

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

PSF No.: 13OD-138

OAHU

Amend Prior Board Action of September 13, 2013 (Item D-7) Consent to Subleases; General Lease No. S-4644, Aiea, Ewa, Oahu, Tax Map Key: (1) 9-8-013:014; Vallejo Venture 99 LLC, Lessee, to the following Sublessees:

Kazi Foods Corporation of Hawaii dba KFC
Calvin K. W. Lau dba Superior Jewelry
El Tres Burros Ltd. dba Chez Sports Bar and Grill
Mihn To dba JP Serrato Pasta
Hawaii State Federal Credit Union
Tax Services of America, Inc. dba Jackson Hewitt Tax Service
Kim Chee Restaurant #7, LLC
Royal Trading International Inc. dba Toys N Joys II
Hawaii Dental Group, Inc. and American Dental Alliance, Inc.
 dba Hawaii Family Dental Center
Mimi Nails and Spa Inc.
Pho My Lien Ltd
HI Energy Alternatives Inc. dba Solar Wave Hawaii

The Amendment Seeks the Board's Approval of Adding Dr. Wayne S. Matsuyama, dba Styleeyes as Sublessee, Updating the Sublease Term for Respective Subleases, and Authorizing After-the-Fact Consent to Subleases for Housekeeping Purposes.

BACKGROUND:

On September 13, 2013, under agenda item D-7, the Board gave its consent to 12 subleases under General Lease No. S-4644. A copy of the approved submittal is attached as **EXHIBIT A**. Subsequently, staff noted that additional Board actions are required for the matters described in the following paragraphs, with the updated information now tabulated in **Exhibit B**.

1. Consent to the sublease for Dr. Wayne S. Matsuyama, dba Styleeyes was not covered in the prior Board action. Staff recommends the Board consent to

this sublease, with its relevant information shown in Exhibit B.

2. Pursuant to the review by the Department of the Attorney General, most of the subleases (except Pho My Lien Ltd) actually commenced before the terms mentioned in the prior approval and they did not obtain any consent from the Board. For housekeeping purposes, staff recommends the Board amend its prior action by allowing after-the-fact consent to those subleases' terms. For ease of reference, the corrected terms for subleases are described in Exhibit B.
3. Some of the sublessees acquired the subleases from previous sublessees as shown in Exhibit B. In addition, amendments of the subleases were executed, which basically, extended the term of the subleases. Nevertheless, such transfers of sublease and amendments have not obtained the Board's consent. For housekeeping purposes, staff recommends the Board authorize its after-the-fact consent to the assignments and amendments of subleases as mentioned in Exhibit B.

RECOMMENDATION: That the Board amend its prior Board action of September 13, 2013 (Item D-7) by replacing the entire Recommendation Section with the following:

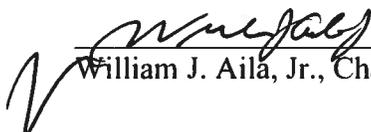
“That the Board consent to the subleases, and assignments or amendments of such subleases, if appropriate, under General lease No. 4644 between Vallejo Venture 99 LLC, as Sublessor, and the Sublessees listed in Exhibit B, subject to any applicable conditions cited above which are by this reference incorporated 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 interest of the State.”

Respectfully Submitted,


Barry Cheurg
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

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

September 13, 2013

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

PSF 13OD-138

Oahu

Consent to Sublease General Lease No. S-4644, Vallejo Venture 99 LLC, Lessee, to HI Energy Alternatives Inc. dba Solar Wave Hawaii, Tax Services of America, Inc. dba Jackson Hewitt Tax Service, Mimi Nails and Spa Inc., El Tres Burros Ltd. dba Chez Sports Bar and Grill, Hawaii Dental Group, Inc. and American Dental Alliance, Inc., Kazi Food Corporation of Hawaii dba KFC, Royal Trading International Inc. dba Toys N Joys II, Calvin K. W. Lau dba Superior Jewelry, Kim Chee Restaurant #7, LLC, Mihn To dba JP Serrato Pasta, Pho My Lien, Ltd., Hawaii State Federal Credit Union, as Sublessees, Aiea, Ewa, Oahu, Tax Map Key: (1) 9-8-013:014

APPLICANT:

Vallejo Venture 99 LLC, a California limited liability company, as Sublessor, to Sublessees, as noted in **Exhibit 1**.

LEGAL REFERENCE:

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

"Revision to Sublease Rent Participation Policy" adopted by the Board of Land and Natural Resources (Board) on May 26, 2000, agenda item D-24, and as amended by "Resubmittal: Amendment to the Sublease Rent Participation Policy" approved by the Board on January 26, 2001, under agenda item D-8.

"Modification of Staff Recommendation in Board Action of January 26, 2001, Item D-8, as Amended, Regarding Sublease Rent Participation. The Purpose of the Modification is to Make the Staff Recommendation Consistent with the Board's Directives and Practice in Determining the State's Participation in Sublease Rents."

LOCATION:

Portion of Government land situated at Aiea, Ewa, Oahu, identified by Tax Map Key: (1) 9-8-013:014, as shown on the attached map labeled **Exhibit 2**.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
September 13, 2013 *Ca.*

EXHIBIT "A"

D-7

AREA:

3.697 acres, more or less.

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act

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

LEASE CHARACTER OF USE:

Commercial use, consistent with the B-2 zoning, Community Business District

SUBLEASE CHARACTER OF USE:

See Exhibit 1.

TERM OF LEASE:

Fifty-five (55) years, commencing on May 4, 1980 and expiring on May 13, 2035. Last rental reopening occurred on May 14, 2010; next rental reopening is scheduled for May 14, 2020.

TERM OF SUBLEASE:

See Exhibit 1.

ANNUAL RENTAL:

\$429,000.00

ANNUAL SUBLEASE RENTAL:

\$939,545.52

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

None, as the subject sublease is for improved property only and the improvements are not owned by the State and the Lessee pays fair market rent.

DCCA VERIFICATION:

SUBLESSOR:

Place of business registration confirmed: YES NO

Registered business name confirmed: YES NO
Good standing confirmed: YES NO

SUBLESSEE:

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

REMARKS:

In 1980, the subject lease was sold at a public auction. In April 2005, PCCP/LDC PEARL KAI, LLC, assigned the subject lease to Vallejo Venture 99 LLC. The Board had given its consent to such assignment in January of 2005.

Vallejo Venture 99 LLC, now requests consent for twelve (12) sublessees including sublessees that had existed prior to the assignment of the lease to Vallejo Venture 99 LLC, whom in effect, were given after-the-fact consent.

Exhibit I provides the information regarding each sublessee.

Pursuant to the "Revision to Sublease Rent Participation Policy" adopted by the Board at its meeting of May 26, 2000, agenda item D-24, the Board authorized the Chairperson to consent to subleases where no sandwich profits exist in two situations: 1) the lease has no provision which allows for sandwich profits or 2) the sublease involves improved property and according to this policy, the State is not entitled to any sandwich profits.

Staff is requesting your consent to sublease under General Lease No. 4644, as the subject sublease is for improved property only, the improvements are not owned by the State, and the Lessee pays fair market rent under the subject lease. Pursuant to the "Amendment to the Sublease Rent Participation Policy" approved as amended by the Board on January 26, 2001, and the "Modification of Staff Recommendation in Board Action of January 26, 2001, Item D-8, as Amended, Regarding Sublease Rent Participation Policy", approved on August 24, 2012, Item D-14: "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 that right and method of calculation are specifically stated in the lease." The purpose of the Board's modification was to clarify that the Board's sublease rent participation policy is a general guideline, and staff needs to review the facts of each case carefully to determine whether the State should share in sublease rents.

On August 9, 2013, Item D-16, the Board gave its consent to the modification of a mortgage on the lease and extended the term of the lease for an additional ten (10) years. The request was to accommodate an additional loan for \$1.25 million.

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 commercial center on the premises and is committing to a substantial investment of \$1.25 million to upgrade the existing improvements. Staff believes that under the Board's policy, considering the lessee's substantial improvements and maintenance expenses in relation to the sublease revenues, the State should not participate in the lessee's sublease rents.

The Lessee is currently in compliance with the terms and conditions of General Lease 4644.

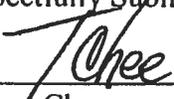
There are no outstanding rental reopening issues or pertinent concerns. No agency or community comments were requested.

RECOMMENDATION:

That the Board consent to the sublease under General Lease No. S-4644 between Vallejo Venture 99 LLC, as Sublessor, and to the Sublessees listed in Exhibit 1, 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,



Timmy Chee
Land Agent

APPROVED FOR SUBMITTAL



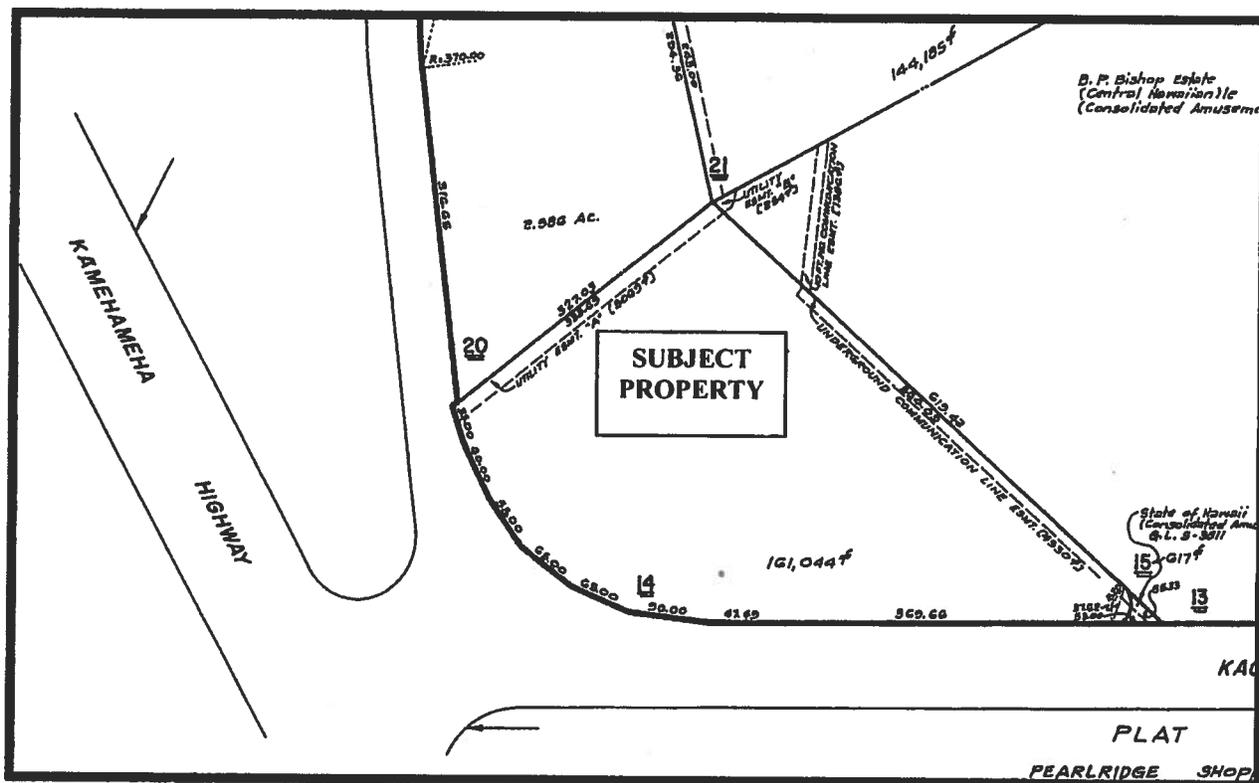
William J. Aila, Jr., Chairperson



GENERAL LEASE NO. 4644-LIST OF SUBLESSEES

Sublessee:	Area (sf)	Character of Use:	Sublease Term:	Monthly Rent:	Entity:
Hi Energy Alternatives, Inc.	806	Solar Industry Sales	October 1, 2012 to July 31, 2015	\$3,224.00	Hawaii Corporation
Tax Services of America, Inc.	792	Tax Return Preparation	January 1, 2013 to December 31, 2015	\$2,772.00	Deleware Corporation
Mimi Nails and Spa Inc.	806	Nail Salon	June 1, 2012 to May 31, 2017	\$3,421.29	Hawaii Corporation
El Tres Burros Ltd.	3,553	Live Music/Entertainment	January 1, 2010 to December 31, 2015	\$12,067.74	Hawaii Corporation
Hawaii Dental Group, Inc. and American Dental Alliance, Inc.	2,955	Dental Practices	July 1, 2012 to August 31, 2017	\$9,664.15	Hawaii Corporation
Kazi Food Corporation of Hawaii	2,900	Operate a KFC store	July 25, 1987 to July 24, 2022	\$8,322.50	Hawaii Corporation
Royal Trading International Inc.	806	Retail Sales of Toys	March 1 2013 to February 29, 2016	\$3,300.00	Hawaii Corporation
Calvin K. W. Lau	806	Sale of Fine Jewelry	December 1, 2012 to November 30, 2015	\$2,982.20	Sole Proprietor
Kim Chee Restaurant #7, LLC	1,612	Korean Restaurant	February 1, 2011 to January 31, 2016	\$6,250.00	Hi. Limited Liability Corp.
Mihn To	806	Italian Restaurant	May 1, 2012 to April 30, 2015	\$3,764.71	Sole Proprietor
Pho My Lien Ltd.	1,584	Vietnamese Restaurant	October 1, 2010 to October 31, 2015	\$5,938.87	Hawaii Corporation
Hawaii State Federal Credit Union	3,896	Federal Credit Union	September 1, 2010 to August 31, 2015	\$16,588.00	Federally Chartered Credit Corp.
TOTAL:	21,322			\$939,545.52	

EXHIBIT " / "



TMK (1) 9-8-013:014

EXHIBIT 2

GENERAL LEASE NO. 4644 - LIST OF SUBLEASES

Current Sublessee: (See Note A)	Area: (SF)	Character of Use:	Term		Monthly Rent:	Consent required for recent subleases, their assignments, and amendments, as appropriate	
			Commenced on	Ends On		Previous Sublessees	Dates
1 Kazi Foods Corporation of Hawaii	2,900	Operate a KFC store	7/25/1987	7/24/2022	\$8,322.50	Bread Brother's, Inc.; Kentucky Fried Chicken National Management Company	12/27/1988; 11/18/1988; 3/4/1998
2 Dr. Wayne S. Matsuyama	1,341	Optical Clinic, Retail Sales	3/1/1999 See Note B	4/30/2017	\$4,930.22	Dr. Gerald N. Matsuyama, Dr. Guy Yamada, Dr. Tonui Y. Sakuda	1/15/1999; 4/30/2008; 5/17/2012
3 Calvin K. W. Lau	806	Sale of Fine Jewelry	11/16/1995	11/30/2015	\$2,982.20	N/A	11/25/1997; 10/1/1999; 9/20/2004; 1/7/2010; 10/17/2012
4 El Tres Burros Ltd.	3,553	Live Music/Entertainment	1/1/1998	12/31/2016	\$12,067.74	AKC Leasing Corporation	4/4/1999; 7/19/2005; 3/8/2007; 4/22/2010; 6/24/2011
5 Mihn To	806	Italian Restaurant	5/1/2000	4/30/2015	\$3,764.71	Johnson To & Gerry Xuyen Quach	11/16/2004; 1/28/2010; 5/17/2012
6 Hawaii State Federal Credit Union	3,896	Federal Credit Union	5/1/2000	8/31/2015	\$16,588.00	N/A	12/21/2009
7 Tax Services of America, Inc.	792	Tax Return Preparation	1/1/2007	12/31/2015	\$2,772.00	Hawaii Tax LLC	11/21/2007; 5/13/2010; 8/2/2011; 1/17/2013
8 Kim Chee Restaurant #7, LLC	1,612	Korean Restaurant	2/6/2001	8/31/2016	\$6,250.00	Tae Kyu Lee & Choon Hee Lee; See Note C	8/12/2005; 12/29/2010; 2/29/2012
9 Royal Trading International Inc. Hawaii Dental Group, Inc. and American Dental Alliance, Inc.	806 2,955	Retail Sales of Toys Dental Practices	6/1/2001 7/1/2002	2/29/2016 8/31/2017	\$3,300.00 \$9,664.15	N/A; See Note C N/A; See Note D	4/17/2006; 3/14/2013 6/1/2007; 7/12/2012
11 Mimi Nails and Spa Inc.	806	Nail Salon	6/1/2008	5/31/2017	\$3,421.29	T & D, LLC; Han D. Nguyen	6/29/2010; 10/17/2012
12 Pho My Lien Ltd.	1,584	Vietnamese Restaurant	10/1/2010	10/31/2015	\$5,938.87	N/A	N/A
13 HI Energy Alternatives, Inc.	806	Solar Industry Sales	8/1/2012	7/31/2015	\$3,224.00	N/A	N/A
TOTAL :	22,663				\$83,225.68		

Notes:

- A No. 2, 3, and 5 - sole proprietor; 6 - Federally chartered credit corporation; 7 - Delaware corporation; 8 - Hawaii limited liability company; rest of the list - Hawaii Corporation.
- B Consent to the sublease period from 3/1/1989 to 2/28/1999 was authorized by the Board.
- C Subleases were signed of the same unit covering the previous periods, but they did not obtain any consent from the Board. Since the previous subleases have been superseded by the subject ones, staff is not recommending any after-the-fact consent to the previous subleases.
- D Both Hawaii Dental Group, Inc. and American Dental Alliance, Inc. are not at good standing at the time of writing this submittal. Lessee will be asked to resolve the issue.