

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

October 8, 2021

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

KAUAI

After-the-Fact Consent to Sublease under General Lease No. S-4023, T&Y, LLC, Lessee and Sublessor, to (i) The Kauai Food Bank, Inc., (ii) Sutada Thongkul dba Hesse Flooring and (iii) Eyes Wide Open Productions LLC, Sublessees, Nawiliwili, Lihue, Kauai, Tax Map Key: (4) 3-2-004: portions of 011.

Consent to Assign General Lease No. S-4023 from T & Y, LLC, Assignor, to The Kauai Food Bank, Inc., Assignee; Nawiliwili, Lihue, Kauai, Tax Map Key: (4) 3-2-004:011.

Consent to Assignment of Sublessor's Interest in Subleases from T & Y, LLC, Assignor, to The Kauai Food Bank, Inc., Assignee, Covering the Subleases to (i) Sutada Thongkul dba Hesse Flooring and (ii) Eyes Wide Open Productions LLC, Sublessees, Nawiliwili, Lihue, Kauai, Tax Map Key: (4) 3-2-004: portions of 011.

APPLICANTS AND REQUEST:

After-the-Fact Consent to Subleases:

T & Y, LLC, Hawaii limited liability company, as Lessee and Sublessor, to (i) The Kauai Food Bank, Inc., Hawaii nonprofit corporation, (ii) Sutada Thongkul dba Hesse Flooring, Individual, (iii) Eyes Wide Open Productions LLC, Hawaii limited liability company, Sublessees.

Consent to Assignment of Lease:

T & Y, LLC, Hawaii limited liability company, as Assignor, to The Kauai Food Bank, Inc., Hawaii nonprofit corporation, as Assignee.

Consent to Assignment of Subleases:

If the Board consents to the assignment, the subleases will be assigned from T & Y, LLC, assignor, to The Kauai Food Bank, Inc., assignee, who will then be the lessee/sublessor as follows:

The Kauai Food Bank, Inc., Hawaii nonprofit corporation, as Lessee and Sublessor, to (i) Sutada Thongkul dba Hesse Flooring, Individual, (ii) Eyes Wide Open Production LLC, Hawaii limited liability company, Sublessees.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Nawiliwili situated at Lot 9, Nawiliwili Harbor Lots, Nawiliwili, Lihue (Puna), Kauai identified by Tax Map Key: (4) 3-2-004:011, as shown on the attached map labeled Exhibit A.

AREA:

0.618 acre, more or less.

ZONING:

State Land Use District:	Urban
County of Kauai CZO:	General Industrial

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Business purposes.

SUBLEASE CHARACTER OF USE:

Business purposes.

TERM OF LEASE:

Sixty-five (65) years, commencing on November 17, 1966 and expiring on November 16, 2031. Last rental reopening occurred on November 17, 2016; next rental reopening is scheduled for April 1, 2023.

TERM OF AFTER-THE-FACT SUBLEASES:

The Kauai Food Bank, Inc.:

Commencing on May 1, 2003 for a period of five (5) years after the consent to sublease is executed.

Sutada Thongkul dba Hesse Flooring:

Commencing on August 1, 2006 for a period of five (5) years after the consent to sublease is executed.

Eyes Wide Open Productions LLC:

Commencing on May 1, 2012 for a period of five (5) years after the consent to sublease is executed.

ANNUAL LEASE RENTAL:

\$53,600.00

ANNUAL AFTER-THE-FACT SUBLEASE RENTAL:

\$81,792.00¹

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

Based on a review of the lease and sublease, staff has applied the sublease rent participation policy, approved by the Board on May 26, 2000, Item D-24, and amended January 26, 2012, Item D-14, as follows.

If the lessee subleases improvements not owned by the State, the Board shall not receive any portion of sublease rents from subleasing improved space unless: (i) that right and method of calculation are specifically stated in the lease, or (ii) participation in sublease rents is warranted considering the age of the improvements (including but not limited to the extent to which the improvements have been depreciated or amortized), lessee's expenditures to maintain the same in relation to sublease revenues, and the extent to which the lessee actually occupies and uses the lease premises for its own business.

Staff has reviewed the lease and has not found any provision stating a specific right and method of calculation. KFB will continue to occupy a significant portion of the lease property for its own business. In addition, staff will evaluate whether to recommend cancelling and reissuing a direct lease to KFB under 171-46.1. Staff's position on sublease rent participation will depend in part on whether KFB is willing to commit to converting a small capacity cesspool to septic within three (3) years (well ahead of the Department of Health deadline for all cesspools to be converted by 2050).

¹ If the Board consents to the assignment, annual sublease rental will change from \$81,792.00 to \$47,232.00, as The Food Bank, Inc. (KFB) will become the lessee/sublessor. Therefore, deducting the portion KFB pays for the sublease rental.

CONSIDERATION:

\$275,010.00

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 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 General Exemption Type 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," Part 1, Item 40 that states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing."

The proposed assignment and subleases are de minimis actions that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR.

DCCA VERIFICATION:

T & Y, LLC:

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

The Kauai Food Bank, Inc.:

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

Eyes Wide Open Productions LLC:

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

Sublessee Sutada Thongkul dba Hesse Flooring is a natural person and is not required to register with the DCCA.

REMARKS:

General Lease No. S-4023 was issued to Tetsuro Maeda and Yoshio Hiranaka dba T & Y for fifty-five (55) years, commencing on November 17, 1966 and expiring on November 16, 2021. The rent was set at \$1,200.00 per annum, which was to be paid quarterly on the 17th of February, May, August, and November of each year. The character of use was for business purposes.

On October 24, 1969, under Item F-18, the Board of Land and Natural Resources (Board) approved the extension of construction deadline under General Lease No. S-4023. Construction of the building was later completed in 1971.

On May 14, 1982, under Item F-17, the Board approved the consent to sublease from Tetsuro Maeda and Yoshio Hiranaka dba T & Y Partners, sublessor, to Interisland Distributors and Waialele Wine Company, sublessees.

On February 26, 1999, under Item D-3, the Board approved consented to a sublease from Tetsuro Maeda and Yoshio Hiranaka, dba T & Y Partners, sublessor, to KFB and Hesse Carpets, subleasee.¹ There was no sublease rent participation. The sublease to the KFB expired on April 31, 2003, while the sublease to Hesse Carpets expired on July 31, 2006.

On August 26, 2011, under Item D-2, the Board consented to assignment of General Lease No. S-4023 from Tetsuro Maeda and Yoshio Hiranaka dba T & Y Partners, assignor, to T & Y, LLC, assignee.

On March 8, 2013, under Item D-2, the Board consented to a 10-year extension of lease term for General Lease No. S-4023. T & Y, LLC requested an extension of lease to amortize the expense of replacing the entire warehouse roof with new metal roofing and several walls that were corroded at a cost of \$50,000.00.

On October 12, 2020, Kauai District Land Office (KDLO) sent a letter to T & Y, LLC requesting information on potential Large Capacity Cesspools (LCCs) on the leased property. T & Y, LLC responded that there were two (2) cesspools on the property; each cesspool is six (6) feet in diameter and ten (10) feet in depth. There are ten (10) persons who use the restrooms per day. According to the Environmental Protection Agency (EPA), an LCC is one that discharges sanitary waste with human waste and serves: (1) a multiple dwelling; OR (2) a non-residential location with the capacity to serve 20 or more persons per day. Therefore, the cesspools might not qualify as a LCCs under the EPA's criteria.

On July 26, 2021, T & Y, LLC submitted an application to KDLO requesting consent to the assignment of General Lease No. S-4023 from T & Y, LLC, assignor, to KFB, assignee. It was also brought to Staff's attention that T & Y, LLC requires an after-the-fact consent to sublease to KFB and Sutada Thongkul currently dba Hesse Flooring (former sublessees). In addition, an after the fact consent to sublease is required for Eyes Wide Open Productions LLC (new sublessee).

¹ Sutada Thongkul was doing business as Hesse Carpets, but is currently doing business as Hesse Flooring.

KFB is a Hawaii non-profit corporation that receives donated food which is inspected, sorted, and stored on the subject lease property. KFB distributes the donated food to food pantries, homeless shelters, soup kitchens, domestic abuse shelters and rehabilitation centers.

Sutada Thongkul dba Hesse Flooring stores and sells a variety of flooring including carpets, tiles, hardwood floors, laminated wood floors, wall tiles, area rugs, oriental rugs and vinyl floors.

Eyes Wide Open Productions LLC operates a production studio with a green screen, theatre, dance studio, professional recording studio and edit suites.

If the Board consents to the assignment, the subleases will be assigned from T & Y, LLC, assignor, to KFB, assignee, who will then be the lessor/sublessor.

On September 2, 2021, Staff conducted an inspection of the subject lease parcel. See Exhibit B for inspection report.

KFB intends to address the cesspool conversion to an alternative wastewater system. Staff is currently discussing with staff the possibility of cancelling the current lease and requesting a new direct lease from the Board, which would include the condition to immediately begin the cesspool conversion.

The applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION:

That the Board:

- A. Consent after the fact to the subleases by T & Y, LLC, as Sublessor, to (i) The Kauai Food Bank, Inc., (ii) Sutada Thongkul dba Hesse Flooring and (iii) Eyes Wide Open Productions LLC, Sublessees, subject to the terms and conditions cited above and further subject to the following:
 - 1. The Lessee shall submit construction plans of the 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.
- B. Consent to the assignment of General Lease No. S-4023 from T & Y, LLC, as Assignor, to The Kauai Food Bank, Inc., as Assignee, subject to the terms and conditions cited above and further 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.
- C. Consent to the assignment of sublessor's interest in subleases from T & Y, LLC, as Assignor, to The Kauai Food Bank, Inc., as Assignee, covering the Sublease to (i) Sutada Thongkul dba Hesse Flooring and (ii) Eyes Wide Open Productions LLC, Sublessees, subject to the terms and conditions cited above and further subject to the following:
 1. The standard terms and conditions of the most current consent to assignment of sublease form, as may be amended from time to time;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Kurt Yasutake

Kurt Yasutake
Land Agent

[Signature]

[Signature]

APPROVED FOR SUBMITTAL:

RT

Suzanne D. Case

Suzanne D. Case, Chairperson



INSPECTION REPORT
Commercial/Industrial/Resort/Other Business

Exhibit B

General Information

Document Number: GLS 4023 or RPS _____

Character of Use Business purposes

Inspection Date: 9/2/21 Inspection Time: 1:45 pm

Land Agent: Kurt Yasutake

TENANT INFORMATION

Name: T & Y, LLC

Home Phone: _____

Address: 364 Likeke Place

Business Phone: _____

Kapaa, HI 96746

Fax: _____

Contact Person: _____

Contact Phone: _____

SITE INFORMATION

TMK: (4) 3-2-004:011

Area: 0.6181 acres

Site Address: 3285 Waapa Road

Lihue, HI 96766

FISCAL INFORMATION

ITEM	N/A	CURRENT= COMPLIANCE	DEFAULT = NON-COMPLIANCE	COMMENTS
Rent		X		
Liability Insurance		X		
Fire Insurance				
Bond		X		

FIELD INSPECTION RESULTS (refer to Field Inspection Worksheet)

ITEM	N/A	COMPLIANCE	NONCOMPLIANCE	COMMENTS
Subleases			X	Consent to sublease needs to be completed.
Improvements		X		
Premises		X		
Character of Use		X		

Field Inspection Worksheet
Commercial/Industrial/Resort/Other Business

File Review

LICENSES/PERMITS/CONSENTS

ITEM	DLNR Approval Docs in File			COMMENTS/NOTES/LISTS
	N/A	YES	NO	
Subletting			X	Staff currently working on consent to sublease.
Improvement Construction Buildings		X		note deadlines for % completion
Improvement Construction Other structures/misc.		X		note deadlines for % completion

Field Inspection

ITEM	SATISFACTORY?			COMMENTS/NOTES
	N/A	YES	NO	
SUBLEASES				Staff currently working on consent to sublease.
Consents approved			X	
Use adheres to lease purpose		X		The building and property appeared to be in satisfactory condition.
IMPROVEMENTS				
Buildings/Residences: roof		X		
paint		X		
exterior		X		
interior		X		
<u>Structures:</u> roads		X		The parcel is in satisfactory condition overall.
walkways		X		
fencelines		X		
others				
PREMISES				The premises appeared to be orderly.
clean, sanitary, orderly		X		
appropriate storage/use of hazardous materials		X		
CHARACTER OF USE		X		
adheres to lease purpose				

ITEM	SATISFACTORY?			COMMENTS/NOTES
	N/A	YES	NO	
Other:				



General Lease No. S-4023 to T & Y, LLC; TMK: (4) 3-2-004:011



The Kauai Food Bank, Inc. (KFB)



Inside KFB Warehouse



KFB Refrigerator



KFB Board Room



KFB Sink Area



Utility Sink Behind KFB



Bathroom Behind KFB



Side of KFB



Sutada Thongkul dba Hesse Flooring



Inside Hesse Flooring



Hesse Flooring Office



Bathroom Behind Hesse Flooring (Shared with Eyes Wide Open Productions LLC)



Eyes Wide Open Productions LLC



Eyes Wide Open Productions LLC Dance Studio



Eyes Wide Open Productions LLC Office



Eyes Wide Open Productions LLC Recording/Video Editing Studio