-trustees under that certain Trust Agreement, dated December 30, 1955, created by Takeyo Fujimoto for the benefit of Fred Y. Fujimoto; (ii) George Ichikawa and Margaret F. Gota, Co-trustees under that certain Trust Agreement, dated December 30, 1955, created by Takeyo Fujimoto for the benefit of Robert M. Fujimoto; and (iii) HAILI INVESTMENT CORPORATION, a Hawaii corporation, as Assignors, and Hawaii Planing Mill, Ltd. a Hawaii corporation, as Assignee. The effect of this transaction was to restore an undivided 60% interest in General Lease No. 3611 to Hawaii Planing Mill, Ltd.
10. At its meeting of September 12, 1997, under agenda item D-27, the Board consented to the assignment of sublease from MARGARET Y. ODA and DONN W. CARLSMITH, Personal Representatives of the Estate of Elaine K. Kono, Deceased to the HIRAOKI, ELAINE AND LAWRENCE KONO FOUNDATION.
11. At its meeting of October 24, 2014, under agenda item D-6, the Board consented to the extension of lease for a period of 10 years, amendment of Terms and Conditions Regarding Allowed Use, Assignment and Sublease Provisions for General Lease No. S-3611.
12. At its meeting of August 14, 2015, under agenda item D-2, the Board consented to the assignment of 20% interest in General Lease No. S-3611 from the HIRAOKI, ELAINE AND LAWRENCE KONO FOUNDATION, as Assignor to HAWAII PLANING MILL, LTD. dba HPM Building Supply, as Assignee. The effect of this transaction was to restore an additional undivided 20% interest in General Lease No. 3611 to Hawaii Planing Mill, Ltd., which resulted in Hawaii Planing Mill, Ltd. owning an undivided 80% interest in the lease with the remaining 20% held by Successor Trustee under that Certain Indenture of Trust Created March 26, 1955 by Nelle Wood Carlsmith for the Benefit of Carl Wendell Carlsmith, Edith Mattson Carlsmith and Donn Wendell Carlsmith.

ASSIGNMENT:

The subject assignment is a result of the effort of the principal Lessee, Hawaii Planing Mill, Ltd. (HPM), to consolidate ownership of the lease. As noted in the Remarks section above, in 1974 HPM assigned General Lease No. S-3611 to four trusts and a corporation, each of whom held and undivided 20% interest. Over the years HPM reacquired an undivided 80% in the lease as explained above. The subject transaction represents HPM's reacquisition of the remaining undivided 20% interest in the lease.

Despite the various forms of ownership of the lease that have existed since the lease was issued, it has always been HPM who operated its business of wholesaling and retailing

building materials on the premises. At its meeting of June 12, 2020, under Item D-3, the Board of Land and Natural Resources approved a 30-year extension of this lease and two others that HPM holds on adjacent State lands. The split ownership of General Lease No. S-3611 has caused delays in finalizing a development agreement covering the improvements that HPM must make to the lease premises in order to receive the lease extensions. Approval of the subject assignment request will allow HPM and the Department to finalize the development agreement and lease extensions.

HPM is current with the terms and conditions of the lease including rent and insurance. There are no other outstanding rental reopening issues.

RECOMMENDATION:

That the Board consent to the assignment of an undivided 20% interest in General Lease No. S-3611 from Kandy J. Carlsmith, Successor Trustee under that Certain Indenture of Trust Created March 26, 1955 by Nelle Wood Carlsmith for the Benefit of Carl Wendell Carlsmith, Edith Mattson Carlsmith and Donn Wendell Carlsmith, as Assignor, to Hawaii Planing Mill, Ltd. dba HPM Building Supply, as Assignee, subject to the following:

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

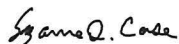
Respectfully Submitted,



KEH

Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

RT

