

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

July 25, 2014

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

13HD-215

Hawaii

**Consent to Assign General Lease No. S-4207, Hugo and Shirley Von Platen Luder, Assignors, to Olu Kai, Ltd., Assignee, Puaa 1<sup>st</sup>, North Kona, Hawaii, Tax Map Key: (3)7-5-009:064.**

APPLICANT:

Hugo and Shirley Von Platen Luder, as Assignors, to Olu Kai, Ltd., a Hawaii for-profit corporation, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Puaa 1<sup>st</sup>, North Kona, Hawaii identified by Tax Map Key: (3)7-5-009:064, as shown on the attached map labeled Exhibit A.

AREA:

578 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

CHARACTER OF USE:

To construct, reconstruct, install, maintain, repair, replace and remove a building and appurtenances thereto over and upon the surface of said easement area.

TERM OF LEASE:

52 years and 6 months, commencing on September 26, 1968 and expiring on February 28, 2021.

ANNUAL RENTAL:

One-time, lump sum payment of \$867.00

CONSIDERATION:

\$ 0.00.

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

DCCA VERIFICATION:

ASSIGNOR:

As individuals the assignors are not required to register with the DCCA.

ASSIGNEE:

Place of business registration confirmed: YES  
Registered business name confirmed: YES  
Good standing confirmed: YES

REMARKS:

The Lessees are the original owners of Huggo's, an oceanfront restaurant located on land leased from Kamehameha Schools just off Alii Drive in Kailua-Kona. In 1968, when the Hawaii Supreme Court rendered its historic decision, interpreting the words "me ka kai" (along the sea) as being along the upper reaches of the wash of waves, the Lessees were in the design/build phase of the restaurant. They had already obtained a County variance from the required 20 foot shoreline setback to an 8 foot setback.

The new seaward boundary, as surveyed in accordance with the Court's ruling, made it obvious that the prior setback variance was insufficient to comply with County ordinance. In an effort to preserve the intent of the variance, the County agreed to measure the 8 foot setback from the seaward boundary of a proposed easement over the shoreline.

The Board approved the sale of such an easement and General Lease No. S-4307 was sold at public auction on September 26, 1968 to Hugo and Shirley Von Platen Luder as an easement for building purposes. The term of the lease was established to run concurrent with the Kamehameha Schools lease of the adjacent property.

The applicants are requesting consent from the Board to assign the existing term easement to Olu Kai, Ltd. as a means to consolidate their holdings under a single corporate entity. Olu Kai, Ltd. is the corporate body for the operations of the restaurant.

The assignment of easement from the Von Platen Luders as individuals to their corporate entity is an accounting operation and will not change the use or management of the easement.

The Lessees are in compliance with all terms and conditions of the lease. Assignee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

This is a term easement lease that was sold at auction for a lump sum of \$867.00 without any further scheduled payments or rents.

No agency comments were sought as this transaction is not a new disposition and does not seek to make any changes to the existing terms and conditions of the original lease.

RECOMMENDATION:

That the Board consent to the assignment of General Lease No. S-4207, Hugo and Shirley Von Platen Luder, Assignors, to Olu Kai, Ltd., Assignee, subject to the following:

1. The standard terms and conditions of the most current consent to assignment 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 

