

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

August 25, 2023

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

HAWAII

Consent to Assign General Lease No. S-6101, LEE-C CORP., Assignor,
to O'NY E'SY, LLC, Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key:
(3) 2-2-032:064.

APPLICANT:

LEE-C CORP., a Hawaii corporation, dba Ken's House of Pancakes, as
Assignor, to O'NY E'SY, LLC, a Hawaii limited liability company, as Assignee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands, situated at Waiakea, South Hilo, Hawai'i, identified
by Tax Map Key: (3) 2-2-032:064, as shown on the attached map labeled Exhibit
A.

AREA:

14,753 square feet, 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:

Commercial purposes.

TERM OF LEASE:

30 years, commencing on January 1, 2017 and expiring on December 31, 2046.
The next rental reopening will be January 1, 2037.

ANNUAL RENTAL:

\$14,280.00 per annum for the first ten-year period.
\$18,560.00 per annum for the second ten-year period.

CONSIDERATION FOR ASSIGNMENT:

\$10.00

DCCA VERIFICATION:

ASSIGNOR: LEE-C CORP. dba Ken's House of Pancakes

| | | |
|---|--------------|---------------|
| 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> |

ASSIGNEE: O'NY E'SY, LLC

| | | |
|---|--------------|---------------|
| 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> |

HRS CHAPTER 343:

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 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 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 of lease is as de minimis action 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.

REMARKS:

On August 23, 2016, a lease of 14,753 square feet of commercial State land was awarded at public auction to LEE-C CORP., dba Ken's House of Pancakes (Lessee), for the upset rent of \$14,280.00 per year. This lease became effective on January 1, 2017 for a term of thirty (30) years. The lease provides that the Lessee shall use or allow the premises leased to be used solely for business and/or commercial purposes as allowed under County of Hawaii zoning.

Currently, the property is being used for a beef jerky retailer, and the Assignee intends to have the current beef jerky retailer remain in operation following the assignment.

The Lessee is a family-owned corporation, and this assignment is a basic transfer of holdings from one business entity to a related business entity. According to Department of Commerce and Consumer Affairs, Debra Ching Maiava is listed as the "Director/Secretary/Treasurer" for LEE-C CORP. and is listed as a "Member" for O'NY E'SY, LLC. A telephone conversation with Ms. Maiava confirmed that she is owner of O'NY E'SY, LLC. Ms. Maiava's mother, Francis Lee Ching, is the owner of LEE-C CORP., dba Ken's House of Pancakes. The reason for the assignment is to keep the entity separate from LEE-C CORP. (Ken's House of Pancakes) in case the family wants to sell one or the other. Although the lease includes a provision for evaluating whether a premium should be assessed in the event of an assignment, the assignment in this case is being made for a consideration of ten dollars (\$10.00), with the result that no assignment premium is assessed on the transaction.

On August 3, 2021, staff sent the Lessee a Notice of Default for performance bond. Our Central Office received a continuation certificate for lease bond from Island Insurance Companies for \$28,560.00 expiring on June 9, 2022 and a letter was sent to the Lessee rescinding the Notice of Default on August 23, 2021. The Lessee is currently in compliance with all lease terms and conditions (i.e. rent, insurance, performance bond, etc.) and has 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.

The rent for the first ten-year period (January 1, 2017 – December 31, 2027) of the lease and the subsequent ten-year period (January 1, 2027 – December 31, 2037) was appraised as part of the determination of the upset rent for public auction by Hastings, Conboy & Associates, Ltd. and will be reopened for the third ten-year period on January 1, 2037. Rent for the second ten-year period will step up 30% over the first ten-year period based on the appraiser's opinion of a 2.5% per year, compounded annually, rent escalation factor, making the annual rent \$18,564.00 for that period.

No agency or community comments were solicited as the subject request is basically a transfer of holdings from one family business entity to a related entity and does not change the size or use of the subject State lands.

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, the proposed action will 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 activity.
2. Consent to the assignment of General Lease No. S-6101, LEE-C CORP., dba Ken's House of Pancakes, as Assignor, to O'NY E'SY, LLC, as Assignee, subject to the following:
 - A. The standard terms and conditions of the most current consent to assignment 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,

Dan Gushiken

Dan K. Gushiken
Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

gch

ken

RT

Assignment of GLS-6101 (LEE-C CORP.) to O'NY E'SY, LLC

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Exhibit A