

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

January 10, 2025

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

OAHU

Assess Lease Assignment Premium in Connection with the Board's Prior Action of August 9, 2024, Item D-6:

Consent to Assign General Lease No. S-6089, BRE Turtle Bay Resort, LLC, a Delaware limited liability company, Assignor, to North Shore Bay Owner LLC, a Delaware limited liability company, Assignee, Kahuku, Koolaupoko, Oahu, Tax Map Keys: (1) 5-7-006:026, 027 & 032;

Consent to Sublease General Lease No. S-6089, from North Shore Bay Owner LLC, a Delaware limited liability company, Sublessor, to North Shore Bay TRS LLC, a Delaware limited liability company. Sublessee, Kahuku, Koolaupoko, Oahu, Tax Map Keys: (1) 5-7-006:026, 027 & 032; and

Authorize the Chairperson to Execute an Estoppel for General Lease S-6089, Kahuku, Koolaupoko, Oahu, Tax Map Keys: (1) 5-7-006:026, 027 & 032.

BACKGROUND:

At its meeting of August 9, 2024, under agenda Item D-6, the Board of Land and Natural Resources (Board) approved, as amended, a request for consent to assignment, consent to sublease (post-assignment) and delegation to the Chairperson to execute an estoppel of the subject lease referenced above. Below is a link to the submittal:

<https://dlnr.hawaii.gov/wp-content/uploads/2024/08/D-6.pdf>

Regarding the assignment premium, the lease is subject to the standard Assignment of Lease Evaluation Policy. According to lease purchase agreement between BRE Turtle Bay Resort LLC (Assignor) and North Shore Bay Owner LLC (Assignee), the purchase price of the lease is \$250,000.00. Given that there are no improvements in the Leased Premises, staff would usually recommend assessing a premium percentage of 45% (based on the elapsed lease term) of the fair market value of the lease. Using the purchase price of the lease resulted in an assignment premium in the amount of \$112,500.00. However, due to the unique nature of this lease, staff believed that it was in the State's best interest to

conduct an independent appraisal to determine the fair market value of the lease and base the assignment premium on that value rather than solely relying on the purchase price. The Board concurred and required the Assignor to pay for an independent appraisal to be procured by the State to determine the fair market value of the subject lease. If the appraisal valued the lease higher than \$250,000.00 resulting in a premium higher than \$112,500.00, the Assignor shall make up the difference within 30 days of this present Board action assessing the premium. If the difference is not paid to the State within the time allowed, any approvals granted pursuant to this action shall be subject to rescission by the Board.

As explained below, staff now has the information in need to make a recommendation to the Board on a lease assignment premium.

REMARKS

Staff procured an appraiser to determine the amount a willing buyer would pay a willing seller for the assignment of the leases. The appraisal report was completed and dated November 20, 2024, and reviewed and accepted by the Department on November 21, 2024. The appraisal estimated the fair market value of GL S-6089 to be \$270,000.00.

Given that the appraised market value of the lease is higher than the purchase price, which was considered by the Board in its initial approval, staff recommends that the assignment premium be increased accordingly to reflect the appraised fair market value. As calculated previously, since there are no improvements on the leased premises, staff recommends an assignment premium equal to 45% (based on the elapsed lease term) of the appraised fair market value of the lease (\$270,000.00), in the amount of **\$121,500.00**, an increase of \$9,000.00 over the previously approved amount.¹ The calculation sheet for the assignment premium is attached as **Exhibit A**. The Assignor has accepted the appraised value of the lease as well as the recommended assignment premium amount. As of the writing of this submittal, the parties have not yet closed the lease assignment transaction. If the transaction closes prior to the Board's approval of the assignment premium, a payment in the amount of \$112,500.00 will be made out of escrow to the Department. Upon the Board's approval, the Assignor has agreed to pay the difference (\$9,000.00) within 30 days.

In the meantime, Staff will work on completing execution of the documents allowing the parties to close the assignment and sublease transactions, subject to the requirement that the lease assignment premium be paid within 30 days of the Board's approval of the lease assignment premium. Upon timely payment of the total amount of the approved lease assignment premium, this obligation regarding the consent to assignment will be deemed satisfied.

RECOMMENDATION:

That the Board:

¹ The amount of the assignment premium based on the lease purchase price is \$112,500.00. That amount was deposited into escrow on August 13, 2024.

1. Authorize the assessment of a lease assignment premium on the Consent to Assignment of General Lease No. S-6809 from BRE Turtle Bay Resort LLC, as Assignor, to North Shore Bay Owner LLC, Assignee, in the amount of \$121,500.00 and direct that the premium be paid out of escrow to the State of Hawaii, Department of Land and Natural Resources, within 30 days of the Board's action on this matter, or the consent to assignment of leases dated September 25, 2024 shall be rescinded.
2. Acknowledge that, upon the Department's receipt of the \$121,500.00 lease assignment premium within the time allowed under recommendation 2.a.a of the Board's August 9, 2024 approval of the consent to assignment of General Lease S-6089 from BRE Turtle Bay Resort LLC, as Assignor, to North Shore Bay Owner LLC, as Assignee, the payment condition set forth shall be deemed fully satisfied and the rescission clause therein of no further force or effect.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

RT

Table 1 Assignment of Lease Premium Calculation
 GL S-6089: BRE Turtle Bay Resort LLC

Lease
 11/1/2015 - 10/31/2080

Year Blt. NA - no improvements

| | | |
|-------------------|-----------|------|
| Net Consideration | \$270,000 | |
| Improvement Cost | \$ - | |
| CCI (most recent) | 315.7 | 2024 |
| CCI (base year) | 250.8 | 2015 |
| Expired Term | 110 | mos. |
| Whole Term | 780 | mos. |

1 Adjusted Cost of Improvements or Renovations

| | | | | |
|-------------|---|---|---|-----|
| Actual Cost | x | $\frac{\text{CCI (most recent)}}{\text{CCI (base year)}}$ | = | |
| \$0 | x | $\frac{315.7}{250.8}$ | = | \$0 |

2 Depreciation

| | | | | |
|-----|---|-------------------|---|-----|
| \$0 | x | $\frac{110}{780}$ | = | \$0 |
|-----|---|-------------------|---|-----|

3 Adjusted Depreciated Cost of Improvements or Renovations

| | | | |
|-------|--|-------|-----|
| \$0 - | | \$0 = | \$0 |
|-------|--|-------|-----|

4 Premium Calculation

| | | |
|-------------------------------|-----|------------|
| Net Consideration | | \$ 270,000 |
| Adjusted Cost of Imp. | \$0 | |
| Depreciation | \$0 | |
| Adjusted Deprec. Cost of Imp. | | \$0 |
| Excess | | \$ 270,000 |
| Premium Percentage | x | 45% |
| Premium | | \$121,500 |

EXHIBIT A