

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

August 9, 2013

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

PSF 13HD-091

Hawaii

Consent to Sublease General Lease No. S-3961, Hilo-Hawaiian Associates, Inc., Lessee, to Banyan Gift Shop, LLC, Sublessee, Waiakea, South Hilo, Hawaii; Tax Map Key: (3) 2-1-003:005.

APPLICANT:

Hilo-Hawaiian Associates, Inc., a Hawaii corporation, as Sublessor, Banyan Gift Shop, LLC, a Hawaii limited liability company, as Sublessee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Waiakea situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-003:005, 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:

Resort-hotel purposes and uses accessory or incidental thereto and customarily conducted within resort-hotel areas.

SUBLEASE CHARACTER OF USE:

Gift shop.

LEASE AREA:

5.00 acres, more or less.

SUBLEASE AREA:

Cabana #3 consisting of 727 square feet, more or less.

TERM OF LEASE:

65 years, commencing on April 15, 1966 and expiring on April 14, 2031. Last rental reopening occurred on April 15, 2011; next rental reopening is scheduled for April 15, 2021.

TERM OF SUBLEASE:

5 years, commencing on July 1, 2012 and expiring on June 30, 2017.

ANNUAL RENTAL:

\$133,200

ANNUAL SUBLEASE RENTAL:

07/2012 – 10/2013	\$16,800 base rent
11/2013 – 10/2014	\$17,640 base rent
11/2014 – 10/2015	\$18,522 base rent
11/2015 – 10/2016	\$19,448 base rent
11/2016 – 06/2017	\$20,420 base rent

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

In accordance with item 1c of the current Rent Participation Policy as approved by the Board of Land and Natural Resources at its meeting of August 24, 2012, agenda item D-14, the State will not receive any portion of the sublease rents for the reasons discussed in the remarks section below.

DCCA VERIFICATION:

SUBLESSOR: *Hilo-Hawaiian Associates, Inc.*

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

SUBLEESSEE: *Banyan Gift Shop, LLC*

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

REMARKS:

At its meeting of February 11, 1966, agenda item F-8, the Board of Land and Natural Resources (Board) authorized the sale of a lease of the subject land at public auction for resort-hotel purposes and accessory uses customarily associated with resort-hotel operations. Melsan, Ltd. was the successful bidder for this sixty-five (65) year lease. The hotel opened for business in October 1975.

At its meeting of June 13, 1986, agenda item F-1-c, the Board consented to the assignment of the lease with assumption of mortgage from Melsan, Ltd. to Hilo Hawaiian Associates, a Hawaii Limited Partnership.

At its meeting of July 8, 2010, under agenda item D-3, the Board consented to a 100% transfer of stock ownership of the parent company of Hilo Hawaiian Associates to HH Associates, LLC.

Effective January 1, 2012, Hilo Hawaiian Associates, together with its general and limited partners, merged with and into the common parent of these companies, TN Group Hawaii, Inc. Effective September 10, 2012, TN Group Hawaii, Inc. changed its name to Hilo-Hawaiian Associates, Inc.

At its meeting of October 26, 2012, agenda item D-11, the Board approved in concept an extension of General Lease No. S-3961 pursuant to Act 219, 2011 Session Laws of Hawaii, which allows hotel/resort leases to be extended up to 55 years provided there is a commitment to substantial upgrades to the existing improvements.

At its meeting of July 12, 2013, agenda item D-4, the Board approved a negotiated development agreement and authorized the extension of General Lease No. S-3961 for an aggregate of 55 years (18 years remaining on lease plus an additional 37 years). Under the development agreement, the lessee is committing to \$5,831,442 in tangible upgrades to the property. In addition to the improvements, the lessee will set aside 3% of the total room revenue each year in a FF&E bank account. This amount will be no less than

\$200,000 per year for the length of the extended term of the lease and will be spent in its entirety to maintain the hotel during extended term of the lease.

The most recent rent participation policy approved by the Board at its meeting of August 24, 2012, agenda item D-14 does not indicate that sandwich profits are expected in this situation:

If the lessee subleases improvements not owned by the State, the Board shall not receive any portion of sublease rents from subleasing improved space unless: (i) that right and method of calculation are specifically stated in the lease, or (ii) participation in sublease rents is warranted considering the age of the improvements (including but not limited to the extent to which the improvements have been depreciated or amortized), lessee's expenditures to maintain the same in relation to sublease revenues, and the extent to which the lessee actually occupies and uses the lease premises for its own business.

In this case, the lessee pays fair market rent, owns the improvements and the lease does not specifically state a method for calculating the rent participation. Further, the lessee operates a full-scale resort hotel on the premises and is committing to a substantial investment of \$5,831,442 in construction and refurbishment expenses to upgrade the existing improvements. Staff believes that under the Board policy, lessee's substantial improvements and maintenance expenses in relation to the sublease revenues lead to the conclusion that the State should not participate in lessee's sublease rents.

The lessee is compliant with all terms and conditions of the lease including rent, insurance and performance bond. The lessee has had two notices of default for insurance in the last 5 years; both incidents were cured in a timely fashion.

The last rental reopening occurred on April 15, 2011; the next reopening is scheduled for April 15, 2021. There are no outstanding rental reopening issues.

The sublessee operates a business which is customarily accessory to hotel/resort operations. They occupy existing improvements and any alterations will be minor.

RECOMMENDATION:

That the Board consent to the sublease under General Lease No. S-3961 between Hilo-Hawaiian Associates, Inc., as Sublessor, Banyan Gift Shop, LLC, 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:

1. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;

2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson



EXHIBIT A

