

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

December 13, 2013

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

Ref. No.: GLS-5862

**HAWAII**

Request to Approve Estoppel Certificate Relating to a Mortgage Under General  
Lease No. S-5862, Global Resort Partners, Lessee, Hilton Waikoloa Village,  
Anaehoomalu, South Kohala, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 6-9-07: 14

**APPLICANT AND REQUEST:**

Global Resort Partners, on behalf of JPMorgan Chase Bank, National Association, Bank of America, N.A., German American Capital Corporation, GS Commercial Real Estate LP, Morgan Stanley Mortgage Capital Holdings LLC, collectively as Mortgagee, is requesting approval of an Estoppel Certificate for a \$3,500,000,000.00 mortgage.

**LEGAL REFERENCE:**

Section 171-6 and -22, Hawaii Revised Statutes, as amended.

**LOCATION:**

Portion of Government lands of Hilton Waikoloa Village situated at Anaehoomalu, South Kohala, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/ 6-9-07: 14, as shown on the attached map labeled Exhibit A.

**AREA:**

1.805 acres, more or less, consisting of 1.337 acres, more or less, of filled/ fast land and 0.468 acres, more or less, of submerged land.

**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:**

Lessee shall have the exclusive right to the use, occupancy and quiet enjoyment of the Premises. Lessee shall occupy and use the Premises only for: (1) the operation of

portions of the hotel resort currently known as the Hilton Waikoloa Village Resort; and (2) uses ancillary or related to such operations. Lessee agrees to continue to maintain public access to the beaches adjoining the Hilton Waikoloa Village Resort in accordance with Lessee's prior practices for beach access via the makai beachfront walkway at the Hilton Waikoloa Village Resort and/or the ancient trail on or abutting the Hilton Waikoloa Village Resort's property.

TERM OF LEASE:

65-years, commencing on August 15, 1997 and expiring on August 14, 2062. Last rental step-up occurred on August 15, 2007; next rental step-up is scheduled for August 15, 2017.

ANNUAL RENTAL:

\$71,500.00.

USE OF LOAN PROCEEDS:

The proceeds of the loan shall be used to (a) make distributions or loans to the direct or indirect members of the "Borrower",<sup>1</sup> (b) repay and discharge any existing loans relating to Hilton and its subsidiaries or the "Collateral",<sup>2</sup> (c) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Mortgagee, (d) fund any working capital requirements of the Collateral, and (e) retain any balance to pay the required amounts due under the loan agreement and otherwise to operate and maintain the Collateral.

REMARKS:

In 1986, Mr. Mervin Napeahi, a native Hawaiian, filed an amended complaint in U.S. District Court, alleging, among other things, that the State had breached its fiduciary duties under the public land trust established under section 5(f) of the Admission Act by abandoning approximately 1.75 acres of submerged lands to private landowners of what is now known as the Hilton Waikoloa Village (Hotel). On remand, Judge Ezra found that the property became naturally submerged land by erosion after 1898 and before the physical alteration by the private landowners. Because the lands had eroded naturally, the court determined that the subject submerged lands were ceded lands owned by the State of Hawaii and subject to the Section 5(f) public lands trust. On August 15, 1997, the court ordered the State to seek compensation for the use of the State public lands by the Hotel.

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<sup>1</sup> A group of Hilton Subsidiaries that includes Global Resort Partners (the current ground lessee at Hilton Waikoloa Village).

<sup>2</sup> A group of Hilton owned interests that includes Global Resort Partners Ground Lessee interest in the Hilton Waikoloa Village

On June 13, 2003, the Board of Land and Natural Resources authorized the Department to enter into a non-binding, three-person appraisal process with Lanpar and Ticor for the purpose of determining the fair market value of the State filled lands and the fair market value for the retroactive periods back to January 1, 1986 to advance the Board's October 25, 2002 conceptual resolution.

On September 12, 2003, the Board approved the issuance of a revocable permit to Global Resort Partners (Global), a Hawaii general partnership, to pay interim rent for the use of the subject filled lands. Revocable Permit No. S-7380 was executed on March 4, 2004 and commenced as of January 1, 2004. Rent was \$6,000 per month.

On May 18, 2004, the three-person appraisal panel concluded the following:

Market rent for filled land as of 01/01/1986:	\$82,876/ yr.
Market rent for filled land as of 08/15/1997:	\$55,000/ yr.
Value of filled land as of 10/04/2003:	* (see below)

\* As to the fee simple value of the filled land, the three-person appraisal panel could not arrive at a majority or unanimous conclusion.

After much discussion and negotiation among the three parties, Global agreed to enter into a lease commencing August 15, 1997.

At its meeting of October 12, 2007, Item D-3, the Board consented to a mortgage on the subject property with estoppel certificate. That mortgage was a portion of a larger loan facility in the amount of \$13,000,000,000, which covered additional assets of Global and other Hilton affiliates around the world. The present request for an estoppel certificate is part of another large financing transaction, the proceeds of which will be used to retire a portion of the debt incurred in the 2007 loan. The existing mortgage of record will be replaced or restated by a new mortgage. The new mortgage will be secured by, among other things, a leasehold mortgage in the Hilton Waikoloa Village, as well as other assets of Hilton throughout the world. In the event of default under the leasehold mortgage, the lender would have the typical remedies (i.e., it can foreclose and sell the leasehold interest, enter into a deed in lieu of foreclosure or institute any other remedies afforded under Hawaii law).

Lender requested the Chairperson's consent to the mortgage. On October 14, 2013, the Chairperson approved a Consent to Mortgage of General Lease No. S-5862, Global Resort Partners, Mortgagor, JPMorgan Chase Bank, National Association, Bank of America, N.A., German American Capital Corporation, GS Commercial Real Estate LP, Morgan Stanley Mortgage Capital Holdings LLC, collectively as Mortgagees, in an amount not to exceed \$3,500,000,000.00, pursuant to the authority granted to the Chairperson under HRS Section 171-22.

Global Resort Partners is now requesting Land Board approval of an Estoppel Certificate

in the form of Exhibit B attached hereto on behalf of the various mortgagees named in the aforementioned consent to mortgage. Staff notes that the Estoppel Certificate may contain some provisions that are objectionable to the State, and therefore recommends that the Chairperson be delegated authority to negotiate the terms of the Estoppel Certificate based on the advice of the Department of the Attorney General.

A review of the file indicates that Global was sent three notices of default on September 10, 2010, March 30, 2012 and February 1, 2013, for failure to submit renewal certificates of liability/property insurance or performance bond. Defaults were timely cured. The current certificate of liability insurance expires on December 1, 2013, and the current certificate of fire insurance expires June 1, 2014. Performance bond number 8835935, through Fidelity and deposit Company of Maryland for \$143,000, is in force through August 15, 2062. Global has not been cited for any illegal or unlawful activity on the property.

There are no outstanding rental reopening issues.

RECOMMENDATION: That the Board:

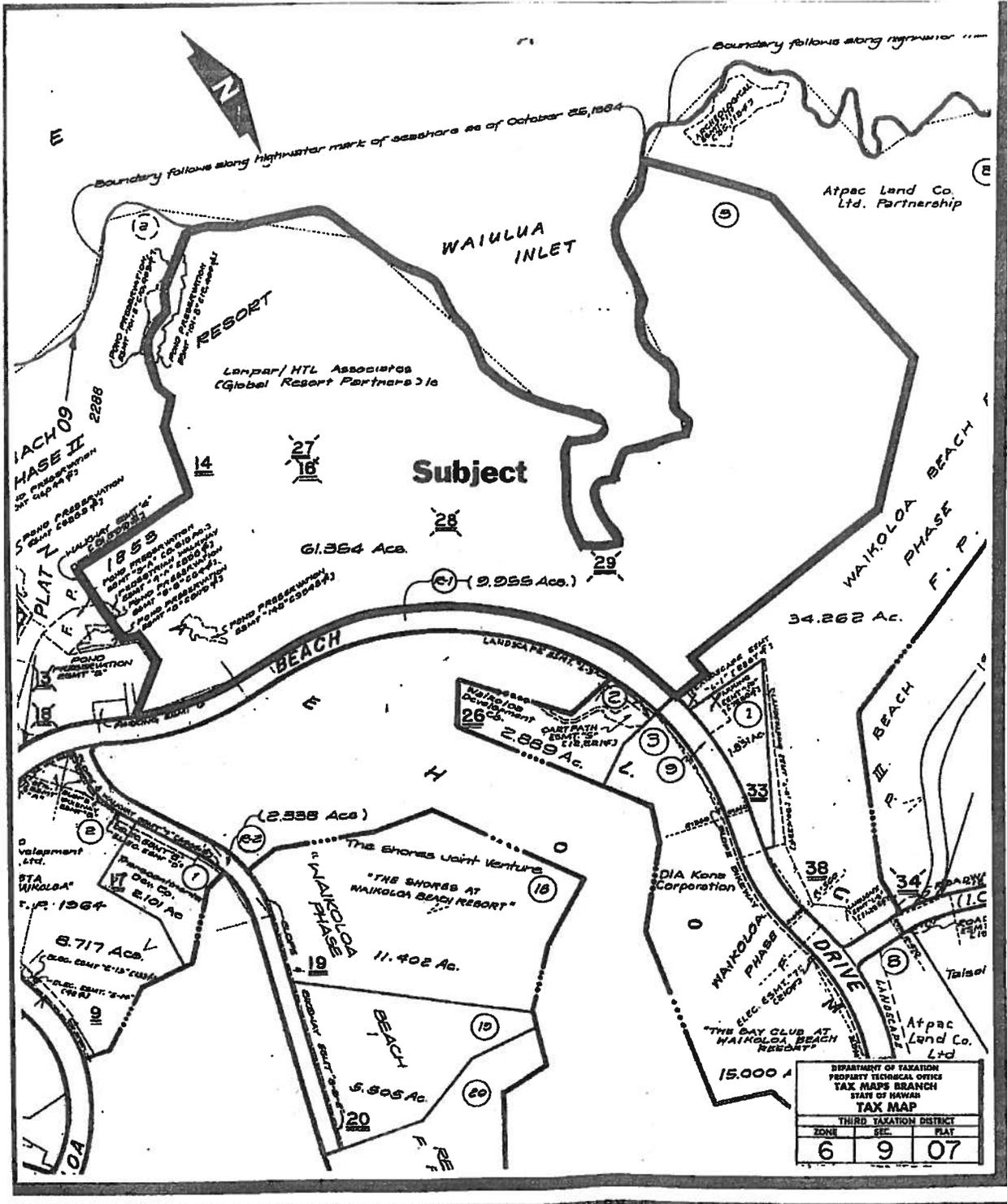
- A. Approve Estoppel Certificate relating to Mortgage under General Lease No. S-5862, Global Resort Partners, as Mortgagor, to JPMorgan Chase Bank, National Association, Bank of America, N.A., German American Capital Corporation, GS Commercial Real Estate LP, Morgan Stanley Mortgage Capital Holdings LLC, Mortgagee, in the form of Exhibit B attached, subject to the following:
1. The Chairperson is hereby delegated authority to negotiate the terms of the Estoppel Certificate based on the advice of the Department of the Attorney General;
  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,

  
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Wesley T. Matsunaga  
Land Agent

APPROVED FOR SUBMITTAL:

  
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William J. Aila, Jr., Chairperson



TAX MAP LOCATING SUBJECT PROPERTY

EXHIBIT A



(2) As far as Lessor is aware, the Lessee is not in default under the Lease in any respect as of this date nor has any event occurred which with the passage of time or the giving of notice would constitute a default;

(3) There are currently no claims for damages, rents due, or other liability which Lessor is aware of against Lessee arising out of the Lease or the performance of the terms, covenants or conditions of the Lease; and

(4) The Lease is in full force and effect and has not been modified, supplemented, extended or amended as of this date.

(5) Without Lessor's consent, Lessee and/or its direct or indirect equityholders may from time to time assign or mortgage the Lease and/or pledge direct or indirect equity interests in Lessee to any one or more lenders to secure debt in any amount (any such lenders, together with their successors and assigns of which Landlord has received written notice, are referred to individually and collectively as "**Leasehold Pledgee**"). A Leasehold Pledgee (and anyone whose title derives directly or indirectly from a Leasehold Pledgee, including a purchaser at any foreclosure sale) may, without Landlord's consent, acquire the Lessee's interest in the Lease or the equity interests in Lessee, as applicable, through foreclosure or assignment in lieu of foreclosure or otherwise, and transfer or assign the Lease or such equity interests, either in its own name or through a nominee, and in any such case the resulting Lessee and its assignees shall thereafter be bound by all applicable terms of the Lease and Leasehold Pledgee (or its nominee, as the case may be), shall thereafter be released from all liability under the Lease without any further consent or notice required.

(6) The Lease may not be further amended or modified, may not be surrendered or terminated, and any purchase option, if any, may not be exercised by Lessee, without the consent of Leasehold Pledgee.

(7) Leasehold Pledgee shall have the right to participate in the adjustment of losses with any insurance company with respect to any damage or destruction of the Property or any improvements thereon and Leasehold Pledgee shall have the right to supervise and control the receipt and disbursements of all insurance proceeds and shall be entitled to all insurance proceeds which are not used to restore the Property to be applied to the reduction of the debt secured by the mortgages and/or pledges in accordance with the relevant loan documents. In the event of any taking of all or any part of the Property, Leasehold Pledgee shall have the right to participate in any settlement discussions, shall have the right to supervise and control the receipt and disbursement of all awards in connection therewith and shall be entitled to all awards which are not used to restore the Property in accordance with the relevant loan documents, to be applied to the reduction of the debt secured by the mortgage and the pledges. Lessee's share of any condemnation or casualty proceeds shall be remitted to Leasehold Pledgee.

(8) In the event of termination of the Lease prior to the expiration of the Term (as defined in the Lease) for any reason (except by reason of condemnation or casualty as provided herein), or in the event the Lease is rejected or disaffirmed pursuant to any bankruptcy, insolvency or laws affecting creditor's rights (collectively, a "**Termination**"), Lessor shall serve upon the

Lender written notice of such Termination, together with a statement of any and all sums which would at that time be due under this Lease but for such Termination, and of all other defaults, if any, under the Lease then known to Lessor. Such Lender shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:

A. Upon the written request of Lender within thirty (30) days after service of such notice of Termination, Lessor shall enter into a new lease with Lender, or its designee;

B. Such new lease shall be effective on the date of termination of the Lease and shall be for the remainder of the Term of the Lease, at the Rent (as defined in the Lease) and upon all the agreements, terms, covenants and conditions hereof. Such new lease shall require the lessee to promptly (and within ten (10) business days in the case of unpaid Rent) perform all unfulfilled obligations of Lessee under the Lease which are reasonably susceptible of being performed by such lessee. Upon the execution of such new lease, the lessee named therein shall within ten (10) business days cure any outstanding monetary defaults and pay all sums which would at the time of the execution thereof be due under the Lease but for such termination and shall pay the reasonable expenses incurred by Lessor in connection with such defaults and termination, and the preparation, execution and delivery of such new lease; and

C. Any such new lease and the leasehold estate thereby created shall, subject to the same conditions contained in the Lease, continue to maintain the same priority as the Lease with regard to any mortgage, including any fee mortgage, on the property, or any part thereof or any leasehold interest therein or any other lien, charge or encumbrance thereon, whether or not the same shall then be in existence.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Chairperson of the Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

By  
Chairperson  
Board of Land and  
Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General

Dated: