

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

February 28, 2014

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

PSF 13HD-175

Hawaii

Consent to Sublease General Lease No. S-3619 Mattos Electric, LLC, Lessee to PTSH, Inc. and Will Kill Termites & Pests LLC, sublessees; Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-049:013.

APPLICANT:

Mattos Electric, LLC, a Hawaii limited liability company, as Sublessor.
 PTSH, Inc. a Hawaii corporation, as Sublessee.
 Will Kill Termites & Pests LLC, a Hawaii Limited Liability Companies, as Sublessee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Kanoelehua Industrial Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-049:013, as shown on the attached map labeled Exhibit A.

AREA:

Lease: 13,975 square feet, more or less.
 Sublease: 841 square feet more or less.

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:

Uses allowed under the current County of Hawaii Zoning Code, ML-20, limited industrial.

SUBLEASE CHARACTER OF USE:

PTSH, Inc.: Tax preparation services.
Will Kill Termites & Pests LLC: Extermination services

TERM OF LEASE:

Fifty-five (55) years, commencing on February 6, 1961 and expiring on February 5, 2016. Last rental reopening occurred on February 6, 2011 which was the final reopening for the term of the lease.

TERM OF SUBLEASE:

PTSH, Inc.: Two (2) years and Ten (10) months, commencing on January 01, 2013 and expiring on October 31, 2015.

Will Kill Termites & Pests LLC: Three (3) years, commencing on November 1, 2012 and expiring on October 31, 2015

ANNUAL RENTAL:

\$15,120.00, due in semi-annual installments of \$7,560.00 on February 6th and August 6th of each year.

ANNUAL SUBLEASE RENTAL:

PTSH, Inc.: \$6,000.00, due in monthly installments of \$500.00.

Will Kill Termites & Pests LLC: \$12,000.00, due in monthly installments of \$1,000.00.

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. Refer to attached exhibit B for discussion.

DCCA VERIFICATION:

SUBLESSOR: *Mattos Electric, LLC*

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

SUBLESSEE:

PTSH, Inc.

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

Will Kill Termites & Pests LLC

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

REMARKS:

General Lease No. S-3619 (GL S-3619) was awarded directly to Gordon M. Ishii dba No-D-Lay Top Shop, pursuant to Act 4, Special Session Laws of Hawaii 1960, which provided for the direct issuance of leases to natural disaster victims who were affected by the 1960 tsunami that struck Hilo and other areas of the State.

The lease is for fifty-five years commencing February 6, 1961 and expiring on February 5, 2016. Rental for the first 2 years was waived with a set rental amount of \$510.00 per year for the following 18 years. Rental renegotiations for fair market rent were scheduled for the 20th, 30th, 40th & 50th years of the lease term. Character of use was for auto trimming purposes.

At its meeting of August 28, 1970, item F-5, the Board granted consent to the assignment of GL S-3619 to Club 11 Partners.

At its meeting of November 20, 1970, item F-1, the Board granted consent to the assignment of GL S-3619 to Mauna Kea Electric, Inc.

At its meeting of May 25, 1979, item F-1-a, the Board consented to an additional charge mortgage for the purpose of short-term working capital.

By way of lease amendment dated March 24, 1983 and approved by the Board at its meeting of August 27, 1982, GL S-3619 was amended to postpone the 1st scheduled renegotiation of rent until the 21st year due to adverse economic climate.

At its meeting of May 25, 2012, item D-4, the Board granted consent to the assignment of GL S-3619 to Mattos Electric, LLC. The Board also approved amendments which changed the character of use and updated the terms and conditions to reflect current language regarding assignments, subletting, insurance and bond requirements.

Since acquiring the lease in May 2012, the current lessee has made substantial repairs and improvements to the property including roof and fascia repair/replacement, exterior painting, fence repair, landscape maintenance, termite treatment, electrical and plumbing upgrades, complete interior remodeling with new wood flooring, drywall, paint and doors.

PTSH, Inc. provides tax preparation services and utilizes the rented space for office and data storage. Will Kill Termites & Pests LLC is a termite extermination company and utilizes their space for office and equipment storage. Staff verified with the County of Hawaii Planning Department that both uses are allowed within the current zoning of the parcel. The lessee does not intend to renew either sublease at the end of the terms.

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. Staff recommends that participation in sublease rents is not warranted as lessee has made a substantial investment in repairs and improvements within the last two years and occupies a majority of the premises for his own electrical contracting business. Refer to attached Exhibit B for further analysis.

The lessee is compliant with all terms and conditions of the lease including rent, insurance and performance bond.

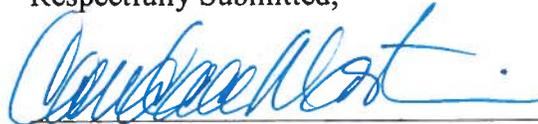
The last rental reopening occurred on February 6, 2011, which was the final reopening for the term of the lease. There are no outstanding rental reopening issues.

RECOMMENDATION:

That the Board consent to the sublease under General Lease No. S-3619 between Mattos Electric, LLC, as Sublessor, and PTSH, Inc. and Will Kill Termites & Pests LLC, as Sublessees, 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,



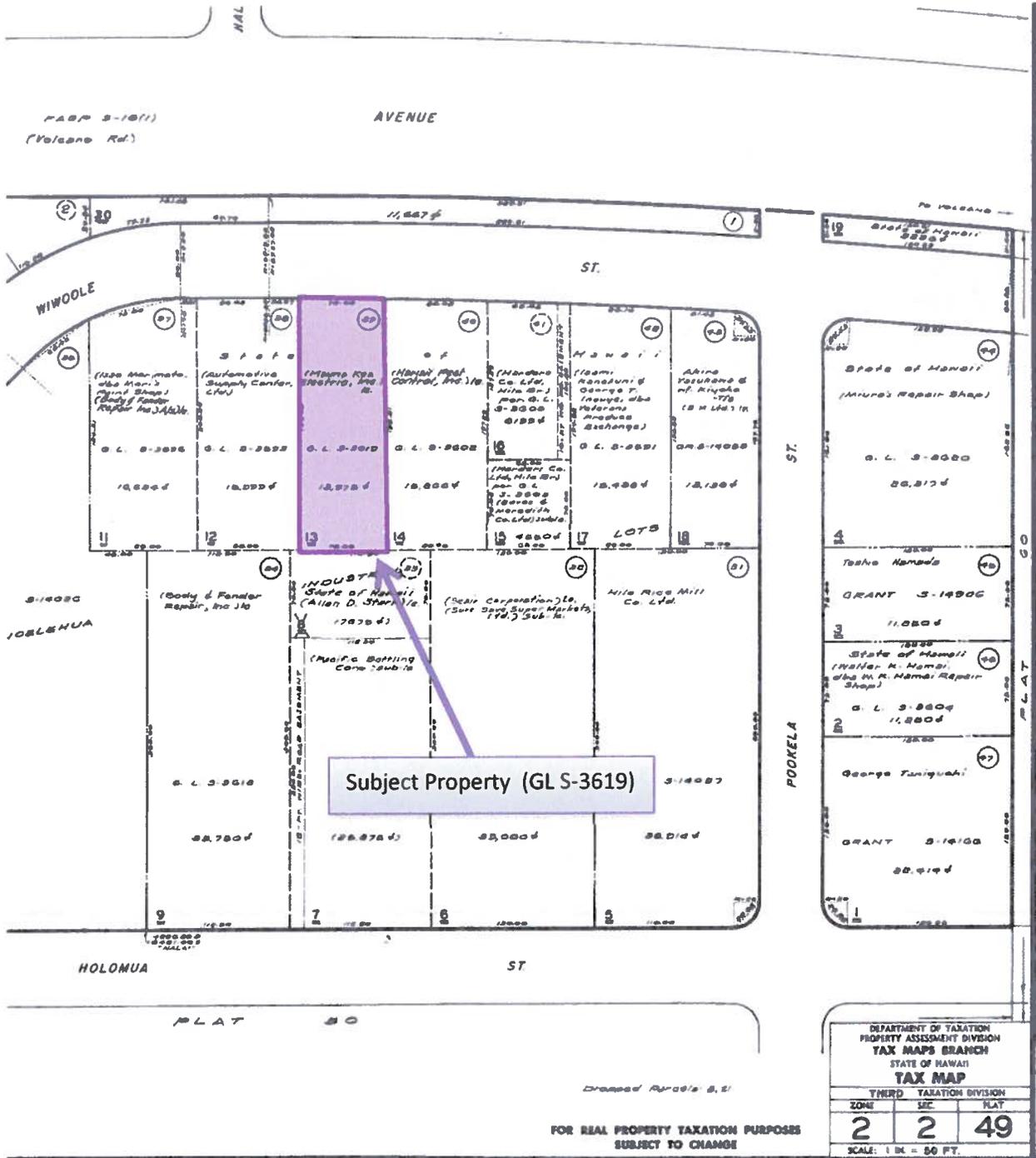
 Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:




William J. Aila, Jr., Chairperson

EXHIBIT A





**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 31, 2014

MEMORANDUM

TO: William J. Aila, Jr., Chairperson

THROUGH: Russell Y. Tsuji, Division Administrator

FROM: Candace Martin, Land Agent

SUBJECT: In-House Recommendation – Sublease Participation Calculation

GL No.:	S-3619
Lessee/Sublessor:	Mattos Electric, LLC
Sublessee:	PTSH, Inc. and Will Kill Termites & Pests LLC
Location:	Waiakea, South Hilo, Hawai'i
Lease area:	0.32 acres (13,975 sf)
Sublease Area:	841 sf. more or less (combined total)
Tax Map Key:	3 rd /2-2-049:013
Character of Use:	Limited Industrial

We 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-3619, Mattos Electric, LLC, Lessee/Sublessor to PTSH, Inc. (PTSH) and Will Kill Termites & Pests LLC (WK), Sublessees. The sublease documents and information provided by Lessee were analyzed and staff applied the formula approved by the Land Board on January 26, 2001, agenda item D-8, and modified by the Board at its meeting on August 24, 2012, agenda item D-4, comprising of the Rent Participation Policy.

The lease was originally issued pursuant to Act 4, Special Session Laws of Hawaii 1960, which provided for the direct issuance of leases to natural disaster victims who were affected by the 1960 tsunami that struck Hilo and other areas of the State.

The current lessee acquired the lease by assignment in May 2012 and has made substantial repairs and improvements to the property including roof and fascia repair/replacement, exterior painting, fence repair, landscape maintenance, termite treatment, electrical and plumbing upgrades, complete interior remodeling with new wood flooring, drywall, paint and doors. The parcel consists of 13,975 square feet with a warehouse of 1,920 square feet. PTSH sublets 365 square feet and WK sublets 476 square feet. The remaining 1,079 square feet of warehouse is

occupied by Mattos Electric (lessee). The balance of the parcel is used for landscape, parking and construction baseyard purposes. Both sublessees utilize the common parking area.

The lease allows the Board to review and approve the sublease rent and, if necessary, to revise the rent of the demised premises based on the rent charged to the sublessee; provided that the rent may not be revised downward. However, the lease does not provide a method for calculating the rent revision.

The Rent Participation Policy, item 1c states:

For lessees paying fair market rent:

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.

Additionally, the lessee has made substantial repairs and improvements within the last two years. The lessee's investment in upgrading the improvements is truly the marketable portion of these subleases.

Further, the lessee occupies a majority of the premises for his own electrical contracting business.

CALCULATION: GL No. S-3619

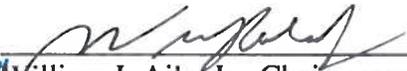
Annual Ground Rent		\$15,120.00
Annual Sublease Rent Income	\$18,000.00*	
Less G.E. Tax	0.00**	
Less Real Property Tax	2,300.00	
Less Insurance	<u>1,400.00</u>	
Total Sublease Rent	\$14,300.00	
Annual Income to Land:		\$14,300.00
Annual Ground Rent		(15,120.00)
Annual Rental Proceeds to Lessee:		(820.00)
DLNR Rent Participation:		<u>0%</u>
DLNR portion of Rent Participation		\$ 0.00

*Combined sublease rent for both units.

**GE Tax is charged in addition to the sublease rent.

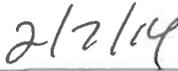
Based on the approved Rent Participation Policy, staff does not believe circumstances warrant the State sharing in the sublease rents.

Approved/Disapproved:



William J. Aila, Jr., Chairperson





Date