

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

May 23, 2014

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

GL S-5844  
  
Hawai'i

(1) Report to the Board on Uncured Defaults for Performance Bond and Improvement Bond, and on Plans Submitted by Lessee for Review under General Lease No. S-5844, WHR, LLC, Lessee; and (2) Authorization of Forfeiture of Lease in Event Defaults are not Cured, Waiakea, South Hilo, Hawaii, Tax Map Keys: 3<sup>rd</sup>/ 2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, 46.

**PURPOSE:**

Report to the Board on uncured defaults for performance bond and improvement bond and on plans submitted by Lessee under General Lease No. S-5844, WHR, LLC, Lessee, and authorization of forfeiture of lease in event defaults are not cured within 30 days of board meeting.

**LEGAL REFERENCE:**

Section 171-39, Hawaii Revised Statutes, as amended.

**LOCATION:**

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, 46, as shown on the attached map labeled Exhibit A.

**AREA:**

68.926 acres (net area after exclusions), 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:**

Hotel and golf course purposes.

TERM OF LEASE:

65 years, commencing on February 1, 2006 and expiring on January 31, 2071.

ANNUAL RENTAL:

\$500,000 minimum base rent, or 2% of gross revenues, whichever is greater, due in semi-annual payments.

BACKGROUND:

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980 and the breach provision contained in General Lease S-5844, WHR, LLC, Lessee, was served a Notice of Default by certified mail dated January 10, 2014 for:

- Failure to keep lease rental payments current
- Failure to post required performance bond (\$1,000,000: Equal to twice the annual rent)**
- Failure to post required fire insurance policy
- Failure to post required liability insurance policy
- Failure to post required Improvement Bond Kilauea Tower: \$1,115,356**

Said notice, accepted by the Lessee on January 11, 2014, offered the Lessee a sixty-day cure period to correct the default. This cure period expired on March 11, 2014. As of April 29, 2014, this breach has not been cured.

As of April 29, 2014, the current status of all lease compliance items is as follows:

**RENT:** The Lessee is current with all rent obligations.

**INSURANCE:** The Lessee has posted the required liability and fire insurance policies.

**PERFORMANCE BOND:** The Lessee has not posted the required performance bond.

Section 18 of General Lease No. S-5844 requires the Lessee, at its own cost and expense, procure and deposit with the Lessor a performance bond to be kept in full force and effect during the term of this lease in an amount equal to two times the annual lease rent. This bond shall provide that in the case of a breach or default of any of the lease terms, covenants, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages.

**OTHER:** The Lessee has not posted the required improvement bond for the

construction of the Kilauea Tower.

Section 41 of General Lease No. S-5844 requires Lessee to procure and deposit with the Lessor a surety bond upon written approval of the improvement plans by the Chairperson. The original Lessee negotiated separate bonds agreements for the individual tower structures on the lease property. Renovations to the Kilauea Tower have not been completed.

**REMARKS:**

General Lease No. S-5844 was issued at public auction on September 30, 2005 to Hawaii Outdoor Tours, Inc. (HOTI) for a term of 65 years commencing on February 1, 2006. The lease character of use is for hotel and golf course purposes.

**Bankruptcy**

After defaulting on its purchase money mortgage loan,<sup>1</sup> HOTI filed for bankruptcy protection in November 2012. Initially, HOTI managed the bankruptcy estate as a debtor in possession. But later a bankruptcy trustee was appointed to manage the assets, including the lease. In September 2013, the bankruptcy trustee filed a motion with the court for an order authorizing the assumption of the lease. The State opposed this motion due to the many outstanding defaults under the lease, which were itemized in the Declaration of Russell Y. Tsuji dated October 7, 2013, a copy of which is attached hereto as Exhibit B. The declaration listed the defaults as of that date at paragraph 9. The defaults included:

- a. Delinquent rent in the amount of approximately \$263,000;
- b. Failure to provide evidence of renewal of required construction bonds;
- c. Failure to complete renovations of all facilities to applicable building codes and to a standard expected by the State or required by the lease;
- d. Failure to release all recorded liens by full payment;
- e. Delinquent utility bills of approximately \$245,000;
- f. Failure to provide evidence that all notices of violation issued by the County of Hawaii have been cured to the satisfaction of the County;
- g. Failure to provide evidence of payment in full of all amounts owed to any governmental entity or public utility for such matters as taxes, assessments, electrical, sewer and water charges;
- h. Failure to replenish the performance bond to the full \$1,000,000 required under the lease (a bond of \$500,000 was posted at the time); and
- i. Failure to pay the State's attorneys' fees and costs with regard to litigation.

Despite the State's opposition to the bankruptcy trustee's motion to assume the lease, in October 2013 the bankruptcy court allowed the assumption without requiring the trustee to cure the defaults. Nevertheless, the declaration and other documents filed with the court served as notice to all concerned parties of the outstanding defaults under the lease.

---

<sup>1</sup> \$10 million loan issued by First Citizens Bank & Trust Co.

### Assignment of Lease to WHR, LLC

The lease was then sold through the bankruptcy court by sealed bid to WHR, LLC (WHR) and closing occurred on December 17, 2013. The bankruptcy court confirmed the sale (over the State's objection) based solely on high bid, without requiring all defaults to be cured or at least requiring reasonable assurances by the proposed buyer it would cure with a reasonable period of time the outstanding defaults under the lease.

In a presentation to the Land Board at its meeting of December 13, 2013, WHR's attorney, on behalf of WHR's principal, Ed Bushor, submitted a letter setting forth a preliminary construction schedule of improvements to the property. The schedule indicates that room renovations for towers 1 and 2 of the premises will be completed by November 30, 2014. See Exhibit C.

Staff met with Mr. Bushor, on January 16 and 31, 2014 and discussed with him his plans for the hotel and the importance of promptly curing the defaults under the lease. Staff informed WHR of the terms and conditions of the lease including the performance bond requirement and the replacement of the improvement bond for the ongoing construction of the Kilauea Tower.

On February 5, 2014, in response to Mr. Bushor's request, staff provided him with copies of the improvement bonds for the hotel's Kilauea and Mauna Kea Towers that were in place when HOTI was the lessee, so that Mr. Bushor could have samples of acceptable replacement improvement bonds under the lease. See Exhibit D. On February 26 and 27, 2014, Land Division Administrator Russell Tsuji sent Mr. Bushor a number of emails reiterating that the performance and improvement bonds needed to be posted promptly. See Exhibit E.

Mr. Bushor appeared before the Board at its meeting of February 28, 2014 and provided a timeline and some renderings of the proposed hotel renovations. The timeline included scheduled dates for the implementation of the performance bond and improvement bond requirements.<sup>2</sup>

Mr. Tsuji reminded Mr. Bushor of the outstanding performance and improvement bond defaults in emails dated March 13, April 1, April 4, April 9, and April 29, 2014. See Exhibit F and H.

### Plans Submission to BLNR for Review and Approval

At its meeting of January 10, 2014, Item D-2, the Board authorized the procurement of an engineering consultant to assist in review of WHR's plans for the renovations of the hotel. The Engineering Division thereafter selected the engineering firm Brown and Caldwell as the consultant on the project. Between March 28 and April 9, 2014, WHR submitted to Land Division plans for various parts of the hotel renovation. Upon review, Brown and Caldwell found the plans to have varying percentages of drawings submitted, as follows:<sup>3</sup>

---

<sup>2</sup> The timeline indicated a delivery date of 3/21/2014 for the performance bond and the issuance of a \$5 million construction bond by 5/15/2014.

<sup>3</sup> Mr. Bushor stated that some of the plans were submitted as 60% plans.

<u>Drawing Title</u>	<u>% of Drawings Submitted</u>
Owner Alterations Mauna Loa Tower	20%
Owner Alterations Lobby	64%
Owner Alterations Crown Room Lounge	9%
Owner Alterations Kilauea Tower	8%
Owner Alterations Mauna Kea Tower	8%
Partial Guest Room Demolition Mauna Loa Tower	100%
Ventilation Ductwork Demolition Kilauea Tower	100%
Bar Progress Set	Unknown <sup>4</sup>
Hilo Naniloa Lighting Plans	Unknown
Banquet Plan	Unknown
Lobby Plan	Unknown
Mauna Loa Furniture Plan	Unknown

Brown and Caldwell advised that:

Due to the incompleteness of the drawings to date, such as the missing plumbing, mechanical, fire sprinkler, and electrical plans, we are unable to effectively conduct our review as requested to determine if the Lessee is complying with DLNR's lease terms with the proposed alterations to the Naniloa Resort. We respectfully request that the Lessee be asked when a complete set of drawings that includes all design disciplines for the various proposed alterations to the Naniloa Resort will be submitted so that we can conduct our review of all of the proposed drawings, as well as the accompanying specifications for the alterations that would normally be part of the construction documents for prospective Contractors constructing such alterations.

See Exhibit G attached.

As a result, staff will not be able to bring the construction plans to the Board for approval until they are in a format acceptable to the engineers. On April 9, 2014, Land Division inquired when the complete plans and cost estimates would be available. Mr. Bushor responded that work is proceeding in four overlapping phases to meet the targeted opening of the renovated hotel on January 1, 2015. Phase 1 covers the Mauna Loa Tower; phase 2 is the lobby and public areas; phase 3 is the restaurant and pool area; and phase 4 is the former Crown Room. Mr. Bushor explained that each phase covers a distinct area and will require a separate permit. He expected complete construction plans for phases 1 and 2 and submission of building, electrical and plumbing permits by April 21, 2014, but they were not provided to Land Division. Mr. Bushor added that construction plans for phases 3 and 4 will be submitted for permits in July 2014 after leases are signed and operators are selected. Mr. Tsuji reminded Mr. Bushor that all plans need to be approved by the Board before commencement of construction. See Exhibit H attached.

---

<sup>4</sup> For those items marked "Unknown," Brown and Caldwell indicated that the drawings did not include an index sheet with the number of total drawings to be submitted. Accordingly, no percentage could be calculated.

Status of Bonds and Uncured Notices of Default

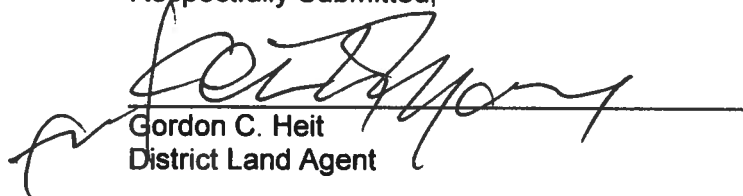
At present, the Department has no performance bond, though Land Division sent a proposed form of surety bond to Mr. Bushor on April 9, 2014. A copy of the proposed bond form is attached as Exhibit I. The language of this bond would give WHR some assurance that the bond would not be called for County of Hawaii violations, as long as the County did not pursue enforcement of the violations or impose fines. Additionally, WHR has not posted a construction bond for the Kilauea Tower. Attached as Exhibit J is a sample of the construction bond previously issued for the Kilauea Tower when HOTI had the lease. Everyone, including Mr. Bushor, understood the construction bond in at least the equivalent amounts as posted by HOTI needed to be replaced at closing, and later increased if further additional work is contemplated above the old plans previously approved by DLNR submitted by HOTI for the Kilauea Tower.

The continuing defaults on the performance and construction bonds are a serious concern. Staff therefore recommends below that WHR be given 30 days from the date of the Board meeting to post a construction bond (with substantially similar language and identical amount as the prior Kilauea Tower construction bond – see Exhibit J), and the performance bond in the form that staff recommended (see Exhibit I). If the bonds are not posted within 30 days of the Board meeting, the lease will automatically terminate.

RECOMMENDATION: That the Board:

1. In the event WHR, LLC fails to post an acceptable performance bond in the amount of \$1,000,000, or an acceptable construction bond for the Kilauea Tower in the amount of \$1,115,356 within 30 days of this Board action, authorize the cancellation of General Lease No. S-5844 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-5844 to be applied to any past due amounts;
3. In the event of cancellation, terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of the date of cancellation, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law; and
4. In the event of cancellation, authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under General Lease No. S-5844 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,



Gordon C. Heit  
District Land Agent

APPROVED FOR SUBMITTAL:



---

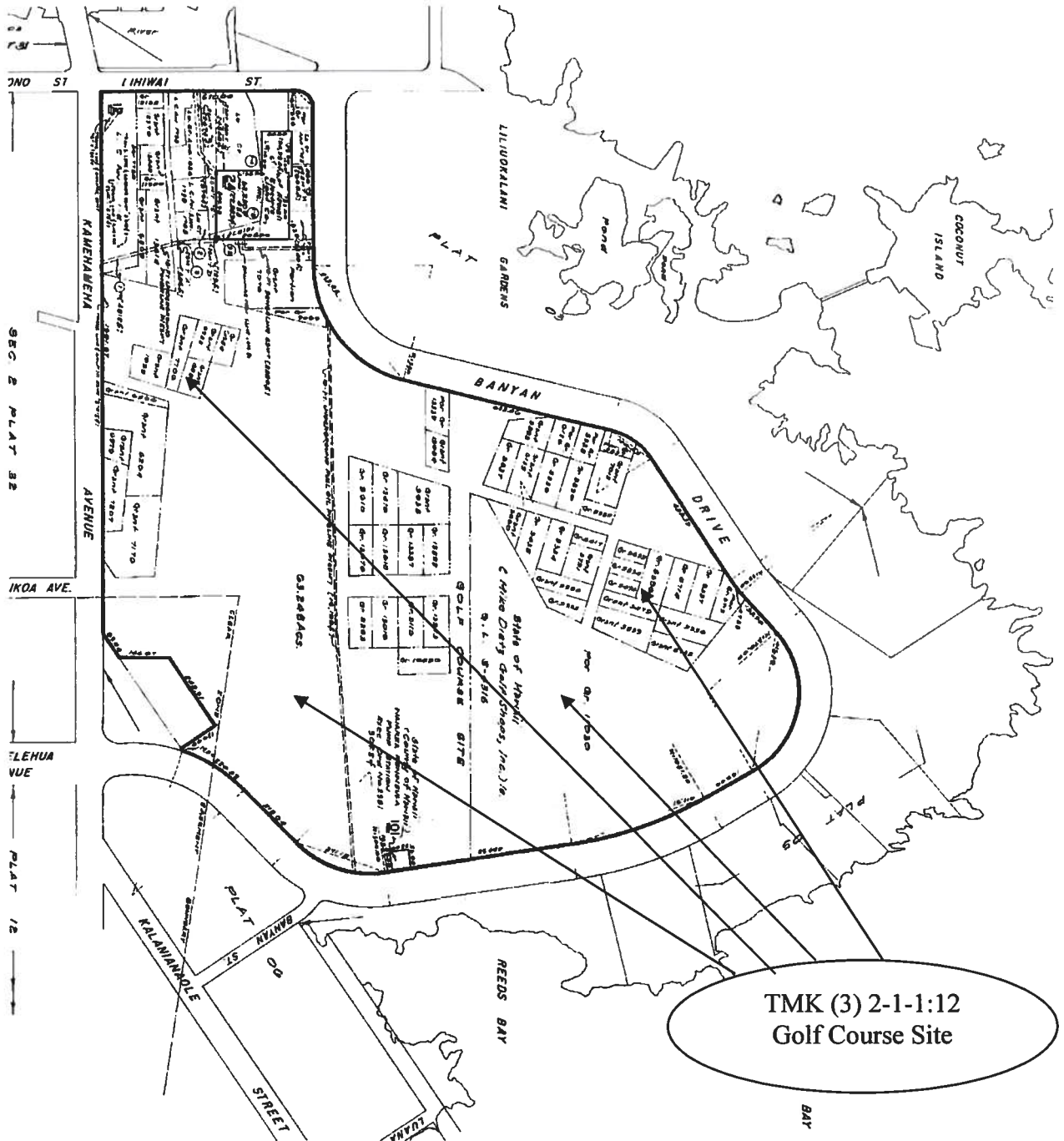
William J. Aila, Jr., Chairperson



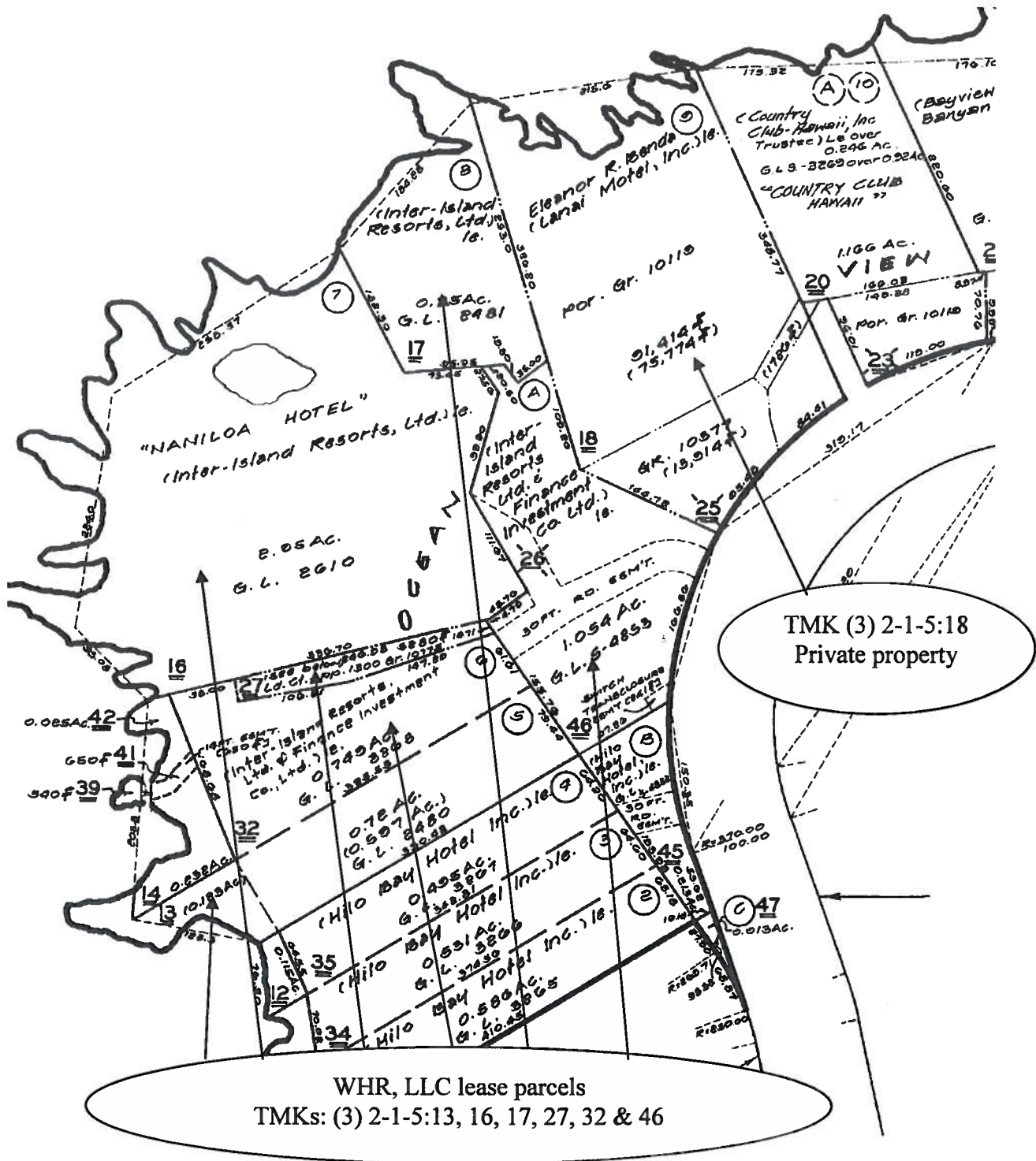


# EXHIBIT A





**EXHIBIT A**



# EXHIBIT B

DAVID M. LOUIE 2162  
Attorney General of Hawaii

CYNTHIA M. JOHIRO 5445  
DAMIEN A. ELEFANTE 7271  
Deputy Attorneys General  
Department of the Attorney  
General, State of Hawaii  
425 Queen Street  
Honolulu, HI 96813  
Telephone: 586-1470  
E-Mail: Cynthia.M.Johiro@hawaii.gov

Attorneys for the  
STATE OF HAWAII

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF HAWAII

In re

HAWAII OUTDOOR TOURS, INC.  
dba Nanihoa Volcanoes  
Resort and Nanihoa  
Volcanoes Golf Club,

Debtor.

CASE NO. 12-02279  
(Chapter 11)

*Re: Docket Entry No. 367*

HEARING:

DATE: October 21, 2013

TIME: 9:30 a.m.

JUDGE: Honorable Robert J.  
Faris

518964

DECLARATION OF RUSSELL Y. TSUJI REGARDING  
STATE OF HAWAII'S MEMORANDUM IN OPPOSITION TO TRUSTEE'S  
MOTION FOR ORDER (A) AUTHORIZING THE ASSUMPTION OF  
CERTAIN UNEXPIRED NON-RESIDENTIAL REAL PROPERTY LEASES  
AND (B) ESTABLISHING CURE COSTS; EXHIBITS B, C, E, AND

G

**EXHIBIT B**

1. I am the Administrator of the Land Division of the State of Hawaii, Department of Land and Natural Resources (hereinafter, "DLNR").

2. I have reviewed the records of the DLNR and am competent to testify as to the matters stated herein.

3. As part of my duties, I have been assigned to oversee the State of Hawaii General Leases Nos. S-5844 ("Naniloa Lease") and S-5372 ("Kau Lease"). Hawaii Outdoor Tours, Inc. ("Debtor") is the lessee of both the Naniloa Lease and the Kau Lease. True and correct copies of the Naniloa Lease and the Kau Lease are attached hereto as Exhibits B and C, respectively.

4. The Naniloa Lease requires the Debtor to obtain a Performance Bond<sup>1</sup> in the amount of twice the annual rent in favor of the DNLR. Because the base rent at this time is \$500,000.00 annually, the Performance Bond required by the Naniloa Lease is \$1,000,000.00.

---

<sup>1</sup> The performance bond requirement is in lieu of requiring a cash security deposit; under the Naniloa Lease, the bond may be called upon to cure any defaults under that lease.

5. During 2011 and 2012, the Debtor was unable to pay the Naniloa Lease semi-annual rent installments. The DNLR accordingly drew down the Performance Bond twice. To be more specific, a Notice of Default was issued in or around February 28, 2011 for delinquent rent. In or around March 2011, the Debtor requested that the \$1,000,000.00 Performance Bond be reduced to \$500,000.00, with the understanding that \$500,000.00 from the Performance Bond would be applied directly to the annual rent for that year. On March 24, 2011, the Land Board approved the reduction of the Performance Bond with the understanding that the aforesaid \$500,000.00 would be immediately applied to the annual rent, and in the event of any future violation of a term or condition of the Naniloa Lease, the Chairperson could reinstate the Performance Bond back to the original \$1,000,000.00 amount upon thirty (30) days' written notice. The Performance Bond has since been reinstated<sup>2</sup> to the original \$1,000,000.00

---

<sup>2</sup> On May 10, 2013, the Land Board reinstated the Performance Bond back to the original \$1,000,000.00 amount.

amount, but as of this date, the Performance Bond remains short \$500,000.00.

6. On or about March 2, 2012, the DNLR notified Debtor of its default for failure to pay the Naniloa Lease rent for the period from February 1, 2012 and July 31, 2012. Because of the outstanding delinquent rent, on or about May 9, 2012, the DNLR called upon the Performance Bond to cure the delinquent semi-annual rental installment.

6. On or about June 1, 2012, the DNLR notified Debtor of another default under the Naniloa Lease for failing to replenish the Performance Bond to the then reduced amount of \$500,000.00.<sup>3</sup>

7. On or about August 29, 2012, the DNLR sent another notice of default to the Debtor for failing to pay the Naniloa Lease rent for the period from August 1, 2012 to January 13, 2013.<sup>4</sup>

---

<sup>3</sup> On or about October 5, 2012, DNLR acknowledged First-Citizens Bank's cure of about \$260,000.00 of the Performance Bond under the Naniloa Lease bringing the bond account balance back to then \$500,000.00 level.

<sup>4</sup> DNLR records show that in or around January 7, 2013, First Citizens Bank advanced \$262,000.00 to cover the default for Debtor's failure to pay the Naniloa Lease rent.



8. The Naniloa Lease rent for the period from August 1, 2013 to January 13, 2014 became due and is unpaid. The Naniloa Lease requires the semi-annual rental payment of \$250,000.00 to be paid in advance.

9. As of the date of this declaration, the following are defaults in the Naniloa Lease and ought to be cured immediately and certainly before the Trustee assumes any of the leases with the DLNR:

- a. Delinquent rent payment of approximately \$263,000.00;
- b. Evidence of renewal of all construction bonds<sup>5</sup>;
- c. Complete renovations of all facilities to applicable building codes and to a standard expected by the State or required by the Naniloa lease<sup>6</sup>;
- d. Release of all recorded liens by full payment<sup>7</sup>;
- e. Payment of all delinquent utilities bills of approximately \$245,000.00<sup>8</sup>;
- f. Satisfactory evidence that all Notices of Violation issued by the County of

---

<sup>5</sup> E.g., paragraphs 41, 40 and 11 of the Naniloa Lease.

<sup>6</sup> E.g., paragraphs 10, 9, 5, 6, and 7 of the Naniloa Lease.

<sup>7</sup> E.g., paragraph 11 of the Naniloa Lease.

<sup>8</sup> E.g., paragraph 3 of the Naniloa Lease.

Hawaii have been cured to the satisfaction of the County of Hawaii, such as those notices issued against the Naniloa hotel site<sup>9</sup>;

- g. Satisfactory evidence of payment in full of all amounts owed to any governmental entity or public utility for such matters as taxes, assessments, electrical, sewer and water charges<sup>10</sup>;
- h. Replenishment of the Performance Bond (\$500,000.00) back to the full \$1 million dollar level as required by the Naniloa Lease<sup>11</sup>; and
- i. Payment of the State's attorneys' fees and costs with regard to any litigated matter<sup>12</sup>.

10. DLNR sent out the following notice of default letters to the Debtor regarding the Kau Lease: November 21, 2008, December 3, 2010, May 31, 2011, November 29, 2011, and May 31, 2012. The nature of the default for all of the aforesaid notices was for delinquent rent, late charges, and interest. The amount of the delinquent rent, late charges, and

---

<sup>9</sup> E.g., paragraph 7 of the Naniloa Lease.

<sup>10</sup> E.g., paragraphs 2 and 3 of the Naniloa Lease.

<sup>11</sup> E.g., paragraph 18 of the Naniloa Lease and pursuant to the Land Board's decision on Item D-5 at the Land Board meeting held on May 10, 2013.

<sup>12</sup> E.g., paragraphs 15 and 16 of the Naniloa Lease.

interest due under the Kau Lease through November 2013 is approximately \$5,400.00.

11. As to the Naniloa Lease, DLNR sent out the following notice of default letters: March 15, 2007<sup>13</sup>, February 13, 2009<sup>14</sup>, August 23, 2010<sup>15</sup>, February 28, 2010<sup>16</sup>, March 2, 2012<sup>17</sup>, June 1, 2012<sup>18</sup> and August 29, 2012<sup>19</sup>.

12. True and accurate copies of the current amounts owing on the Naniloa Lease and the Kau Lease are set forth in the rent ledgers attached hereto as Exhibit E.

13. At the September 13, 2013 Land Board meeting, the Board asked the Secured Lender's counsel if the Secured Lender would be coming forward to cure

---

<sup>13</sup> Lack of the construction bond to cover mechanic and materialman liens, and completion.

<sup>14</sup> Rent delinquent.

<sup>15</sup> Rent and percentage rent report delinquent.

<sup>16</sup> Rent delinquent.

<sup>17</sup> Rent delinquent.

<sup>18</sup> Performance Bond shortage.

<sup>19</sup> Rent delinquent.


the rent default. The Secured Lender's counsel did not answer.

14. True and accurate copies of the testimony sent to the Land Board for the September 13, 2013 asking that the Board not extend the time for the trustee to assume or reject the State Leases are attached hereto as Exhibit G.

15. The State is unable to amend lease terms until expiration of the lease period.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: Honolulu, Hawaii, 10/7/13.

  
\_\_\_\_\_  
RUSSELL Y. TSUJI

# EXHIBIT C



December 12, 2013

Department of Land and Natural Resources  
P.O. Box 621  
Honolulu, Hawaii 96809

Dear Chairman Aila and Members of the Board:

Please accept my apology that I cannot attend today's important meeting. We are under enormous pressure from the bankruptcy trustee and his attorney to complete the purchase of the hotel and close no later than December 17. We have fully funded the purchase price and provided additional funds to cure the lease defaults and provide some funds for unsecured creditors in accordance with the Order. We have engaged skilled and experience managers and we have a construction and design team hard at work on plans for renovations.

As a result of the trustee's demands, I cannot leave Hilo until the closing occurs. There are simply too many problems and details that must be resolved on Friday through Monday. None of these matters is fatal to the deal, but the all require close attention and my presence at the Property.

If there are any questions or concerns my attorneys cannot answer at the meeting, I can be available by cell phone, but I hope you will be satisfied with our bona fides, our intent to cure and upgrade the property, and our unwavering commitment to restore the Naniloa to its glory.

I have also attached a preliminary schedule for our construction plans and will provide further details as plans are finalized. We look forward to working with the State on this great project.

Sincerely,

A handwritten signature in black ink, appearing to read "EB", is written over a faint circular stamp or watermark.

Edward Bushor  
On behalf of  
WHR, LLC and  
Tower Development, Inc.

**EXHIBIT C**



Preliminary Construction Schedule\*\*

Closing	December 17, 2013
Planning For Immediate Improvements	December 17 – December 31, 2013
Process Permit Violation Cures	December 17, 2013
Implement Immediate Improvements	January 1, 2014 – January 31, 2013
Planning and Design	January 1, 2014 – February 28, 2013
Commence New Permit Processing For "The Wyland Hilo"	March 1, 2014
Grand Opening of Willie Ks Gig	November 1, 2014
Room Renovations Tower 1 & 2 Complete (320 rooms estimated to be complete)	November 30, 2014
Common Area Renovations Complete	December 15, 2014
Grand Opening Party Towers 1 & 2	December 31, 2014
Tower 3 Renovation Complete	TBD

\*\* Due to the Bankruptcy, our schedule is preliminary and upon adequate review of all issues concerning the project, Tower will update this schedule and deliver it to DLNR with renovations plans.



# EXHIBIT D



{In Archive} Re: Bond Form

Gordon C Heit to: Ed

02/05/2014 03:05 PM

Cc: "Kevin.E.Moore@hawaii.gov", "Russell.Y.Tsuji@hawaii.gov", Stuart

Archive: This message is being viewed in an archive.

Here are the improvement bond documents we have on file.

As Russell mentioned, the Performance Bond was in the form of a cash account held by their bank. All we have on file is the signature card.

Please let me know if there is anything else I can assist you with.

Gordon

[attachment "Improvement Bond Kilauea Tower.pdf" deleted by Kevin E Moore/DLNR/StateHiUS]  
[attachment "Improvement Bond MK Tower.pdf" deleted by Kevin E Moore/DLNR/StateHiUS] [attachment  
"Letter of Understanding Improvement Bond.pdf" deleted by Kevin E Moore/DLNR/StateHiUS]

Gordon C. Heit  
District Land Agent  
State of Hawaii  
Department of Land and Natural Resources  
Hawaii District Land Office  
808.961.9590  
808.961.9599 fax

Ed

Any form of agreements used in past would be h...

02/05/2014 02:51:28 PM

From: Ed <ed@towerdevcon.com>  
To: "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov>, Ed <ed@towerdevcon.com>,  
Cc: "Gordon.C.Heit@hawaii.gov" <Gordon.C.Heit@hawaii.gov>, "Kevin.E.Moore@hawaii.gov" <Kevin.E.Moore@hawaii.gov>, Stuart <stuart@towerdevcon.com>  
Date: 02/05/2014 02:51 PM  
Subject: Re: Bond Form

Any form of agreements used in past would be helpful to short cut time...

**From:** "[Russell.Y.Tsuji@hawaii.gov](mailto:Russell.Y.Tsuji@hawaii.gov)" <[Russell.Y.Tsuji@hawaii.gov](mailto:Russell.Y.Tsuji@hawaii.gov)>

**Date:** Wednesday, February 5, 2014 2:23 PM

**To:** Edward Bushor Tower Development <[ed@towerdevcon.com](mailto:ed@towerdevcon.com)>

**Cc:** Edward Bushor Tower Development <[ed@towerdevcon.com](mailto:ed@towerdevcon.com)>, "[Gordon.C.Heit@hawaii.gov](mailto:Gordon.C.Heit@hawaii.gov)" <[Gordon.C.Heit@hawaii.gov](mailto:Gordon.C.Heit@hawaii.gov)>, "[Kevin.E.Moore@hawaii.gov](mailto:Kevin.E.Moore@hawaii.gov)" <[Kevin.E.Moore@hawaii.gov](mailto:Kevin.E.Moore@hawaii.gov)>, Stuart <[stuart@towerdevcon.com](mailto:stuart@towerdevcon.com)>

**Subject:** Re: Bond Form

Need to be aware That there was a standard surety bond for the construction bond. On the performance bond Ken posted cash held by the Bank which had a special land agreement excited which explained the process for calling the bond.

**EXHIBIT D**

Sent from my iPhone

On Feb 5, 2014, at 1:59 PM, "Ed" <[ed@towerdevcon.com](mailto:ed@towerdevcon.com)> wrote:

Thx,

Gordon, if you could forward to Stuart and I any form of bond received from prior owner, can expedite our bidding...thx.

Aloha and warm regards,

Ed Bushor

Tower Development, Inc.

1050 Bishop 530

Honolulu, Hawaii 96813

808.268.1903 cell

[Ed@towerdevcon.com](mailto:Ed@towerdevcon.com)

[www.TowerDevCon.com](http://www.TowerDevCon.com)

**From:** "Russell.Y.Tsuji@hawaii.gov" <[Russell.Y.Tsuji@hawaii.gov](mailto:Russell.Y.Tsuji@hawaii.gov)>

**Date:** Wednesday, February 5, 2014 1:52 PM

**To:** Edward Bushor Tower Development <[ed@towerdevcon.com](mailto:ed@towerdevcon.com)>

**Cc:** "Gordon.C.Heit@hawaii.gov" <[Gordon.C.Heit@hawaii.gov](mailto:Gordon.C.Heit@hawaii.gov)>, "Kevin.E.Moore@hawaii.gov" <[Kevin.E.Moore@hawaii.gov](mailto:Kevin.E.Moore@hawaii.gov)>

**Subject:** Re: Bond Form

these kinds of stuff, you can work directly with the Districts and copy me and Kevin.

Gordon: see below.

**From:** Ed <[ed@towerdevcon.com](mailto:ed@towerdevcon.com)>

**To:** "Russell.Y.Tsuji@hawaii.gov" <[Russell.Y.Tsuji@hawaii.gov](mailto:Russell.Y.Tsuji@hawaii.gov)>,

**Date:** 02/05/2014 12:15 PM

**Subject:** Bond Form

Bond surety asked for last issued form received from prior owner to review. Since public document, possible to get a copy to me so I can forward to surety. They said it would speed up process if they could review last issued bond form and bond issued...

Thanks for any help you can provide.

Aloha and warm regards,

Ed Bushor

Tower Development, Inc.

1050 Bishop 530

Honolulu, Hawaii 96813

808.268.1903 cell

[Ed@towerdevcon.com](mailto:Ed@towerdevcon.com)

[www.TowerDevCon.com](http://www.TowerDevCon.com)

# EXHIBIT E