

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

October 13, 2023

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

Ref. No.: 23HD-009

HAWAII

Consent to Sublease General Lease No. S-3599, Central Supply, Inc., Lessee, to Top Notch Automotive, Inc., Sublessee; Lot 22 Kanoelehua Industrial Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-050:090.

APPLICANT:

Central Supply, Inc., a Hawaii corporation, as Sublessor, to Top Notch Automotive, Inc. (TNA), a Hawaii Corporation, as Sublessee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Lot 22 Kanoelehua Industrial Lots, Waiakea situated at South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-050:090, as shown on the attached map labeled Exhibit A.

AREA:

Total Area of State Parcel: 33,750 square feet more or less.

Subleased Area for TNA: 5,650 square feet, more or less¹

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

¹ Sublessee utilized a 4,500 sq. ft. portion of building 31B Makaala St. and a parking area fronting the building of approximately 1150 sq. ft.

LEASE CHARACTER OF USE:

Limited Industrial purposes.

SUBLEASE CHARACTER OF USE:

TNA: Wholesale distribution purposes.

TERM OF LEASE:

Original Term: Commencing on January 16, 1961 and expiring on January 15, 2016.

Extension: Commencing on January 16, 2016 and expiring on January 15, 2026.

Last rental reopening occurred on January 16, 2011; Rent was reopened for extended term from January 16, 2016 to January 15, 2026.

TERM OF SUBLEASE:

Original Term was for three years, commencing on May 16, 2019 and expiring on May 15, 2022. Current Term is for an additional three years, commencing on May 16, 2022 and expiring on May 15, 2025.

ANNUAL LEASE RENTAL:

\$27,843.75 per annum.

ANNUAL SUBLEASE RENTAL:

TNA: \$54,000.00 per annum (\$4,500.00 per month).

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

Refer to Exhibit B attached for premium/sandwich calculations.

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 Exemption Type No. 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 sublease is a 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.

DCCA VERIFICATION:

SUBLESSOR:

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>

SUBLEESSEE:

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:

General Lease No. S-3599 (GLS-3599) was issued to Kaneko Jelly, 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).

The original lease, which began on January 16, 1961 and expires on January 15, 2016, restricted the use of the 33,750 square foot property to jelly processing purposes. A warehouse building encompassing an area of approximately 6,000 square feet was constructed in compliance with the building requirements of the lease in 1961. An additional warehouse building approximately 4,800 square feet in area was constructed in 1977.

At its meeting of August 12, 1977, under agenda item F-1-b, the Board consented to the assignment of GLS-3599 from H.H. Jelly, Inc., formerly known as Kaneko Jelly, Ltd., as Assignor, to Norman Koshiyama, as Assignee. At the same meeting, under item F-1-c, the Board consented to the assignment of GLS-3599 from Norman Koshiyama, as Assignor, to Big Island Builders, Inc., as Assignee.

Big Island Builders, Inc. had financial problems and First Hawaiian Bank assumed the lease in foreclosure and, in accordance with the Finding of Fact, Summary Judgment and Interlocutory Decree of Foreclosure in Civil Case No. 87-023, GLS-3599 was assigned from Wayne Metcalf III, the appointed and acting commissioner, to Tadao Roy Van Dyke Kimura, Trustee of the Tadao Roy Van Dyke Kimura Trust dated January 22, 1982, as Assignee, and consented to by the Board at its meeting of July 8, 1988 under item F-1-f.

At its meeting of January 26, 1996, under item F-1-f, the Board consented to the assignment of GLS-3599 from Tadao Roy Van Dyke Kimura, Trustee of the Tadao Roy Van Dyke Kimura Trust dtd. January 22, 1982, as Assignor, to Vince M. Kimura, as Assignee.

Furthermore, at its meeting of April 9, 1999, under item D-25, the Board consented to the assignment of lease from Vince M. Kimura, as Assignor, to Central Supply, Inc. (CSI), as Assignee. CSI is a plumbing supplies business that is owned by Vince M. Kimura.

At its meeting of March 14, 2014, under item D-7, the Board consented to the ten (10) year extension of GLS-3599, pursuant to Act 207, Session Laws of Hawaii 2011, in order to amortize the cost of improvements to the property, which included the replacement of the roof along with interior office renovations to the warehouse 31A at a cost in excess of \$40,100.00. Under the same agenda item D-7, the Board also approved an amendment of GLS-3599 to change the character of use from "jelly processing" to "uses allowed under the current County of Hawaii Zoning Code, ML-20, limited industrial", and to update the lease provision titled "Assignments, etc." (Section 22 of the lease) with the current language used by the Department of Attorney General for assignment and subleasing provisions.

In relation to the ten-year extension, at its meeting of August 12, 2016, item D-2, the Board approved the (1) the mediated settlement of rent dispute for GLS-3599 of \$0.825 per square foot or \$27,843.75 per year, and (2) changed the start date of the new rent to the first day of the ten-year extension of the lease from March 14, 2014 to January 16, 2016.

Sublease:

Top Notch Automotive, Inc. (TNA) requested to sublease a portion of the existing improvements on the property, specifically 4,500 square feet of the 6,000 square foot warehouse, identified as building 31B, the parking area fronting building 31B (3,500 sq. ft.) and also the outside area along the south side of the building 31B having dimensions of approximately 10' x 115' (1,150 sq. ft.). TNA is requesting a three (3) year term commencing on May 16, 2019 and expiring on May 15, 2022, for wholesale distribution purposes. TNA has also requested to extend its sublease term for an additional three (3) years, commencing on May 16, 2022 and expiring on May 15, 2025. See Exhibit A for reference.

CSI uses a large portion of the lease premises for the storage of inventory for its plumbing supply business. As noted above, the total parcel area is 33,750 square feet and CSI uses approximately 24,600 square feet (or about 73% of the parcel area) for its own business operations. Also as noted above, CSI invested \$40,100 in the premises in 2014 to qualify for a 10-year lease extension. GLS-3599 will expire on January 15, 2026 and CSI has expressed interest in

requesting a thirty (30) year extension of said lease, in which new annual market rent will be determined. Under applicable lease extension laws, a lessee needs to commit to improvements valued at no less than 30% of the appraised value of the existing buildings. The tax assessed value of the improvements in the property is \$790,000.00. While tax assessed value is not necessarily equivalent to appraised value, 30% of the tax assessed value is \$237,000.00, meaning that CSI will need to make a substantial investment in the property to be eligible for a further lease extension under Chapter 171, HRS.

Staff has considered adjustments to the Annual Lease Rent based on the Board's Sublease Rent Participation Policy. TNA is requesting a sublease from May 16, 2019 through May 15, 2025. Staff is recommending increasing the annual lease rent for the period of May 16, 2019 through May 15, 2025 by \$536.24, making the total annual lease rent for that period \$28,379.99. Please see the attached Memorandum on In-House Recommendation – Sublease Participation Calculation (Exhibit B).

This request for sublease is after-the-fact as CSI explains it inadvertently overlooked the lease terms requiring Board consent to subleasing. Prior to the extension of GLS-3599 in 2016, CSI was not required to get Board approval for subleasing a portion of the property. As part of the 10-year extension approved in 2014, the lease terms were amended to update the assignment and subleasing provision to the current lease language, which now requires CSI to obtain Board approval for any subleases. CSI is compliant with all other lease terms and conditions.

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 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 sublease under General Lease No. S-3599 between Central Supply, Inc., as Sublessor, and Top Notch Automotive, Inc., as Sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:
 - a. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
 - b. Apply a one-time charge of \$2,234.33 for the sublease terms past due from May 16, 2019 through July 15, 2023 and increase the

annual lease rent an additional \$536.24/yr. for the period beginning July 16, 2023 through May 15, 2025 or, if the sublease is terminated earlier than March 15, 2025 for any reason, then through the last day of such shorter sublease term;

- c. Review and approval by the Department of the Attorney General; and
- d. 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

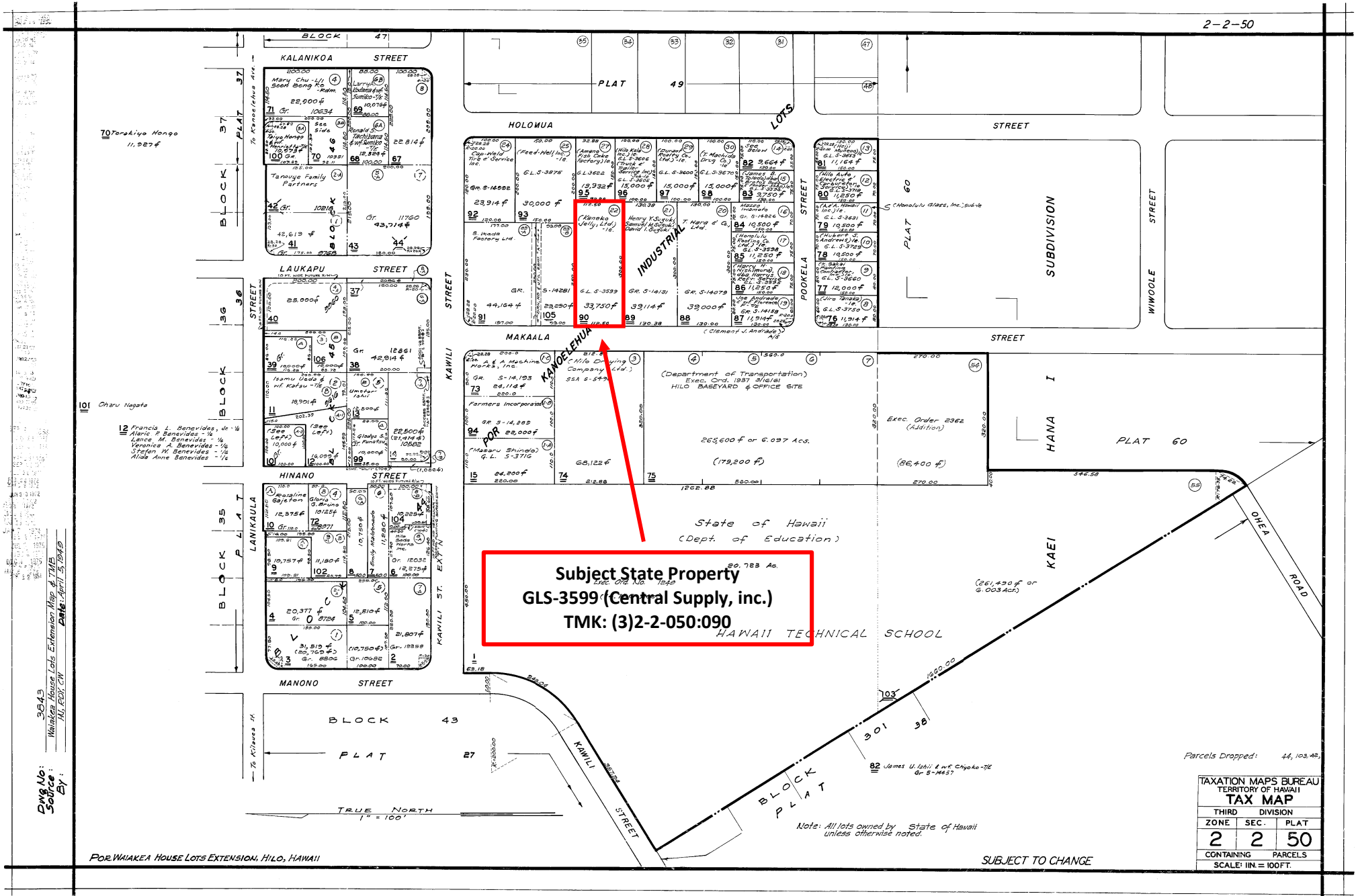
JCH

KM

RT

GLS-3599 Central Supply, Inc. TMK: (3)2-2-050:090

Exhibit A



Dwg No: 3643
Source: Waialeale House Lots Extension Map & T.M.P.
By: ALL FDC/CW Date: April 5, 2019

FOR WIALEALE HOUSE LOTS EXTENSION, HILO, HAWAII

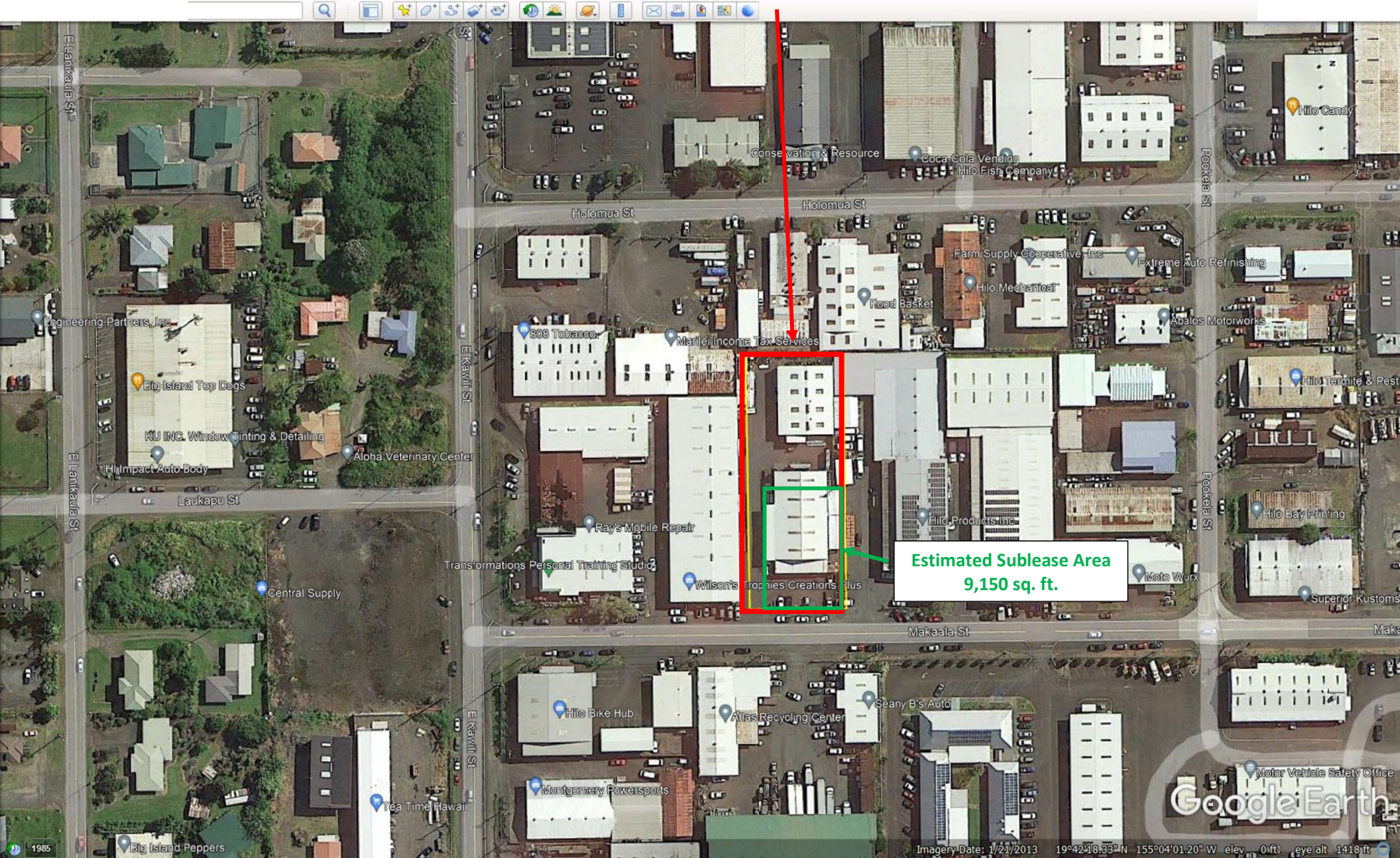
TAXATION MAPS BUREAU TERRITORY OF HAWAII		
TAX MAP		
THIRD	DIVISION	
ZONE	SEC.	PLAT
2	2	50
CONTAINING PARCELS		
SCALE: 1"IN = 100FT.		

SUBJECT TO CHANGE

Note: All lots owned by State of Hawaii unless otherwise noted.

Parcels Dropped: 44, 103, 48

Subject State Property
GLS-3599 (Central Supply, inc.)
TMK: (3)2-2-050:090



Estimated Sublease Area
9,150 sq. ft.

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



DAWN N. S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

Exhibit B



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

75 Aupuni Street, Room 204
Hilo, Hawaii 96720
PHONE: (808) 961-9590
FAX: (808) 961-9599

October 13, 2023

MEMORANDUM

TO: Dawn N. S. Chang, Chairperson

THROUGH: Russell Y. Tsuji, Division Administrator

FROM: Dan Gushiken, Land Agent

SUBJECT: In-House Recommendation – Sublease Participation Calculation

GL No.: S-3599
Lessee/Sublessor: Central Supply, Inc.
Sublessee: Top Notch Automotive, Inc.
Location: Waiakea, South Hilo Hawaii
Lease Area: 33,750 square feet
(Total building area – 10,800 sq. ft.)
Sublease Area: 9,150 square feet (4,500 sq. ft. building space; 1150 sq. ft. outside space, 3,500 sq. ft. parking space)
Tax Map Key: (3) 2-2-050:090
Char. of Use: Limited industrial purposes

Pursuant to the “Revision to Sublease Rent Participation Policy” adopted by the Board at its meeting of July 9, 1982, Item F-9, as amended at its meeting of May 26, 2000, Item D-24, and further amended at its meetings of January 26, 2001, Item D-8, and August 24, 2012, Item D-14, approved as amended, staff have been requested to provide an in-house evaluation of the sublease premium due to the State for the subleasing of a portion of GL S-3599, Central Supply, Inc., Lessee/Sublessor to Top Notch Automotive, Inc., Sublessee. The sublease documents and information provided by Lessee were analyzed and staff applied the policy approved by the Land Board on as noted above.

The following calculations are for the requested sublease term beginning May 16, 2019 through May 15, 2022 and May 16, 2022 through May 15, 2025. The calculation allows for the return on investment for improvements and allowances for property insurance, General Excise Tax, and Real Property Tax.

CALCULATION:

Annual Lease Rent	\$27,843.75
Annual Sublease Rent	\$54,000.00
Less G. E. Tax (4.712%)	<u>\$ 2,544.48</u>
Effective Annual Sublease Ground Rent	<u>\$51,455.52</u>
Less Real Property Tax ¹ (2022 taxes)	\$ 3,604.79
Insurance ²	\$ 1,896.39
Investment Return ³	<u>\$14,448.22</u>
Total Allowances	<u>\$18,249.40</u>
Income to Land:	\$51,455.52
Less Total Allowances:	- \$18,249.40
Less Annual Lease Rent	- <u>\$27,843.75</u>
Total:	\$ 5,362.37
	\$ 5,362.37
	<u> x 0.10</u>
Annual Rent Increase (10%)⁴	<u>\$ 536.24</u>

Based on the analysis above, staff is recommending that the Board approve a one-time charge of **\$2,234.33⁵** for the sublease terms past due from May 16, 2019 through July 15, 2023 and increase the annual lease rent an additional **\$536.24/yr.** for the period beginning July 16, 2023 through May 15, 2025 or, if the sublease is terminated earlier than March 15, 2025 for any reason, then through the last day of such shorter sublease term.

Approved/Disapproved:



Dawn N. S. Chang, Chairperson

Sep 15, 2023

Date

¹ Prorated area of property being subleased (9,150 sq. ft.) out of the total area (33,750 sq. ft.) is 27.11% of the total 2022 property tax (\$13,296.89) listed by the Hawaii County Real Property Tax Office.

² Prorated area of property being subleased (9,150 sq. ft.) out of the total area (33,750 sq. ft.) is 27.11% of the total insurance premium of the property (\$6995.15).

³ Prorated area of the portion of building being subleased (4,500 sq. ft.) out of total area of building space on property (10,500 sq. ft.) is 43% of the 2023 market building value based by the Hawaii County Real Property Tax Office (\$790,600), times 4.25% return on investment.

⁴ CSI has expanded its business with a new retail store in the same area. They are currently utilizing the State leased property for additional inventory storage but is left with extra space that is not necessary for their operations. So, to maximize the leased property, CSI is subleasing a portion of the front warehouse to help the small business community, and not merely for profit. Therefore, staff is recommending an increase in annual lease rent of only 10% of the excess in revenue after lease rent and allowances are considered.

⁵ \$536.24/yr. additional lease rent (annually) times the past due sublease periods of May 16, 2019 to July 15, 2023 (4 years, 2 months).