

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

February 25, 2022

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

Hawaii

Lessee's Request for a Six-Month Rent Payment Adjustment under General Lease
No. S-5844, WHR LLC, Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-
1-001:012 and 2-1-005:013, 016, 017, 027, 032, 046

LESSEE:

WHR LLC, a Hawaii limited liability company.

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended.

LOCATION AND AREA:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax
Map Key: (3) 2-1-01:012 and 2-1-005:013, 016, 017, 027, 032, 046, as shown on the
attached map labeled Exhibit A.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

LEASE CHARACTER OF USE:

Hotel and golf course purposes.

TERM OF LEASE:

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

ANNUAL RENTAL:

\$580,270.44 minimum base rent or 2% of gross revenues, whichever is greater.
Semi-annual payments of \$290,135.22 due in advance on February 1, and August 1, as required in the lease terms.

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>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

REMARKS:

Background:

On May 28, 2021, under agenda item D-4, the Lessee appeared before the Board for failure 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. Interest in the amount of \$34,816.20 and late charges \$350.00 (at \$50 per month) 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 was \$615,536.64. Additionally, a performance bond of \$1,160,541.00 was 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. The Lessee's total monetary obligation to the Department was therefore \$1,776,077.64.

The Lessee had requested a deferral of the ground rent under GL5844 from August 1, 2020 through January 31, 2021. 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 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. The Lessee then proposed to withdraw the golf course parcel from the lease in exchange for a reduction of rent and a repayment plan for the balance owed to the State.

After much discussion during the meeting, the Board approved staff's recommendation with the following amendments, 1) adjust interest and late fees by deferring the rent for two months. 2) Lessee to pay all delinquent rent along with adjusted interest and late fees totaling \$617,023.42 on or before 6/04/21. 3) Post full amount of the Performance Bond on or before 6/30/21. 4) defer any decision on the withdrawal of the golf course at this time.

Request:

By email dated January 21, 2022, Ed Bushor, representing the Lessee, WHR LLC (Lessee or WHR), requested authorization to pay rent in the amount of \$290,135.22 due on February 1, 2022, in installments. Mr. Bushor is requesting that, in order to keep current with the ground rent, the Lessee be allowed to make six (6) equal monthly payments beginning February 1, 2022.

In his email, Mr. Bushor explained that the current cashflow from the hotel operation is sufficient to pay a monthly amount, but Lessee is unable to pay the entire six months in advance. The Lessee also indicated it is agreeable to paying interest on the declining balance due at the rate of 12% per annum set by the lease.

In a letter dated January 25, 2022 (Exhibit B), Chairperson Suzanne Case explained to Mr. Bushor, the Department has no authority to enter into any agreements for deferral of rent payments without approval from the Board of Land and Natural Resources (BLNR). In her letter, the Chairperson also stated that the Board, at its meeting of May 28, 2021, under agenda item D-4, approved a two-month rent deferral without interest to the Lessee to help mitigate the impacts of COVID-19.

In the past eight years default notices have been sent to General Lease No. S-5844 on the following occasions as indicated in the table below.

<i>DATE</i>	<i>TYPE OF DEFAULT</i>	<i>RESULT</i>
1/10/14	Performance Bond – expired 1/11/14	Bond received 10/06/14
1/10/14	Construction/Improvement Bond – Kilauea Tower \$1,115,356	Bond received 10/06/14
6/03/16	Rent 2/01/16 – 7/31/16 \$40,135.22	Payment received 6/22/16
9/15/16	Rent – 8/01/16-1/31/17 \$290,185.22	Payments received \$293,186.57 - 11/09/16 \$ 5,000.00 - 11/23/16 \$ 5,000.00 - 11/29/16
6/25/18	Unauthorized improvements ¹	7/17/18 improvements were removed
11/13/20	Delinquent Wastewater account	12/28/20 – Repayment plan w/CoH WW Branch

¹ On 6/18/18, 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.

11/05/20	Rent 8/01/20 -1/31/21 \$290,135.22	Payment made prior to 6/04/21
1/25/21	Performance Bond – expired 11/07/20	Bond received 6/23/21
4/30/21	Rent 2/01/21 – 7/31/21 \$290,135.22	Payment made prior to 6/04/21

The Lessee is requesting the rent for the current period to be paid over the six months. Lessee intends to make monthly principal and interest payments of \$50,062.36 for six months commencing February 1, 2022 through July 31, 2022 (Exhibit C). Additionally, the Lessee will continue to make semi-annual rental payments of \$290,135.22 beginning August 1, 2022.

This request is being presented to the Board at the behest of the Lessee. The Lessee is compliant with the lease terms and conditions including insurance and performance bond. However, a notice of default will likely issue soon for the shortage in the rent payment received for February 2022, unless the Board approves the requested installment plan.

RECOMMENDATION:

- A. That the Board consider the Lessee's request for a six-month payment plan of the lease rent and accept Lessee's proposal for paying the rent on an installment basis on the conditions cited above which are by this reference incorporated herein, and further subject to the following terms and conditions:
1. The total amount is \$290,135.22.
 2. Lessee shall make monthly principal and interest payments of \$50,062.36 for six months commencing February 1, 2022 to July 31, 2022.
 3. The interest rate applicable to the payments under the installment plan is 12% per annum.
 4. Prepayments may be made without penalty.
 5. Any delinquent installment payment will be charged a \$50.00 late fee for any month or portion thereof a payment remains unpaid. In addition, a late installment payment shall constitute a default under the lease. If such default is not cured within 60 days after delivery to Lessee of a notice of default, the lease shall be subject to forfeiture in accordance with its terms and conditions.

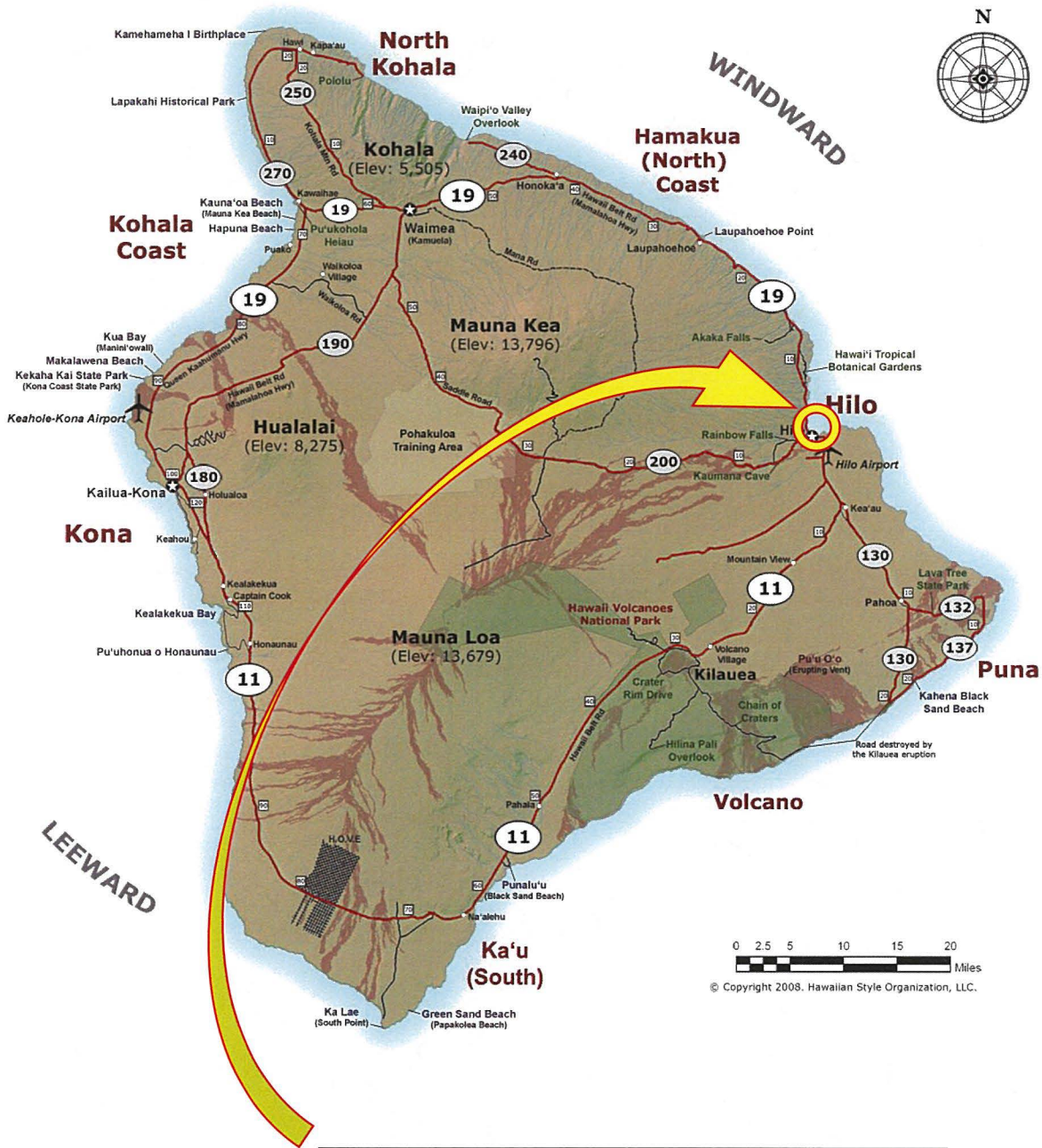
Respectfully Submitted,

for *Gordon C. Heit*
Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:

RT *Suzanne D. Case*
Suzanne D. Case, Chairperson

EXHIBIT A



GL S-5844 - Hilo, Hawaii

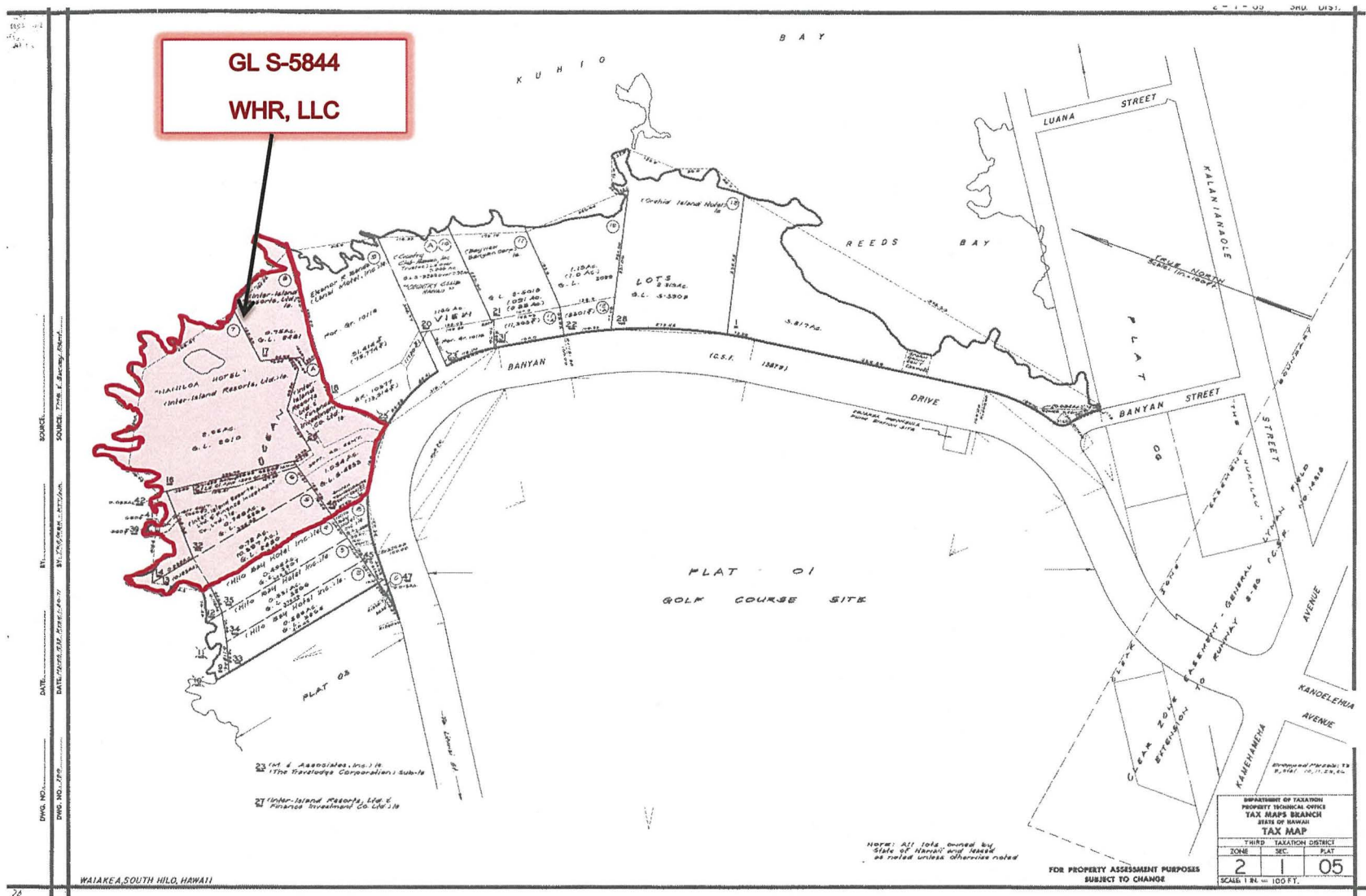


EXHIBIT A

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

January 25, 2022

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

Dear Mr. Bushor:

Your email of January 21, 2022 requested that WHR LLC (WHR) be allowed to pay its semi-annual rent payment in the amount of \$290,135.22 due on February 1, 2022 in six monthly installments from February 1 to July 1, 2022, instead of full payment on February 1.

Please be advised the Department has no authority to enter into agreements for deferral or payment of rent over installments without approval of the Board of Land and Natural Resources (Board). At its meeting of May 28, 2021, under agenda Item D-4, as amended, the Board already approved a two-month rent deferral without interest for WHR to help mitigate the impacts of COVID-19. Any request for additional relief such as an installment or payment plan for 2022 would require Board approval at an open, public meeting. The Board would be required to charge interest on any unpaid rent at the rate provided for in the lease, which is 12% per year. If WHR is interested in a payment plan under these terms, we can present a request to the Board, who is the ultimate decision-maker.

Please contact Land Division Assistant Administrator Kevin Moore at 587-0426 or kevin.e.moore@hawaii.gov if you have any questions.

Sincerely,

Suzanne D. Case

RT

Suzanne D. Case
Chairperson

C: HDLO

EXHIBIT B

GL S-5844 Rent Payment Calculation

Purchase & Financing Information

Amount (In Dollars)

Percentage Down: %

Length of your loan: Months

Annual Interest Rate: %

Explain ☒ Show me the calculations and amortization

Calculations:

[Start Over](#)

Down **\$0.00**

Payment:

Amount **\$290,135.22**

Financed:

Monthly **\$50,062.36**

Payment: (Principal & Interest ONLY)

Amortization For Monthly Payment: **\$50,062.36** over .5 years

Month	Interest Paid	Principal Paid	Remaining Balance
1	\$2,901.35	\$47,161.01	\$242,974.21
2	\$2,429.74	\$47,632.62	\$195,341.60
3	\$1,953.42	\$48,108.94	\$147,232.66
4	\$1,472.33	\$48,590.03	\$98,642.62
5	\$986.43	\$49,075.93	\$49,566.69
6	\$495.67	\$49,566.69	\$0.00

EXHIBIT C