

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.: 11HD-211

Hawai'i

Deny Requests for the Cancellation of General Lease No. S-3606, The Food Basket Inc., and Issuance of Direct Lease to The Food Basket Inc. for Food Distribution Purposes, Waiakea, South Hilo, Hawaii Tax Map Key: (3) 2-2-50:96.

**APPLICANT:**

The Food Basket Inc. a Hawaii Non-profit, 501(c) (3) corporation.

**LEGAL REFERENCE:**

Sections 171-16 and 171-43.1, Hawaii Revised Statutes, as amended.

**LOCATION:**

Portion of Government lands of Lot 28, Kanoelehua Industrial Lots, situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-50:96, as shown on the attached map labeled Exhibit A.

**AREA:**

15,000 square feet, more or less.

**ZONING:**

State Land Use District: Urban  
County of Hawaii CZO: ML-20 Limited Industrial Use

**TRUST LAND STATUS:**

Section 5(b) lands of the Hawaii Admission Act

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

**CURRENT USE STATUS:**

Currently encumbered by General Lease No. S-3606 to The Food Basket Inc, Lessee, for operating and maintaining a food storage and distribution center for needy families. Current lease set to expire January 15, 2016.

CHARACTER OF USE:

Operation of a non-profit food distribution center.

LEASE TERM:

Thirty-five (35) years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Current annual rent is \$17,100.00 per annum as determined by independent appraisal effective January 16, 2011, for the remaining five years of the lease.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10<sup>th</sup>, 20<sup>th</sup> and 30<sup>th</sup> years of the lease term, by independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO ___
Registered business name confirmed:	YES <u>X</u>	NO ___
Applicant in good standing confirmed:	YES <u>X</u>	NO ___

REMARKS:

The Applicant, Food Basket Inc., is requesting to cancel its existing fair market rent lease and the reissuance of a new 65-year term, non-profit lease at nominal rent. Staff respectfully requests that the Land Board deny this instant request.

As background, on January 13, 1961 General Lease No. S-3606 was issued to Hilo Equipment and Manufacturing Co., Ltd. as a result of Act 4, First Special Session, 1960 which authorized the leasing or leasing with option to purchase of public lands to victims of natural disaster through direct negotiation for other than residential or agricultural purposes.

At its meeting of May 27, 1961, under Agenda Items F-1-c, the Board of Land and Natural Resources approved the assignment of GL S-3606 from Honolulu Iron Works Company, successor in interest to Hilo Equipment and Manufacturing Co., Ltd., Assignor, to Hilo Kala, Inc., Assignee. On September 23, 1966, the Chairperson consented to the sublease of a

portion of the property to Truck & Trailer Service, Inc.

The previous Lessee had been utilizing the property for the same purpose for which the lease was issued (wholesaling and retailing of truck and trailer parts and body manufacturing). Staff recommended the Board consent to the change in the character of use from 'truck and trailer parts and body manufacturing' to the proposed uses allowed under the County of Hawaii zoning code, ML-20, limited industrial.

At its meeting of June 23, 2011, under agenda item D-3, the Board consented to the assignment of lease from Hilo Kala, Inc., Assignor to The Food Basket Inc., Assignee, and to the change in character of use to limited industrial.

The Lessee, The Food Basket Inc. (Lessee) is an island-wide, supplemental food network that collects and distributes nutritious, high quality food to low income households, the working poor, the disabled, the ill, senior citizens, children programs and other charitable organizations that serve this population. Supplemental food is provided regardless of religious beliefs, gender or ethnicity. Lessee plans to utilize the subject property for warehouse, storage and distribution purposes. This use is consistent with the current county zoning, industrial use.

Lessee previously sub-leased space in a warehouse on Hawaiian Home Lands one block south of Lessee's present location. The current economic situation created a greater need for Lessee's services and Lessee quickly outgrew the space it was previously occupying. The close proximity of the current location provides continuity for receiving and distribution of the food products.

Lessee has made extensive improvements to the lease property and has invested in excess of \$260,000 towards equipment and renovations to the warehouse structure. It has made a continuing commitment to serve the needs of the community in East Hawaii. Lessee is now asking for a new long-term lease at the established nominal rental rate of \$480 per year allowed for non-profit organizations.

Lessee 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 proposed use is allowable in the county zoning. Lessee is in compliance with all the lease terms and conditions.

#### DISCUSSION:

The Board of Land and Natural Resources (Board) typically issues leases to private individuals and entities via public auction. The new rent at reopening is established at fair market rental value by an appraiser. If the tenant or prospective tenant is an eleemosynary (charitable) organization, the Board may issue the lease at a nominal rent, by direct negotiation. The statute providing the Board this authority is as follows:

**§171-43.1 Lease to eleemosynary organizations.** The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501 (c) (1) or 501 (c) (3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary

organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c202, §1; am L 1991, c 212, §3]

It is noted that the 501 (c) (1) organizations must be both organized by an Act of Congress and be an instrumentality of the United States, while the 501 (c) (3) organizations is a privately organized charitable organization.

On May 13, 2005, the Land Board established a Minimum Rent Policy that stated, among other things, that the Minimum Rent for leases be no less than \$480 per year. Staff believes “nominal” rent under section 171-43.1, Hawaii Revised Statutes, ought to be anywhere between fair market rent and the minimum rent of \$480.

There should be a reasonable and fair market annual rent for all Land Division non-profit tenants. However, as the location of the subject property is in an established industrial district, staff is of the opinion that the issuance of a direct lease at nominal rent would not present the highest and best use for this particular parcel of land.<sup>1</sup> The lot is one of a limited number of industrial-zoned properties in the Department’s inventory and revenue from these properties plays an important part in funding the missions of its various divisions. Additionally, the issuance of a long-term direct lease may impact any future development plans for the area (such as consolidation of the relatively small parcels and creation of fewer but larger parcels, for which new leases would be sold at public auction).

Prior to purchasing the lease property, staff informed Roland Higashi, then first Vice Chair of The Food Basket Inc., of the limited time remaining on the lease and offered no assurances of a lease extension or that a new lease would be issued.<sup>2</sup> Mr. Higashi stated he fully understood the present lease would expire on January 15, 2016, but that The Food Basket Inc. had outgrown its current location and was looking for a larger facility. On June 23, 2011, the Board approved the sale of the property and consented to the assignment of lease.

On November 14, 2011, Lessee wrote to the Board requesting approval to perform renovations to the existing structure. These renovations included major improvements to the warehouse as required to conform to Federal and State health and safety regulations. In a reply letter dated November 23, 2011 (Exhibit B), staff wrote to the Lessee questioning the substantial improvements it was planning for the property considering the impending expiration date of the lease. Staff requested the Lessee acknowledge and agree to its understanding of the lease expiration date. This letter was received and the acknowledgment was signed by Roland Higashi, Vice-Chair.

On November 14, 2011, Dr. Nani Lee, the Executive Director for Lessee, requested a direct lease at nominal rent for a period of thirty-five (35) years pursuant to § 171-43.1 [Lease to

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1. The Kanoelehua Industrial Area (KIA) was developed as an industrial park to relocate businesses damaged or destroyed by the 1960 tsunami that devastated the Hilo Bay front. The KIA is a mixture of fee simple, DHHL and DLNR properties. It has been the industrial and commercial center for East Hawaii since its development in the mid 1960s. The subject property is located among several State leases. Most of these leases are set to expire in 2016.

2 Board submittal of June 23, 2011, agenda item D-3, states in part that the “Assignee is also aware and understands that the lease will expire on January 15, 2016 and currently, cannot be extended beyond the 55-year term.”

eleemosynary organizations]. An application to lease lands for non-profit organizations was sent out for completion and returned to the Hawaii District Land Office. In a letter of response (Exhibit C), staff explained why it could not recommend to the Board the granting of a direct lease for nominal rent on a marketable industrial zoned property.

Staff understands the important services provided by The Food Basket Inc. to the community and will work with them in locating a suitable, alternative site for their distribution center. However, for the reasons stated above, staff is recommending the Board of Land and Natural Resources deny The Food Basket Inc.'s request for a new direct lease at nominal rent.<sup>3</sup>

**RECOMMENDATION:** That the Board:

1. Deny the issuance of a direct lease at nominal rent to The Food Basket Inc. for the reasons stated above.

Respectfully Submitted,

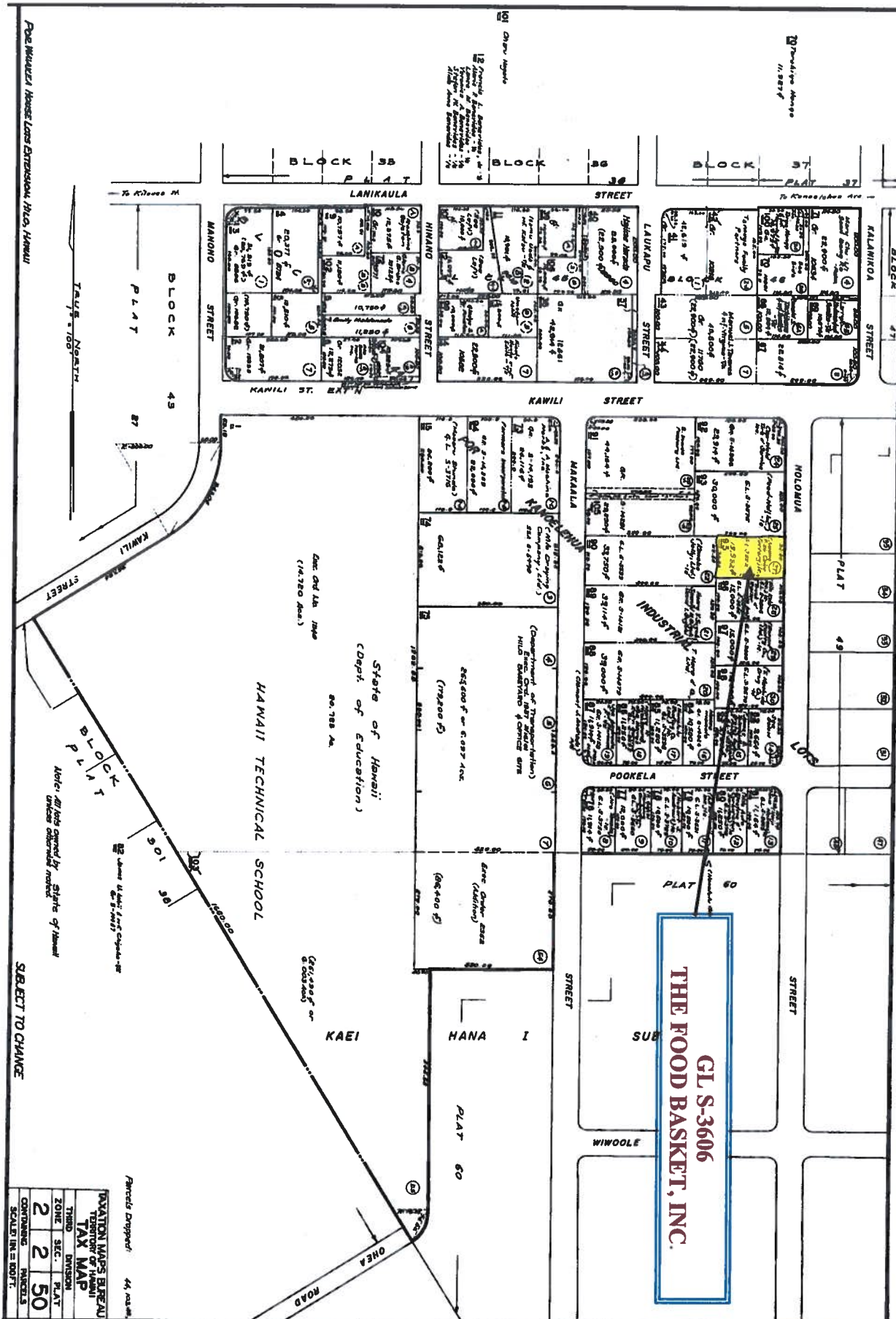
  
\_\_\_\_\_  
Gordon C. Heit  
District Land Agent

**APPROVED FOR SUBMITTAL:**

  
\_\_\_\_\_  
William J. Aila, Jr., Chairperson



<sup>3</sup> In light of the short term remaining on the lease and the logistics involved in any relocation, the Lessee may want to consider applying for an extension of the current lease allowing it time to plan and implement the relocation of its present warehouse/distribution center. Under Act 207, Session Laws of Hawaii 2011, Lessee may be eligible for a ten-year extension of its lease under certain circumstances.

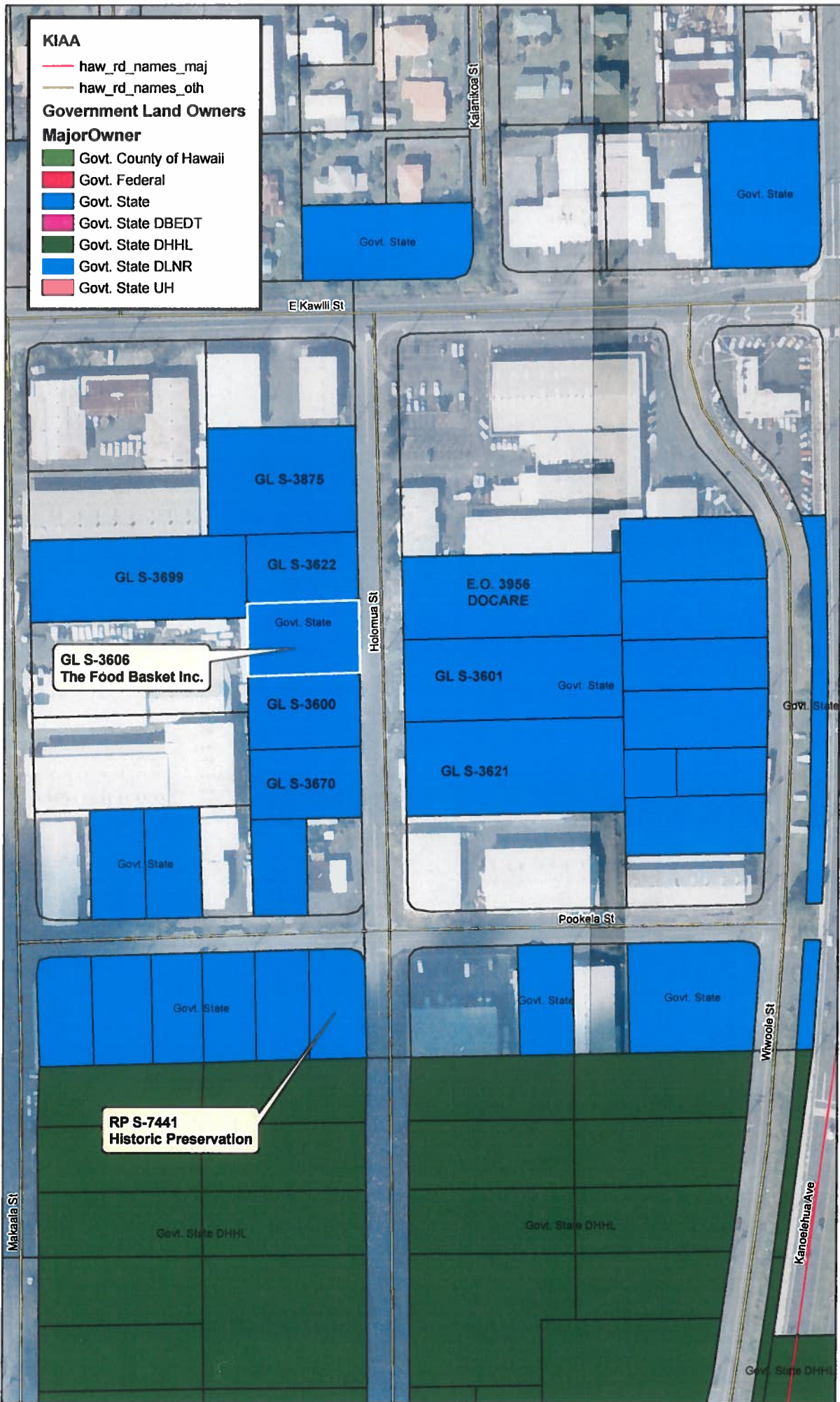


For KAUAI House Lot Extension, Hilo, Hawaii

SUBJECT TO CHANGE

Amends Original 44, made

DIVISION MAPS BUREAU	
TERRITORY OF HAWAII	
TAX MAP	
THIRD DIVISION	
ZONE	SEC. PLAT
2	2 50
CONTAINING PARCELS	
SCALE: 1 IN. = 200 FT.	



NEIL ABURCROMBIE  
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.  
COMMISSIONER  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
1555 KALANIANA'OLEHI MALEKAU DRIVE  
HONOLULU, HAWAII 96813-2001



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

2011 DEC -2 A 10:02

75 Aupuni Street, Room 201  
Hilo, Hawaii 96720  
PHONE: (808) 974-6203  
FAX: (808) 974-6222

RECEIVED  
LAND DIVISION  
HILO, HAWAII

November 23, 2011

Ref. No.: GL S-3606  
Author: LD-GH

The Food Basket, Inc.  
140 Holomua Street  
Hilo, Hawaii, 96720

Dear Lessee:

Subject: **Plan approval for General Lease No. S-3606, The Food Basket, Inc., Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/2-2-50:96.**

We have received your proposed construction plans for improvements to the warehouse on the above-mentioned leasehold property.

The improvements appear substantial considering the Lease expires in approximately four years. By statute, the lease cannot be extended beyond the fifty-five years limit and therefore The Food Basket, Inc. would not qualify for any further extensions or a new long term lease, unless by winning bid at auction. However, we do understand you will be applying for a new 35 year "Direct Lease" for 501 (C) (3) nonprofit organizations.


Accordingly, please acknowledge you fully understand that your lease term will expire in January 15, 2016, and you still would like the Land Division to process and approve your proposed construction plans. If you have any questions, please feel free to contact me at the Hawaii District Land Office at 974-6203. Thank you.

Sincerely,

Gordon C. Heit  
Land Agent

Acknowledged and Agreed:

THE FOOD BASKET, INC.

by   
Its VICE-CHAIR

cc: Land Board Member  
Central Files, District Files

**EXHIBIT B**





STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

2012 AUG -8 P 4:05

RECEIVED  
LAND DIVISION  
HILO, HAWAII

August 7, 2012

Nani Lee  
Executive Director  
The Food Basket Inc.

Hilo, Hawaii 96720

Dear Dr. Lee:

Subject: Request for the Cancellation of GL S-3606 and the Issuance of a Direct Lease for Food Distribution Purposes; Waiakea, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/2-2-50:96

We have received your request for the cancellation of your existing lease and the issuance of a new direct lease for food distribution purposes on State land located in Kanoelehua Industrial Lots situated at Waiakea, South Hilo, Hawaii. You are asking that the new lease be set at the minimum annual rent of \$480.

There are two reasons we cannot recommend to the Board of Land and Natural Resources that it approve your request. The first is that the subject parcel is one of a limited number of industrial-zoned properties in the Board's inventory. Our department relies on the rental revenues from lands such as these to fund the important missions of its various divisions. Accordingly, while the statutory section and Board policy you cite allow the Board to issue leases to eleemosynary organizations at nominal rent, we do not believe the Board would agree to the conversion of one its income-generating industrial leases to a nominal rent lease. Your request for nominal rent would receive much better reception in the department if you were to locate unimproved land for your operation.

The second reason we cannot make a favorable recommendation to the Board on your request is that your lease expires at about the same time as a number of other State leases in the vicinity of the subject parcel. The issuance of a long-term direct lease may impact any future development plans for the area (such as consolidation of the relatively small parcels and creation of fewer but larger parcels, for which new leases would be sold at public auction). As a result, we are not prepared to issue new long-term leases for these parcels.

**EXHIBIT C**

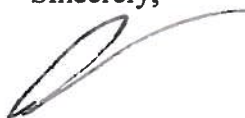
Nani Lee  
Executive Director  
The Food Basket Inc.  
August 7, 2012  
Page 2

As you will recall, we apprised your organization of the short term remaining on the lease at the time the Board approved the assignment to The Food Basket, and also when your construction plans were approved. The Board submittal of June 23, 2011, Item D-3, states in part that the "Assignee is also aware and understands that the lease will expire on January 15, 2016 and currently, it cannot be extended beyond the 55-year term." By letter dated November 23, 2011, countersigned by Roland Higashi, we reiterated that the term remaining on the lease was very short.

Accordingly, while we recognize the contribution that your organization makes to feeding the hungry in our community, we cannot support the cancellation of the existing lease and issuance of a new 35-year lease by direct negotiation at this particular location. If there is another site suitable for your operations, we would evaluate whether a direct lease at nominal rent would be appropriate for the alternate location.

If you have any questions, please feel free to contact the Hawaii District Land Office at (808) 961-9590. Thank you.

Sincerely,



Russell Y. Tsuji  
Land Division Administrator

cc: Land Board Member  
Central Files  
District Files