

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

May 26, 2023

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

Hawaii & Oahu

Consent to Transfer of 100% Stock Ownership of Parent Company of InSite Towers Development, LLC, Lessee, to American Towers, LLC, Transferee, Amended General Lease Nos.:
S-4130, Humuula, North Hilo, Hawaii, Tax Map Key: (3) 3-9-002: pors.;
S-4223, Mount Kaala, Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-7-003: pors.;
S-4588, Kalawahine and Opu, Honolulu, Oahu, Tax Map Key: (1) 2-5-019: pors.; and
S-4614, Humuula, North Hilo, Hawaii, Tax Map Key: (3) 3-8-001: por. 1 & 10

Issuance of Management Right-of-Entry Permit Retroactive to January 1, 2023 and Revocable Permit to InSite Towers Development, LLC for Telecommunication Station and Telecommunication Tower Facilities Purposes, Humuula, North Hilo, Hawaii, Tax Map Key: (3) 3-9-002: pors.

APPLICANTS:

InSite Towers Development, LLC, a Delaware limited liability company, (InSite), as Lessee/Transferor; and
American Towers, LLC, a Delaware limited liability company, (ATC), as Transferee

LEGAL REFERENCE:

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

TABLE 1: LOCATION/ TAX MAP KEY/ AREA/ ANNUAL RENT/ TERM OF LEASE:

GL No.	Location	Tax Map Key:	Area*	Annual Rent	Term
S-4130	Humuula, North Hilo, Hawaii	(3) 3-9-002: pors.	1.047 acres Exhibit A	21,000	01/01/68-12/31/22
S-4223	Mount Kaala, Mokuleia, Waialua, Oahu	(1) 6-7-003: pors.	9,200 sf Exhibit B	39,000	03/01/66-02/28/31
S-4588	Kalawahine and Opu, Honolulu, Oahu	(1) 2-5-019: pors.	56,653 sf Exhibit C	39,300	06/06/73-06/05/38
S-4614	Humuula, North Hilo, Hawaii	(3) 3-8-001: por. 1 & 10	7,500 sf Exhibit D	18,250	12/01/77-11/30/42
			Total:	\$117,550	

*The areas shown include the facility sites as well as appurtenant easements and access roads, where applicable. Refer to the exhibits referenced in this column for maps of the subject lease sites attached hereto.

TABLE 2: TRUST LAND STATUS/ CHARACTER OF USE/ RENTAL REOPENINGS:

GL No.	Trust Land Status***	Character of Use	Rental Reopenings	
			Last	Next
S-4130	Section 5(b) DHHL: No	Microwave radio station and other radio communications purposes	01/01/13	N/A Lease Expires 12/31/22
S-4223	Section 5(b) DHHL: No	Microwave station and other radio communication facilities, together with appurtenant easements purposes	03/01/16	03/01/26
S-4588	Section 5(b) DHHL: No	Maintenance and operation of radio-telephone transmission facilities purposes	06/06/18	06/06/28
S-4614	Section 5(b) DHHL: No	Microwave radio relay station site purposes	12/01/12	12/01/22

*** “Section 5(b)” refers to Section 5(b) lands of the Hawaii Admission Act. “DHHL: No” means the lease premises are not former sugar cane lands, and the Department of Hawaiian Home Lands is therefore not entitled to 30% of the revenues as provided for under the Hawaii State Constitution.

CONSIDERATION:

GL No. S-4130: \$47,000
GL No. S-4223: \$41,100
GL No. S-4588: \$82,000
GL No. S-4614: \$44,000
Total : \$214,100

RECOMMENDED PREMIUM ON ASSIGNMENTS:

None. See discussion in remarks section.

RECOMMENDED PREMIUM ON SUBLEASES:

30% of gross sublease revenues for the first sublease under each lease, 40% of gross sublease revenues for the second sublease under each lease, and 50% of gross sublease revenues for the third and subsequent subleases under each lease.

RENT FOR RIGHT-OF-ENTRY AND REVOCABLE PERMITS:

\$1,750 per month. The right-of-entry permit will be made retroactive to January 1, 2023 as InSite has continued to pay rent for the premises covered by General Lease No. S-4130 that expired on December 31, 2022. The proposed rent is the last rent paid under the lease. The right-of-entry and revocable permits are interim measures until InSite's request for a new direct lease can be brought to the Board.

DCCA VERIFICATION:

TRANSFERROR:

Place of business registration confirmed: YES X NO __
Registered business name confirmed: YES X NO __
Good standing confirmed: YES X NO __

TRANSFEE:

Place of business registration confirmed: YES __ NO X
Registered business name confirmed: YES __ NO X
Good standing confirmed: YES __ NO X

ATC's acquisition of InSite does not require ATC to register with DCCA. InSite will remain as the lessee and InSite's registration with DCCA is in good standing.

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 General Exemption Type 1, Part 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,” and Item 40 that states, “Leases of state land involving negligible or no expansion or change of use beyond that previously existing.” The subject request is a de minimis action that will probably have minimal or no significant effect on the environmental and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR.

REMARKS:

Assignments:

The subject leases were issued to Hawaiian Telephone Company by direct negotiation in the 1960s, 70s, and 80s for communication purposes (the specific character of use is indicated in Table 2 above). Hawaiian Telephone Company underwent numerous name changes over the years and is now known as Hawaiian Telcom, Inc. (“HTI”).

At its meeting of October 24, 2014, under Item D-9, the Board of Land and Natural Resources (Board) approved the assignment of the subject leases from HTI to InSite and also approved the amendment of the subject leases to update the provisions relating to assignment and subletting, and to provide that the State shall receive a percentage of new sublease rents.

Recently, InSite contacted the department and advised that 100% of the ownership of InSite was transferred to ATC on or about December 23, 2020. Although ownership of InSite was transferred to ATC, InSite continues to exist as a business and will remain the lessee going forward.

Pursuant to the Assignments section of the subject leases, as amended:

“ . . . the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium. In addition, the subject stock purchase agreement is subject to the assignment premium policy.”

Accordingly, the assignment of the subject leases requires the approval of the Board.

Premium on Assignment:

As noted above, in 2014 the Board approved the amendment of the leases to update the assignment and other provisions. As a result of the amendment, this transaction must be analyzed under the Assignment Lease Premium Evaluation Policy now included in the amended lease. Staff calculated assignment premiums pursuant to the policy and determined that depreciation exceeded the value of any potential premium due:

TABLE 3: PREMIUM ON ASSIGNMENT CALCULATION

GL No.	Consideration Received	Consideration Paid	Premium
S-4130	\$47,000	-\$50,751	\$53,942
S-4223	\$41,100	\$141,766	-\$51,896
S-4588	\$82,200	\$283,327	-\$103,690
S-4614	\$44,000	-\$36,792	\$43,232
Total:	\$214,300	\$337,550	-\$58,412

See Exhibit E attached for details.

InSite acquired all four leases (and many others on private property) from HTI as part of a single transaction, and ATC acquired ownership of InSite as a single transaction. Certain assets in such a transaction can actually be assigned a negative value. According to ATC:

The purchase price for these sites is based on tower cash flow (TCF) which is calculated as rental income less expenses. There are adjustments to purchase prices made based on the characteristics of the sites. For example, a deduction could be made if the term of a ground lease is short, or if repairs must be made to the tower or access road, or if liens that must be paid off, etc. Any obligation that the buyer may assume would be a deduction from the purchase price [for the transaction as a whole].

Accordingly, staff believes it is appropriate to evaluate the four leases as a package and is recommending that the Board not assess an assignment premium for the transaction due to the overall negative value assigned to the assets. As discussed below, the State participates in existing sublease rents and will additionally participate in future subleases that the Board consents to in accordance with the terms and conditions of the amended leases.

The status of rental reopenings of the subject leases is as shown in Table 2 above. There are no outstanding rental reopening issues.

Right-of-Entry and Revocable Permit:

General Lease No. S-4130 expired on December 31, 2022, InSite has applied for a new lease. Staff is processing this request but recommending the Board approve the issuance of a right-of-entry and revocable permit as an interim measure while the new lease is negotiated as the process can be time consuming. InSite is registered as a public utility with the Public Utility Commission. Therefore, direct negotiation is authorized by HRS Section 171-95 and staff will return to the Board with a direct lease request at a later date. InSite continues to pay base and sublease rent at the rates dictated by the expired lease and continues to maintain and operate the site.

Subleases:

Table 4 contains a detailed breakdown of the current subleases.

TABLE 4: EXISTING SUBLEASES:

GL No.	Sublessee	Sublease Term	Annual Sublease Rent	Options to Extend
S-4130	Cellco Partnership, d/b/a Verizon Wireless	10/1/18 – 9/30/23	\$32,174	8 periods of 5 years each
S-4223	Hawaiian Electric Company, Inc.	05/01/20 – 04/30/25	\$3,654	Up to 04/30/30
S-4223	Hawaiian Telcom, Inc.	12/30/14 – 12/29/24	\$492	4 periods of 5 years each
S-4588	Hawaiian Telcom. Inc.	12/30/14 – 12/29/24	\$492	4 periods of 5 years each
S-4588	Hochman Hawaii One	Expired 10/31/21	\$28,108	Currently MTM pending renewal after assignment
S-4588	Salem Media of Hawaii, Inc.	04/27/2022 – 04/26/2027	\$21,900	5 periods of 5 years each
S-4588	Blow Up, LLC	12/14/2018 – 10/13/2023	\$13,113	5 periods of 5 years each
S-4588	United States Secret Service	03/01/2019 – 02/29/2024	\$7,648	2 periods of 5 years each
S-4614	Hawaiian Telcom, Inc.	12/30/14 – 12/29/14	\$246	4 periods of 5 years each
S-4614	T-Mobile West LLC	6/1/20 – 5/31/25	\$37,900	5 periods of 5 years each
		Total:	\$145,727	

In addition to the existing subleases listed above, ATC anticipates requesting approval of at least two new subleases should the Board approve the assignment of the subject leases.

On August 9, 2013, Item D-1, the Board approved that the State share in the gross revenues from these subleases at the rate of 30% for the first sublease under each lease, 40% for the second sublease under each lease, and 50% for the third and subsequent subleases under each lease.¹

No agency or community comments were solicited as there is no change in use under any of the leases.

InSite is wholly owned and directly held by InSite Issuer, LLC, a Delaware limited liability company, (“InSite Issuer”), who is an affiliate of InSite Wireless Group, LLC (“IWG”), a Delaware limited liability company, which owns and operates nearly 800 wireless communications sites through the United States, Puerto Rico, and the U.S. Virgin Islands. IWG also has a distributed antenna system (“DAS”) division which specializes in the design, installation, operation, and maintenance of DAS infrastructure solutions in convention centers, hotels and casinos, airports, sports stadiums, and transit systems.

InSite and InSite Issuer were both affiliates and subsidiaries of IWG prior to the stock purchase on or about December 23, 2020.

InSite is in compliance with the terms and conditions of the subject leases in regard to the rent, liability insurance, and performance bond.

Neither ATC or InSite has had a lease, permit, easement, or other disposition of State lands terminated within the last five years due to non-compliance and such terms and conditions.

No agencies or interest groups were solicited for comments, as there will be no changes in the existing use of the property.

Staff’s recommendation is to consent to the transfer of 100% stock ownership from InSite to ATC.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will

¹ There is one exception to the 30-40-50% participation standard. For GL S-4223, the Board already approved sublease rent participation for the first sublease in the amount of 50% at its meeting of October 28, 2011, Item D-27. Accordingly, for GL S-4223, the sublease rent participation will be 50% for the first sublease, 40% for the second sublease, and 50% for the third and subsequent subleases.

probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis action.

2. Consent to the Transfer of 100% Stock Ownership of Parent Company of InSite Towers Development, LLC, Lessee, to American Towers, LLC, relating to the subject leases subject to the following:
 - A. The standard terms and conditions of the most current consent form, as may be amended from time to time; and
 - 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.
3. Authorize the issuance of a management right-of-entry permit to InSite Towers Development, LLC for telecommunication station and telecommunication tower facilities purposes retroactive to January 1, 2023 under the conditions and rent set forth above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Find that the issuance of a revocable permit to InSite Towers Development, LLC for telecommunication station and telecommunication tower facilities purposes under the conditions and rent set forth above will serve the best interests of the State and authorize the issuance of the permit at Humuula, North Hilo, Hawaii, Tax Map Key: (3) 3-9-002: pors., 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.

Respectfully Submitted,

Luke Sarvis

Luke J. Sarvis
Project Development Specialist

APPROVED FOR SUBMITTAL:



RT

Dawn N. S. Chang, Chairperson

EXHIBIT A



GL 4130 - Ookala

TMK: (3) 3-9-002: pors.



EXHIBIT B



GL 4223 – Mt. Kaala

TMK: (1) 6-7-003: pors.



EXHIBIT C



GL 4588 – Tantalus
TMK: (1) 2-5-019: pors.

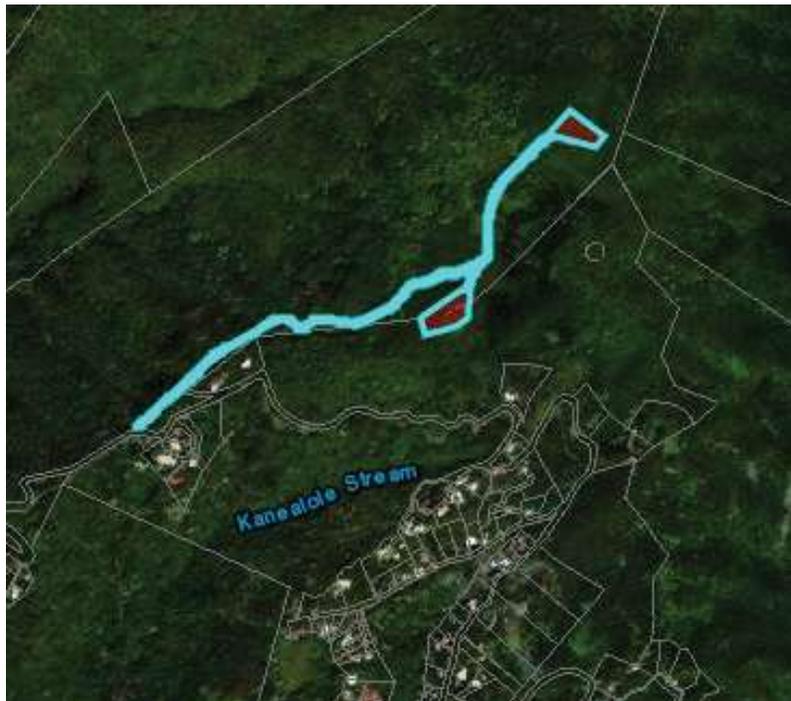
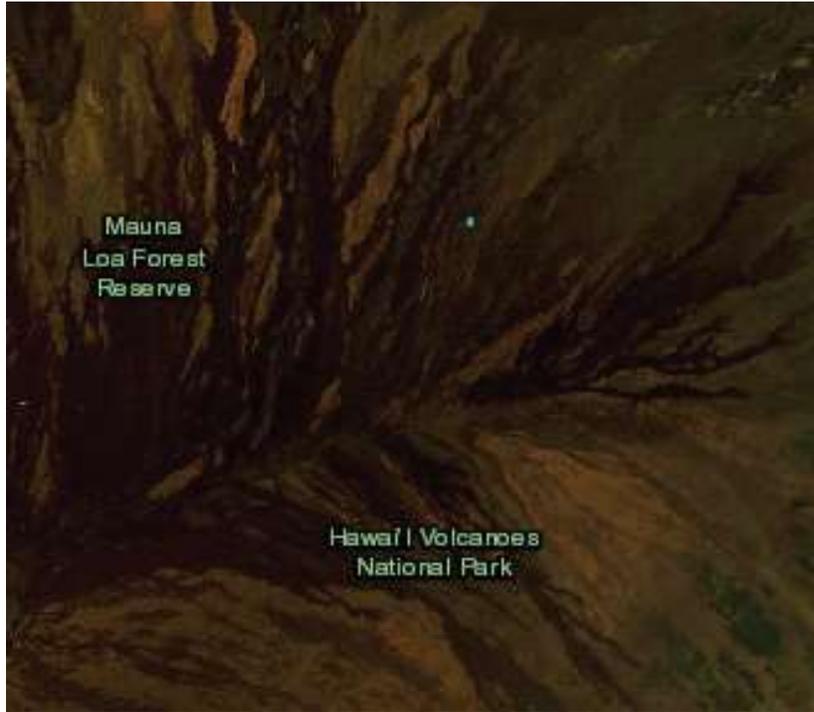


EXHIBIT D



GL 4614 – Humuula

TMK: (3) 3-8-001: por. 1 & 10

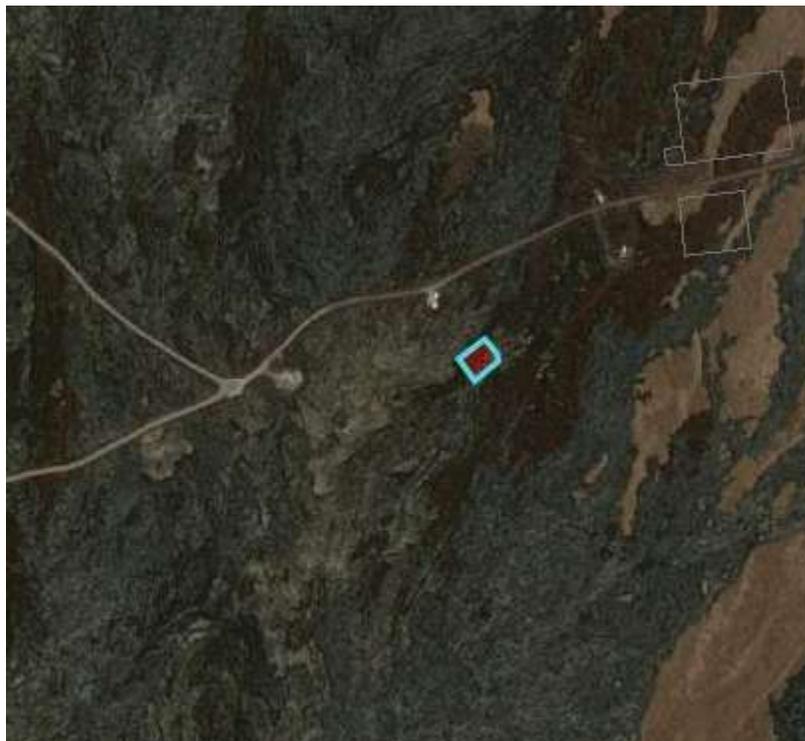


EXHIBIT E

Table 1	Assignment of Lease Premium Calculation <u>GL S-4130: American Tower Corporation</u>		
1 Net Consideration rcvd:	\$47,000		
2 Consideration Paid:	\$ (50,751)		
CPI (most recent)	296.8		2022
CPI (base year)	237.4		2014
Expired Term	98		mos.
Whole Term	660		mos.
3 Adjusted Value Consideration:			
Actual Cost		x <u>CPI (most recent)</u> CPI (base year)	
\$ (50,751)	x	<u>296.8</u> 237.4	= (\$63,449)
Depreciation			
(\$63,449)	x	<u>98</u> 660	= (\$9,421)
Adjusted Depreciated Value of Consideration			
(\$63,449) +		(\$9,421) =	(\$72,871)
Premium Calculation			
Net Consideration rcvd			\$ 47,000
4 Excess			\$ 119,871
Premium Percentage	x		<u>45%</u>
5 Premium			<u>\$53,942</u>

Table 1

Assignment of Lease Premium Calculation
GL S-4223: American Tower Corporation

1 Net Consideration rcvd:	\$41,100		
2 Consideration Paid:	\$ 141,766		
CPI (most recent)	301.8		2023
CPI (base year)	237.4		2014
Expired Term	103	mos.	
Whole Term	780	mos.	

3 Adjusted Value Consideration:

Actual Cost		x <u>CPI (most recent)</u>	
		CPI (base year)	
\$141,766	x	<u>301.8</u> =	\$180,223
		237.4	

Depreciation

\$180,223	x	<u>103</u> =	\$23,799
		780	

Adjusted Depreciated Value of Consideration

\$180,223	-	\$23,799	=	\$156,424
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Premium Calculation

Net Consideration rcvd		\$	41,100
4 Excess		\$	(115,324)
Premium Percentage	x		<u>45%</u>
5 Premium			<u>(\$51,896)</u>

Table 1

Assignment of Lease Premium Calculation
GL S-4588: American Tower Corporation

1 Net Consideration rcvd:	\$82,200		
2 Consideration Paid:	\$283,327		
CPI (most recent)	301.8		2023
CPI (base year)	237.4		2014
Expired Term	103	mos.	
Whole Term	780	mos.	

3 Adjusted Value Consideration:

Actual Cost	x	$\frac{\text{CPI (most recent)}}{\text{CPI (base year)}}$	
\$283,327	x	$\frac{301.8}{237.4} =$	\$360,186

Depreciation

\$360,186	x	$\frac{103}{780} =$	\$47,563
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Adjusted Depreciated Value of Consideration

\$360,186 -	\$47,563 =	\$312,623
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Premium Calculation

Net Consideration rcvd		\$	82,200
4 Excess		\$	(230,423)
Premium Percentage	x		<u>45%</u>
5 Premium			<u>(\$103,690)</u>

Table 1

Assignment of Lease Premium Calculation
GL S-4614: American Tower Corporation

1 Net Consideration rcvd:	\$44,000	
2 Consideration Paid:	\$ (36,792)	
CPI (most recent)	296.8	2023
CPI (base year)	237.4	2014
Expired Term	103	mos.
Whole Term	780	mos.

3 Adjusted Value Consideration:

Actual Cost	x	<u>CPI (most recent)</u>	=	
		CPI (base year)		
(\$36,792)	x	<u>296.8</u>	=	(\$45,998)
		237.4		

Depreciation

(\$45,998)	x	<u>103</u>	=	(\$6,074)
		780		

Adjusted Depreciated Value of Consideration

(\$45,998)	+	(\$6,074)	=	(\$52,072)
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Premium Calculation

Net Consideration rcvd		\$	44,000
4 Excess		\$	96,072
Premium Percentage	x		<u>45%</u>
5 Premium			<u>\$43,232</u>