

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

February 24, 2012

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

Hawaii

Consent to Assign General Lease No. S-3595, Opportunity Management Hawaii, Inc., Assignor, to Hawaii HVAC, LLC, Assignee, Amendment of the Terms and Conditions Regarding Allowed Use, Assignments, Subleases, Insurance and Bond Requirements for General Lease No. S-3595, Lot 18, Kanoelehua Industrial Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-2-50:86.

APPLICANT:

Opportunity Management Hawaii, Inc., as Assignor, to Hawaii HVAC, LLC, a Hawaii Corporation as Assignee.

LEGAL REFERENCE:

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

LOCATION AND AREA:

Portion of Government lands of Kanoelehua Industrial Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-2-50:86, consisting of approximately 11,250 square feet, 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

CHARACTER OF USE:

Refrigeration purposes (current character of use in lease).

TERM OF LEASE:

55 years, commencing on January 16, 1961 and expiring on January 15, 2016. Last rental reopening occurred on January 17, 2011; there are no scheduled rental reopening remaining.

ANNUAL RENTAL:

\$12,840.00.

CONSIDERATION:

\$ 1.00.

RECOMMENDED PREMIUM:

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

DCCA VERIFICATION:

ASSIGNOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u>—</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>—</u>
Good standing confirmed:	YES <u>—</u>	NO <u>X</u>

ASSIGNEE:

Place of business registration confirmed:	YES <u>X</u>	NO <u>—</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>—</u>
Good standing confirmed:	YES <u>X</u>	NO <u>—</u>

REMARKS:

General Lease S-3595 dated 1/16/1961 between the State of Hawaii and Harry Hiroo Nishimura, dba Harry's Refrigeration Service, of Hilo Hawaii pursuant to Act 4, Session Laws of Hawaii (First Special Session 1960), which provided for the direct issuance of leases to victims of natural disaster who were affected by the 1960 tsunami that struck Hilo and other areas of the State. One of the conditions of the lease was that the lessee

use the leased land for the first five (5) years of the term of the lease for the same business use or undertaking in which the Lessee was engaged at the time of the natural disaster or a use designated by the Board; provided however, that the Lessee may devote or place said demised premises to a use or uses other than refrigeration in character, with the prior written consent of the Board, which consent shall not be unreasonably or arbitrarily withheld....

At its meeting of October 26, 2001, under agenda item D-1, the Board consented to the assignment of GL S-3595 from Harry Hiroo Nishimura, dba Harry's Refrigeration Service to Merle Lam, Successor Trustee of that certain Unrecorded Harry H. Nishimura Revocable Living Trust and that certain Unrecorded Ellen M. Nishimura and then from Merle Lam, Successor Trustee of that certain Unrecorded Harry H. Nishimura Revocable Living Trust and that certain Unrecorded Ellen M. Nishimura Assignor, to Richard Alister Wilson and Pamela Jean Wilson, Assignee.

Further, at its meeting of January 14, 2005, under agenda item D-11, the Board consented to the assignment of lease from Richard Alister Wilson and Pamela Jean Wilson, husband and wife to Richard Alister Wilson, single. At its meeting of July 13, 2007, under agenda item D-1, the Board consented to the assignment of lease from Richard Alister Wilson to Opportunity Management Hawaii, Inc. (OMHI).

OMHI is the real estate property management company for Heide & Cook, Ltd. a mechanical contracting firm. Heide & Cook, LTD. has been occupying a portion of the property as allowed under section 22 of the lease which states in part, that the Lessee may sublet a part of the leasehold premises without approval of the Board.

This assignment is the result of the acquisition of Heide & Cook, Ltd. by Chugach Alaska Corporation (CAC). CAC has established a new entity in Hawaii doing business as Hawaii HVAC, LLC and will continue to operate the existing business on the premises.

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.

The Lessee is current with all the terms and conditions of the lease with the exception of the performance bond. A notice of default was issued as a result of an increase in the performance bond requirement. The last rental reopening occurred on January 17, 2011 increasing the annual rent from \$7,140.00 to \$12,840.00. This increased the performance bond¹ amount from \$14,280.00 to \$25,680.00, creating a shortage of \$11,400.00. The Assignee will provide a performance bond in the full amount of \$25,680.00 within thirty (30) days of the execution of the consent to assignment of lease.

AMENDMENT

Because the lease was issued by direct negotiation instead of public auction, the Board has authority to amend the lease to change the character of use provision and make other amendments.

A change in the character of use from "refrigeration" to the proposed uses allowed under the County of Hawaii zoning code, ML-20, limited industrial, would benefit the State by allowing a wider range of uses and thereby making the property more appealing for future leasing.² Staff is requesting that the sections of the lease relating to the bond, liability insurance and fire insurance be amended and replaced with the current lease language used for such provisions. Also, the lease as presently drafted contains language that allows the lessee to sublease portions of the building without Board approval. Staff believes that the better practice is to require prior Board consent for all subleases. Staff is therefore recommending that the assignment/sublease provision in the lease amended to reflect the current language for subleases and assignments.

Accordingly staff is recommending that the Board consent to the assignment of the lease to Hawaii HVAC, LLC on the condition that they post the full performance bond under the lease terms within 30 days of the execution of the consent to assignment instrument, and that the Board further authorize the amendment of the lease (i) to change the character of use provision to the allowable uses under the current County of Hawaii zoning code, ML-20, limited industrial, and (ii) to update the lease provisions titled "Assignments, etc." (section 22 of the lease), "Bond" (section 25), "Liability insurance" (section 31), and "Fire insurance" (section 32) with the current language for such provisions used by the Department of the Attorney General.

1 Par.25, page 10 of the lease state in part, "That the Lessee shall, on or before the effective date of this lease, file with the Lessor, and thereafter keep in full force and effect during the period of this lease, a good and sufficient bond, conditioned upon the full and faithful observance and performance by said Lessee of all the terms, covenants and conditions of this lease in an amount equal to twice the annual rent payable under the terms of this lease.

2 The expiration date of the lease is January 15, 2016. However, pursuant to Act 207 (Session Laws 2011), the lease may be eligible for a ten-year extension under some circumstances.

The last rental reopening occurred on January 17, 2011. There are no further rental reopenings presently scheduled. There are no outstanding rental reopening issues.

RECOMMENDATION:

- A. That the Board consent to the assignment of General Lease No. S-3595 from Opportunity Management Hawaii, Inc., as Assignor, to Hawaii HVAC, LLC, as Assignee, subject to the following:
1. Hawaii HVAC, LLC shall post the full performance bond required under the lease in the current amount of \$25,680 within 30 days of the execution of the consent to assignment;
 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.
- B. Authorize the amendment of General Lease No. S-3595 (i) to change the character of use from "refrigeration" to uses allowed under the current County of Hawaii Zoning Code, ML-20, limited industrial; and (ii) to update the lease provisions titled "Assignments, etc." (section 22 of the lease), "Bond" (section 25), "Liability insurance" (section 31), and "Fire insurance" (section 32) with the current language for such provisions used by the Department of the Attorney General. The amendment of the lease shall further be subject to the following:
1. The standard terms and conditions of the most current consent to change in character of use and amendment of lease document forms, 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,



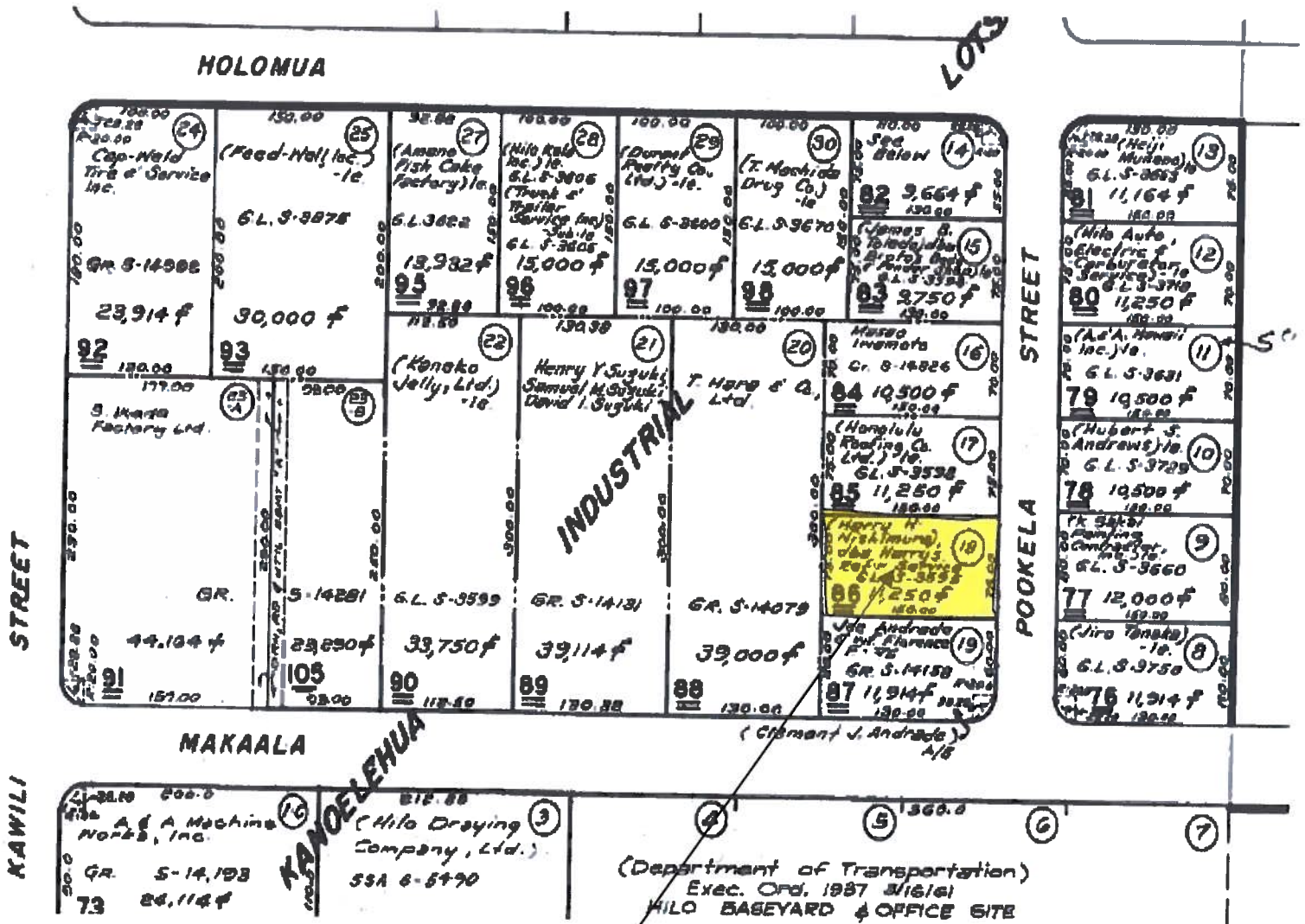
Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr. Chairperson

EXHIBIT A

TMK: 3RD/2-2-50:86



SUBJECT PROPERTY