

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

August 9, 2013

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

PSF 13HD-114

Hawaii

**Consent to Sublease General Lease No. S-4308, KAR Property, LLC, Lessee,
to Jodi Narvaez dba Kammy's Flower Garden, Sublessee, Waiakea, South
Hilo, Hawaii; Tax Map Key: (3) 2-2-058:002.**

APPLICANT:

KAR Property, LLC, a Hawaii limited liability company, as Sublessor, and Jodi Narvaez
dba Kammy's Flower Garden, as Sublessee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Lot 4, Hilo Industrial Development, Pohaku Street
Section situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-
058:002, 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

LEASE CHARACTER OF USE:

General industrial.

SUBLEASE CHARACTER OF USE:

Agricultural processing and sales.

LEASE AREA:

24,007 square feet, more or less.

SUBLEASE AREA:

Unit #3 = 261 square feet Unit #4 = 252 square feet
Total leased area of 513 square feet plus two dedicated parking spaces for each unit in the common parking area.

TERM OF LEASE:

Original term of 40 years, commencing on June 23, 1970 and expiring on June 22, 2010.

Board approved extension of 15 years commencing on June 23, 2010 and expiring on June 22, 2025.

TERM OF SUBLEASE:

18 months; from July 1, 2013 thru December 31, 2014.

ANNUAL RENTAL:

\$21,700

ANNUAL SUBLEASE RENTAL:

\$ 7,500 base rent for the period July 1, 2013 thru December 31, 2013
\$10,276 base rent for the period January 1, 2014 thru December 31, 2014¹
The average of these two annual rents over a one-and-a-half year period is \$9,350.66.

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 for the reasons stated in the

¹ Sublease provides that the sublease tenant may request to negotiate with sublessor to continue prior rental rate if business income (gross) decreases due to economic conditions.

remarks section below.

DCCA VERIFICATION:

SUBLESSOR:

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>

SUBLESSEE:

Individuals operating as sole proprietors and/or under a trade name are not required to register with the DCCA.

REMARKS:

On June 23, 1970, a 40-year lease covering the subject land was sold at public auction to L.H. Nishimoto Plumbing Contractor, Inc. (Nishimoto) as the highest bidder. Nishimoto and the State executed General Lease No. S-4308 (GLS-4308) in September 1970, and Nishimoto thereafter constructed a warehouse building on the property in accordance with plans approved by the Chairperson of the Board of Land and Natural Resources (the Board). Land Division files show that construction of the warehouse was completed as of August 31, 1971.

At its meeting of December 9, 1977, agenda item F-1-m, the Board consented to the assignment of GLS-4308 to Hilo Sheet Metal, Inc. (HSM). In early 2010, HSM applied for a 15-year extension of the lease to allow it to amortize the cost of self-financed improvements and repairs to the property including: replacement of metal roof, perimeter fencing, one roll-up door and exterior painting at an estimated cost of \$36,166. The Board approved the 15-year extension at its meeting of May 13, 2010, agenda item D-5, as amended. The current expiration date for GLS-4308 is June 22, 2025.

At its meeting of August 10, 2012, agenda item D-2, the Board consented to the assignment of GLS-4308 to Kalawe's Auto Repair, LLC and consented to a mortgage from the Bank of Hawaii not to exceed \$260,000. The Board amended this decision at its meeting of October 26, 2012, agenda item D-1, by changing the approved Assignee and Mortgagor from Kalawe's Auto Repair, LLC to their newly established property management company, KAR Property, LLC.

KAR Property, LLC is now seeking consent to sublease a portion of the premises to Jodi Narvaez dba Kammy's Flower Garden for the purpose of operating a cut-flower business. This purpose is consistent with County of Hawaii zoning which is General Industrial and includes Agricultural Products Processing, major and minor, as a permitted use within this zoning designation.

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. The policy provides in part that:

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 is depreciating recent renovation costs to the improvements and occupies most of the premises for its own 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.

Last rental reopening occurred on May 13, 2010; the next rental reopening is scheduled for June 23, 2020. There are no outstanding rental reopening issues.

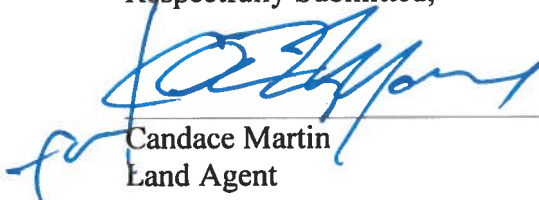
RECOMMENDATION:

That the Board consent to the sublease under General Lease No. S-4308 KAR Property, LLC, Lessee, to Jodi Narvaez dba Kammy's Flower Garden, Sublessee, as Sublessee, 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

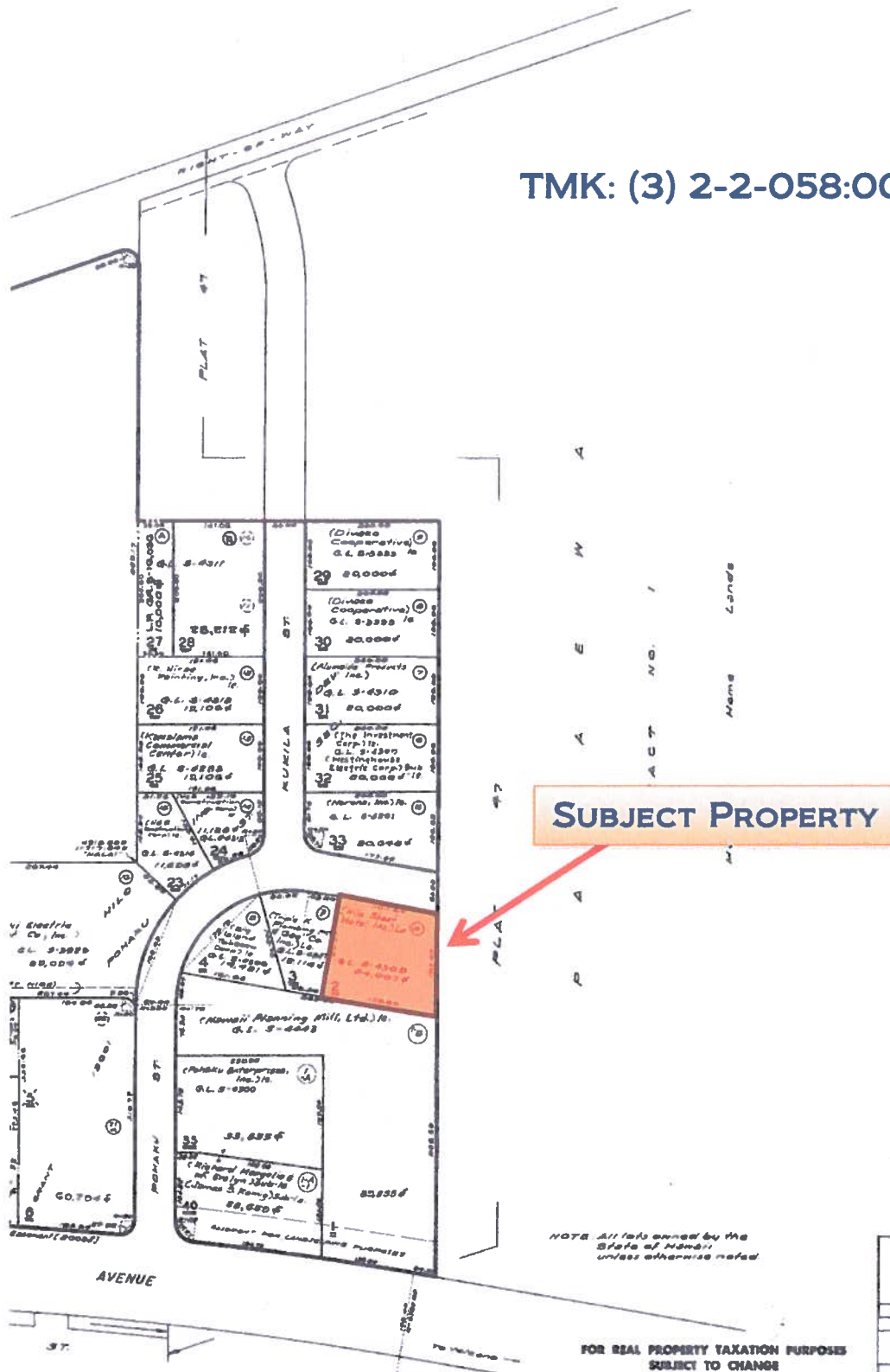
APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



TMK: (3) 2-2-058:002



SUBJECT PROPERTY

Dropped Parcels: 11, 30, 12, 50, A

NOTE: All facts derived by the State of Hawaii unless otherwise noted

FOR REAL PROPERTY TAXATION PURPOSES
SUBJECT TO CHANGE

DEPARTMENT OF TAXATION PROPERTY ASSESSMENT DIVISION TAX MAPS BRANCH STATE OF HAWAII		
TAX MAP		
THIRD	TAXATION DIVISION	
ZONE	SEC	PLAT
2	2	58
SCALE: 1 IN. = 100 FT.		

EXHIBIT A



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 26, 2013

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-4308
Lessee/Sublessor:	KAR Property, LLC
Sublessee:	Jodi Narvaez dba Kammy's Flower Garden
Location:	Waiakea, South Hilo, Hawai'i
Lease area:	0.551 acres (24,007 sf)
Sublease Area:	2,013 sf. more or less
Tax Map Key:	(3) 2-2-058:002
Character of Use:	General 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-4308, KAR Property, LLC (KAR), Lessee/Sublessor to Jodi Narvaez dba Kammy's Flower Garden (Kammy's), Sublessee. 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.

In 2010, Hilo Sheet Metal made repairs and improvements to the property at a cost of \$36,166, which included replacement of the metal roof and perimeter fencing, installation of a roll-up door and exterior painting. The Board approved a 15 year lease extension to allow amortization of the repairs and improvements.

KAR purchased the lease from Hilo Sheet Metal in late 2012 and the costs associated with the repairs and improvements were passed along to KAR in the \$260,000 purchase price. Therefore, KAR will continue to amortize these costs over the remaining years of the lease.

EXHIBIT B

Kammy's is leasing two units within the existing 7200 square foot warehouse building totaling 513 square feet. As part of the lease rent, Kammy's also has exclusive use of 2 parking stalls per unit (approximately 1,500 square feet) in the common parking area. This is a total of 2,013 square feet.

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.

CALCULATION: GL No. S-4308

Annual Ground Rent (24,007 sf - \$0.91/sf)		\$21,700.00
Annual Sublease Rent	\$ 9,350.66	
Less G.E. Tax	0.00*	
Less Real Property Tax (\$0.21/sf)	422.73	
Less Insurance (\$0.13/sf)	261.69	
Annual Amortization	<u>2,411.00</u>	
Total Sublease Rent	\$ 6,255.24	

Annual Income to Land:	\$ 6,255.24
Annual Ground Rent (2,013 sf)	(1,831.83)
Annual Rental Proceeds to Lessee:	4,423.41
DLNR Rent Participation:	<u>0%</u>

DLNR portion of Rent Participation \$ 0.00


*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

Cc: District Files
 Central Files