

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

June 13, 2014

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

GL S-5844

Hawai'i

Resubmittal:

(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: 3rd/ 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,¹ 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.

¹ \$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.²

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:³

² 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.

³ 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 ⁴
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.

⁴ 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

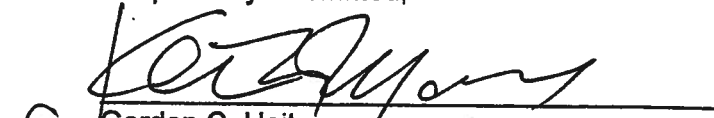
At present, the Department has no performance bond, though Land Division sent a proposed form of surety bond to Mr. Bushor on April 9, 2014. A copy of the proposed bond form is attached as Exhibit I. The language of this bond would give WHR some assurance that the bond would not be called for County 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

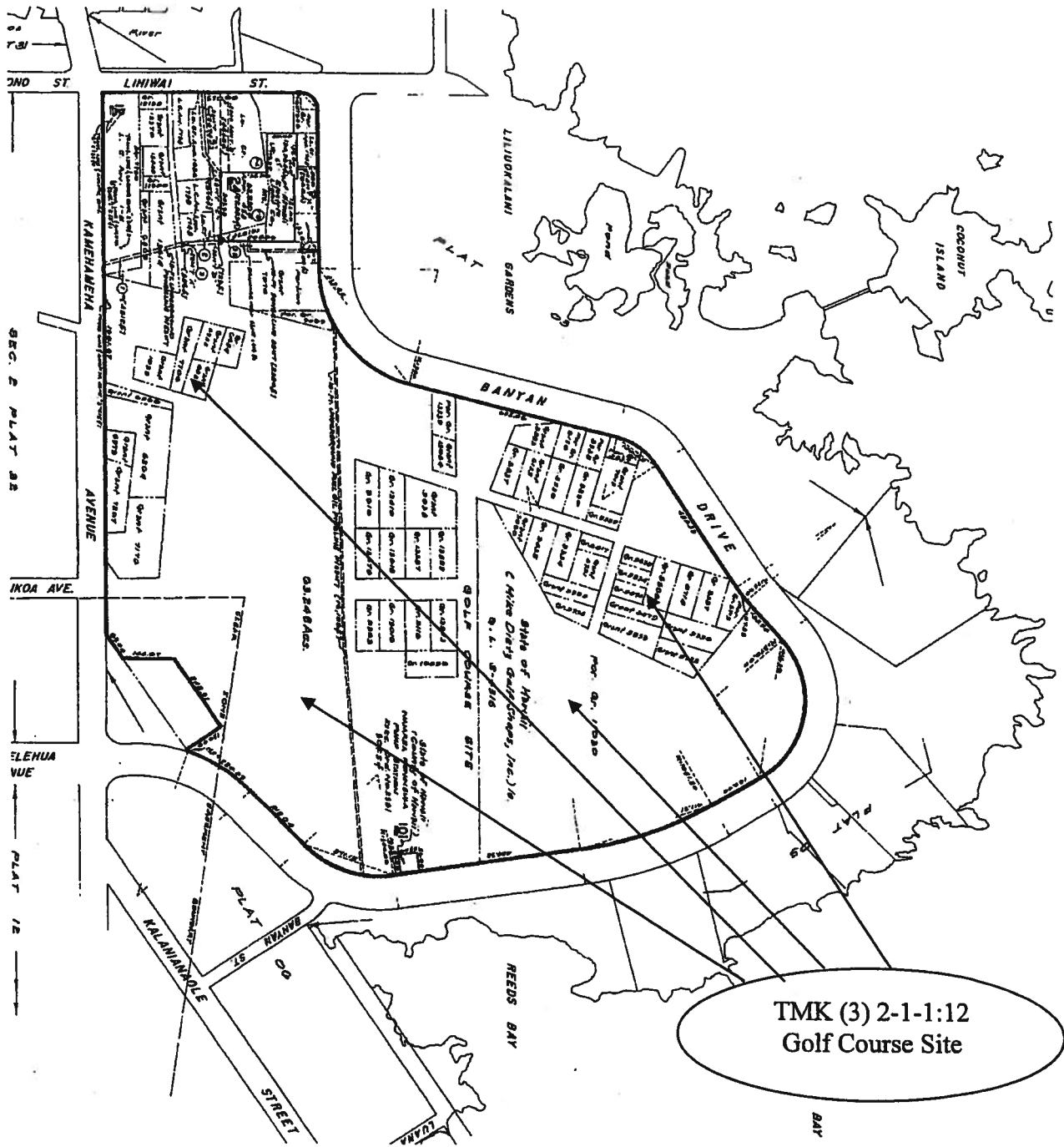


EXHIBIT A

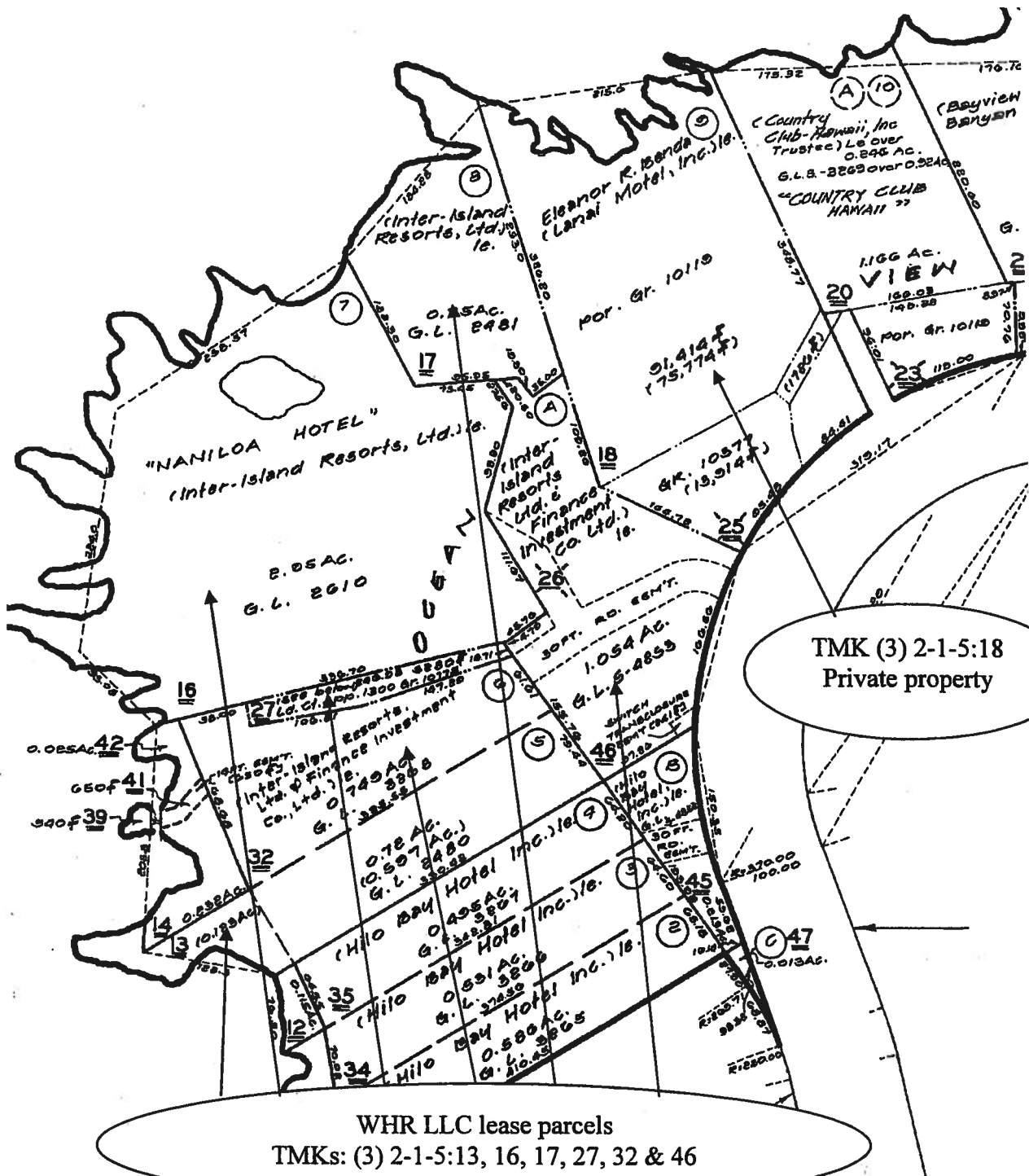


EXHIBIT B

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 Bond¹ in the amount of twice the annual rent in favor of the DNLN. 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.

¹ 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 reinstated² to the original \$1,000,000.00

² 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 DLNR 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 \$500,000.00.³

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, 2013.⁴

³ On or about October 5, 2012, DLNR 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.

⁴ DLNR 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 bonds⁵;
- c. Complete renovations of all facilities to applicable building codes and to a standard expected by the State or required by the Naniloa lease⁶;
- d. Release of all recorded liens by full payment⁷;
- e. Payment of all delinquent utilities bills of approximately \$245,000.00⁸;
- f. Satisfactory evidence that all Notices of Violation issued by the County of

⁵ E.g., paragraphs 41, 40 and 11 of the Naniloa Lease.

⁶ E.g., paragraphs 10, 9, 5, 6, and 7 of the Naniloa Lease.

⁷ E.g., paragraph 11 of the Naniloa Lease.

⁸ 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 site⁹;

- 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 charges¹⁰;
- h. Replenishment of the Performance Bond (\$500,000.00) back to the full \$1 million dollar level as required by the Naniloa Lease¹¹; and
- i. Payment of the State's attorneys' fees and costs with regard to any litigated matter¹².

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

⁹ E.g., paragraph 7 of the Naniloa Lease.

¹⁰ E.g., paragraphs 2 and 3 of the Naniloa Lease.

¹¹ 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.

¹² 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, 2007¹³, February 13, 2009¹⁴, August 23, 2010¹⁵, February 28, 2010¹⁶, March 2, 2012¹⁷, June 1, 2012¹⁸ and August 29, 2012¹⁹.

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

¹³ Lack of the construction bond to cover mechanic and materialman liens, and completion.

¹⁴ Rent delinquent.

¹⁵ Rent and percentage rent report delinquent.

¹⁶ Rent delinquent.

¹⁷ Rent delinquent.

¹⁸ Performance Bond shortage.

¹⁹ 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 dark ink, appearing to read "EB", is written over a light blue circular stamp.

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" <Russell.Y.Tsuji@hawaii.gov>
Date: Wednesday, February 5, 2014 2:23 PM
To: Edward Bushor Tower Development <ed@towerdevcon.com>
Cc: Edward Bushor Tower Development <ed@towerdevcon.com>, "Gordon.C.Heit@hawaii.gov" <Gordon.C.Heit@hawaii.gov>, "Kevin.E.Moore@hawaii.gov" <Kevin.E.Moore@hawaii.gov>, Stuart <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> 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

www.TowerDevCon.com

From: "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov>

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

To: Edward Bushor Tower Development <ed@towerdevcon.com>

Cc: "Gordon.C.Heit@hawaii.gov" <Gordon.C.Heit@hawaii.gov>, "Kevin.E.Moore@hawaii.gov" <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>

To: "Russell.Y.Tsuji@hawaii.gov" <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

www.TowerDevCon.com

EXHIBIT E



{In Archive} Fw: Lease Perf. Bond \$1M

Russell Y Tsuji to: Gordon C Heit, Kevin E Moore, Bill J Wynhoff

02/26/2014 05:57 PM

Archive:

This message is being viewed in an archive.

----- Forwarded by Russell Y Tsuji/DLNR/StateHiUS on 02/26/2014 05:57 PM -----

From: Russell Y Tsuji/DLNR/StateHiUS
To: Ed <ed@towerdevcon.com>
Date: 02/26/2014 05:42 PM
Subject: Re: Lease Perf. Bond \$1M

Time to cure is stated in the lease; any further extensions beyond that period of time is what the BLNR may or may not consider--and staff normally takes a position on the matter as well. please remember that during the Bankruptcy the State's position was always all lease violations must be cured prior to closing, or at the minimum there needs to be a finding by the Court that the proposed new buyer has provided adequate evidence for the Court to conclude that each lease violation will be cured within a reasonable period of time, and therefore ultimately concluding "adequate assurance of performance" under the BK Code has been satisfied. Unfortunately, the Court did not view it the same way.

There has been numerous defaults in the past under the prior tenant, and the bonds were tapped multiple times for various amounts. Though I don't believe we ever called in the construction bond, I am aware of a motion filed by the surety of that bond post your acquisition closing seeking some form of relief or recovery--but that you can check out on your own as it is a public record. I am no longer monitoring the bankruptcy case and have no interest in whether the Surety prevails or not. And it is also public record in both Circuit and Bankruptcy Court there was a prior Mech Lien action filed and an arb award issued--supposedly paid off, but you'd need to check with the Trustee Farmer on that.

Again, I ask for you to talk with Tina as we discussed these matters today, and in the past.

Ed

Aloha Russell, One of the bids we are consideri...

02/26/2014 04:31:30 PM

From: Ed <ed@towerdevcon.com>
To: "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov>
Cc: Ed <ed@towerdevcon.com>
Date: 02/26/2014 04:31 PM
Subject: Lease Perf. Bond \$1M

Aloha Russell,

One of the bids we are considering for the Lease Performance Bond is a surety that developed the form attached and is Westchester Fire Insurance Company, which is rated "A+/Positive" (superior) and financial size category of "XV" (\$2billion or greater) by AM Best (see <http://www3.ambest.com/ratings/entities/SearchResults.aspx?AltSrc=9>). Those ratings are some of the strongest in the surety industry.

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Aloha and warm regards,

Ed Bushor

EXHIBIT E

Tower Development, Inc.
1050 Bishop 530
Honolulu, Hawaii 96813
808.268.1903 cell
Ed@towerdevcon.com
www.TowerDevCon.com

"I make a living from what I get, I make a life from what I give....."

Winston Churchill

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{In Archive} Re: Lease Perf. Bond \$1M 

Russell Y Tsuji to: Ed

Cc: Gordon C Heit, Kevin E Moore, Bill J Wynhoff

02/27/2014 09:41 AM

Archive: This message is being viewed in an archive.

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Product Name: Email - Mail of Russell Y. Tsuji to Ed Bushor | 1/26/2014 10:00:00 AM



{In Archive} Needed Answers to Issue Surety

Ed

to:

Russell.Y.Tsuji@hawaii.gov, Kevin.E.Moore@hawaii.gov

02/27/2014 10:02 AM

Cc:

Ed, MMA Hawaii

Hide Details

From: Ed <ed@towerdevcon.com>

To: "Russell.Y.Tsuji@hawaii.gov"

<Russell.Y.Tsuji@hawaii.gov>, "Kevin.E.Moore@hawaii.gov" <Kevin.E.Moore@hawaii.gov>

Cc: Ed <ed@towerdevcon.com>, MMA Hawaii <chad@mmahawaiiinews.com>

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Aloha Russell and Kevin,

I am hoping we can have a meeting and we can discuss the finalization of the Surety bonds. But if not, please set up a conference call with your legal that can provide me and the surety full details on the bonds and including the history of prior draw downs and basis for any that are related to construction...or physical violations on the Project.

In order for a surety to be issued in the wake of current defaults under the Lease from a prior owner, DLNR needs to address the following questions and issues before any surety can be issued. Any delay on DLNR in assisting us to process the surety company needs and answers to the questions will equally delay the bond to be issued.

To help us speed up final underwriting of the surety, please respond to the following questions in writing so we can process the answers to the surety companies bidding the project which includes at least 4 companies at this point:

A. One of the bids we are considering for the Lease Performance Bond is a surety that developed the form attached and is Westchester Fire Insurance Company, which is rated "A+/Positive" (superior) and financial

size category of "XV" (\$2billion or greater) by AM Best (<http://www3.ambest.com/ratings/entities/SearchResults.aspx?AltSrc=9>). Those ratings are some of the strongest in the surety industry.

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QUESTION 1: How long will DLNR allow owner to cure all of the defaults currently existing from the prior owner before deeming a breach and drawing down on both the \$1M Lease Performance Surety/Bond and the \$5M Construction Surety/Bond?

Note, we believe with construction drawings process being 90 days, permits of 90 days and construction of 120 days, there will be at least a need for 1 year to have a cure period to allow any current default to be cured without DLNR having the right to trigger a bond.

Question 2: Will DLNR prepare a letter addressed to the surety stating DLNR will not trigger any bond without allowing owner to have one (1) year to complete the cure of the existing defaults under the Lease that existed when the current owner purchased the property on December 17, 2013.

B. Please provide a written list of "construction defaults" that DLNR exercised its rights under any previous Construction bond to trigger a draw upon the bond? This is a disclosure item that we need to provide to the surety.

QUESTION 3: List any prior construction bond amount drawn down and the default basis for the draw on the bond.

C. Please provide a written list of "construction defaults" that DLNR exercised its rights under any previous Lease Performance Bond to trigger a draw upon the bond? This is a disclosure item that we need to provide to the surety.

QUESTION 4: List any prior Lease Performance Bond amount drawn down and the default basis of the draw on the bond.

QUESTION 5: Please advise of a time when legal can be on conference call with surety next week preferably Tuesday or Wednesday March 4 or 5?

Aloha and warm regards,

Ed Bushor
Tower Development, Inc.
1050 Bishop 530
Honolulu, Hawaii 96813
808.268.1903 cell
Ed@towerdevcon.com
www.TowerDevCon.com

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Winston Churchill



{In Archive} Re: Lease Perf. Bond \$1M

Ed

to:

Russell.Y.Tsuji@hawaii.gov

02/27/2014 10:04 AM

Cc:

"Kevin.E.Moore@hawaii.gov", MMA Hawaii, Ed

Hide Details

From: Ed <ed@towerdevcon.com>

To: "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov>

Cc: "Kevin.E.Moore@hawaii.gov" <Kevin.E.Moore@hawaii.gov>, MMA Hawaii
<chad@mmahawaiinews.com>, Ed <ed@towerdevcon.com>

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Russell,

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Aloha and warm regards,

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From: "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov>
Date: Thursday, February 27, 2014 9:41 AM
To: Edward Bushor Tower Development <ed@towerdevcon.com>
Cc: "Gordon.C.Heit@hawaii.gov" <Gordon.C.Heit@hawaii.gov>, "Kevin.E.Moore@hawaii.gov" <Kevin.E.Moore@hawaii.gov>, "Bill.J.Wynhoff@hawaii.gov" <Bill.J.Wynhoff@hawaii.gov>
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Ed@towerdevcon.com
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Winston Churchill

[attachment "Lease Bond - State of Hawaii.docx" deleted by Russell Y Tsuji/DLNR/StateHIUS]



{In Archive} Updated Schedule Hilo Naniloa

Ed

to:

Russell.Y.Tsuji@hawaii.gov, Kevin.E.Moore@hawaii.gov

02/27/2014 10:38 AM

Cc:

Ed, MMA Hawaii

Hide Details

From: Ed <ed@towerdevcon.com>

To: "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov>, "Kevin.E.Moore@hawaii.gov" <Kevin.E.Moore@hawaii.gov>

Cc: Ed <ed@towerdevcon.com>, MMA Hawaii <chad@mmahawaii.com>

Archive: This message is being viewed in an archive.

1 Attachment



2014.02.27 Hilo Naniloa Schedule.pdf

HERE IS AN UPDATED SCHEDULE INCLUSIVE OF THE BONDS SO THAT WE ARE ALL WORKING TOWARD SAME DATES TOGETHER.

Aloha and warm regards,

Ed Bushor

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**{In Archive} Naniloa
Russell Y Tsuji to: ed**

02/27/2014 11:49 AM

Cc: Gordon C Heit, Kevin E Moore, Bill J Wynhoff

Archive: This message is being viewed in an archive.



RYT Decl.fin..pdf

Ed: take a look at this. This declaration goes into the history of defaults and calls upon the bond. This declaration also articulates the known outstanding defaults as of the Oct. 7, 2013. Also, please see my prior email to you about the construction bond, lien action, arb award and surety filing a motion for some form of relief or indemnity in BK Court, post closing of the sale of the lease to you.

Thanks.

Russell



{In Archive} Re: Lease Perf. Bond \$1M 

Russell Y Tsuji to: Ed

Cc: "Kevin.E.Moore@hawaii.gov", Gordon C Heit, Bill J Wynchoff

02/27/2014 12:24 PM

Archive: This message is being viewed in an archive.

As we discussed in our prior meeting with Chair Aila, in lieu of an actual performance bond, the State will accept a cash deposit or irrevocable letter of credit. As to the defaults that may have arisen under the prior lessee or Trustee's tenure, you did agree to purchase the lease knowing each of those defaults existed, and took on the responsibility of expeditiously curing them. This auctioned lease clearly sets forth the requirements of the performance and construction bonds. Unfortunately we're not able to amend the of the terms of an auction lease. State v. Kahua Ranch, 47 Haw. 28, 384 P.2d 581 (1963).

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[attachment "Lease Bond - State of Hawaii.docx" deleted by Russell Y Tsuji/DLNR/StateHiUS]



{In Archive} Re: Updated Schedule Hilo Naniloa 

Russell Y Tsuji to: Ed

Cc: "Kevin.E.Moore@hawaii.gov", Gordon C Heit, Bill J Wynhoff

02/27/2014 01:23 PM

Archive: This message is being viewed in an archive.

1 attachment



2014.02.27 Hilo Naniloa Schedule.pdf

We'll take a look at what you sent, but the cure period for the Notices of Default for the performance and construction bonds come due March 11. Anything beyond that would require Land Board approval. Please do you best; again cash or an irrevocable letter of credit would be acceptable in lieu of the performance bond.

From: Ed <ed@towerdevcon.com>
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{In Archive} Re: Lease Perf. Bond \$1M 

Russell Y Tsuji to: Ed

02/27/2014 01:28 PM

Cc: "Bill.J.Wynhoff@hawaii.gov", MMA Hawaii,
"Gordon.C.Heit@hawaii.gov", "Kevin.E.Moore@hawaii.gov"

Archive: This message is being viewed in an archive.

Ed, you're in a default situation as shown in my declaration. That occurred the moment the sale closed and you accepted the assignment of the lease, with all of the outstanding defaults needing to be cured. We can't do what you're asking.

Ed We are not asking for an amendment on this iss...

02/27/2014 01:20:09 PM

From: Ed <ed@towerdevcon.com>
To: "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov>, Ed <ed@towerdevcon.com>,
Cc: "Kevin.E.Moore@hawaii.gov" <Kevin.E.Moore@hawaii.gov>, "Gordon.C.Heit@hawaii.gov" <Gordon.C.Heit@hawaii.gov>, "Bill.J.Wynhoff@hawaii.gov" <Bill.J.Wynhoff@hawaii.gov>, MMA Hawaii <chad@mmahawaii.com>
Date: 02/27/2014 01:20 PM
Subject: Re: Lease Perf. Bond \$1M

We are not asking for an amendment on this issue. We need you to acknowledge in writing to the surety that "Tower" is not in breach of these items until an adequate time to cure them before you could draw on a bond "that states you may draw on any default". Your lease fails to consider a new buyer and how to address a new buyer's hard work in the face of a bond that states you can draw on any default. So we need an agreement as to settling the time frame of curing any and all prior breaches in comparison to the bond.

No surety will issue a bond without it so you need to address it. We are willing to accommodate any reasonable needs and we are already working hard on curing many defaults. However, we can't also be hit with you taking \$1M because of prior owner's default that we are curing for DLNR and the State to get this property back in good standing for tourism. I will be available to discuss solutions but this is not a one way street. We need to work together.

Aloha and warm regards,

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[attachment "Lease Bond - State of Hawaii.docx" deleted by Russell Y Tsuji/DLNR/StateHiUS]



{In Archive} Re: Updated Schedule Hilo Naniloa 

Russell Y Tsuji to: Ed

02/27/2014 02:18 PM

Cc: "Bill.J.Wynhoff@hawaii.gov", "Gordon.C.Heit@hawaii.gov",
"Kevin.E.Moore@hawaii.gov"

Archive: This message is being viewed in an archive.

I don't know what you mean by a reasonable fashion in reasonable time period, but if you want to propose a certain extended time period to cure a particular default, then we and the Board may consider it. If agreed upon, then what that can do for you would be to avoid an action before the Board to terminate the Lease until such time as the agreed upon extended time period has elapsed. But the bond/security is separate, and we will not consider a blanket waiver from calling in the bond or any other security deposit for a period of a year like you suggest. We may need to tap the bond or security deposit in the event of failure to comply with on-going obligations under the Lease such as failure to pay the rent, renew the insurance, etc... and in the event any unknown or latent issues pop up later that triggers a default under the Lease.

Russell

From: Ed <ed@towerdevcon.com>
To: "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov>,
Cc: "Kevin.E.Moore@hawaii.gov" <Kevin.E.Moore@hawaii.gov>, "Gordon.C.Heit@hawaii.gov" <Gordon.C.Heit@hawaii.gov>,
"Bill.J.Wynhoff@hawaii.gov" <Bill.J.Wynhoff@hawaii.gov>
Date: 02/27/2014 01:49 PM
Subject: Re: Updated Schedule Hilo Naniloa

Again, the bond or cash or LC is not the issue. The issue is DLNR's position on allowing Tower "to continue any violations of a previous owner in a reasonable fashion in a reasonable time period" before such time as you draw on a "prior violation".

Example, if the County delays us getting a permit and we want to do the work, that is not the developers fault. We want to cure but we need permits to cure.

I am not sure you have someone who wants to build and core as fast as I do. But the surety or any developer would be unable to authorize you to draw on a bond of some prior owner's default while Tower and myself awaits a permit...

I will recommend a reasonable period of 90 days after any permit is issued and a total time period of one year to cure all defaults of a prior owner violation or breach. Please request a reasonable solution so we can deliver the bond to you.

Aloha and warm regards,

Ed Bushor

Tower Development
1050 Bishop Street #530
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808.268.1903
ed@towerdevcon.com
www.towerdevcon.com

On Feb 27, 2014, at 1:23 PM, "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov> wrote:

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From: Ed <ed@towerdevcon.com>
To: "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov>, "Kevin.E.Moore@hawaii.gov" <Kevin.E.Moore@hawaii.gov>,
Cc: Ed <ed@towerdevcon.com>, MMA Hawaii <chad@mmahawaiinews.com>
Date: 02/27/2014 10:38 AM
Subject: Updated Schedule Hilo Naniloa

HERE IS AN UPDATED SCHEDULE INCLUSIVE OF THE BONDS SO THAT WE ARE ALL WORKING TOWARD SAME DATES TOGETHER.

Aloha and warm regards,

Ed Bushor
Tower Development, Inc.
1050 Bishop 530
Honolulu, Hawaii 96813
808.268.1903 cell
Ed@towerdevcon.com
www.TowerDevCon.com

"I make a living from what I get, I make a life from what I give....."
Winston Churchill

<2014.02.27 Hilo Naniloa Schedule.pdf>



{In Archive}

Russell Y Tsuji to: ed

Cc: Bill J Wynhoff, Kevin E Moore, Gordon C Heit

02/27/2014 02:46 PM

Archive:

This message is being viewed in an archive.

Ed: Providing you with a courtesy heads-up To date we have not received a rescission of any of the county violations, orders or fines, and as far as I know, none of them have been cured or resolved to the County's satisfaction. I think we've given you a reasonable period of time to work this out the County. Since we were notified of those violations, etc., we'll need to document that on our side and provide you with a Notice of Default under the Lease. I hope and trust you will work those issues out with the County in an expeditious fashion (if you haven't done so already), and within the cure period, and avoid any further action before the Board. Thanks.

Russell



{In Archive} Re: Updated Schedule Hilo Naniloa 

Russell Y Tsuji to: Ed

02/27/2014 03:09 PM

Cc: "Bill.J.Wynhoff@hawaii.gov", "Gordon.C.Heit@hawaii.gov",
"Kevin.E.Moore@hawaii.gov"

Archive: This message is being viewed in an archive.

Ed: you assumed each of those defaults when you assumed the Lease, so they have been your responsibility to cure since the closing of the sale late last year. We're now going into March. If you want to propose something specific, please do so in writing. Thank you.

Russell

From: Ed <ed@towerdevcon.com>
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"Kevin.E.Moore@hawaii.gov" <Kevin.E.Moore@hawaii.gov>
Date: 02/27/2014 02:29 PM
Subject: Re: Updated Schedule Hilo Naniloa

Lets not confuse issues. I very specifically asked for reasonable period of time to cure prior defaults. Not my default. So this should be easy for he board to allow me to ire he prior defaults before tapping bond for merely the prior defaults. It is very specific. If you want me to cure he defaults en you need to allow me to do the cures before tapping the bond for only those defaults. Really not a tough solution. Just takes teamwork and fair and reasonable thoughts between all of us to get it done.

Aloha and warm regards,

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I don't know what you mean by a reasonable fashion in reasonable time period, but if you want to propose a certain extended time period to cure a particular default, then we and the Board may consider it. If

agreed upon, then what that can do for you would be to avoid an action before the Board to terminate the Lease until such time as the agreed upon extended time period has elapsed. But the bond/security is separate, and we will not consider a blanket waiver from calling in the bond or any other security deposit for a period of a year like you suggest. We may need to tap the bond or security deposit in the event of failure to comply with on-going obligations under the Lease such as failure to pay the rent, renew the insurance, etc... and in the event any unknown or latent issues pop up later that triggers a default under the Lease.

Russell

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To: "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov>,
Cc: "Kevin.E.Moore@hawaii.gov" <Kevin.E.Moore@hawaii.gov>, "Gordon.C.Heit@hawaii.gov" <Gordon.C.Heit@hawaii.gov>, "Bill.J.Wynhoff@hawaii.gov" <Bill.J.Wynhoff@hawaii.gov>
Date: 02/27/2014 01:49 PM
Subject: Re: Updated Schedule Hilo Naniloa

Again, the bond or cash or LC is not the issue. The issue is DLNR's position on allowing Tower "to continue any violations of a previous owner in a reasonable fashion in a reasonable time period" before such time as you draw on a "prior violation".

Example, if the County delays us getting a permit and we want to do the work, that is not the developers fault. We want to cure but we need permits to cure.

I am not sure you have someone who wants to build as fast as I do. But the surety or any developer would be unable to authorize you to draw on a bond of some prior owner's default while Tower and myself awaits a permit...

I will recommend a reasonable period of 90 days after any permit is issued and a total time period of one year to cure all defaults of a prior owner violation or breach. Please request a reasonable solution so we can deliver the bond to you.

Aloha and warm regards,

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We'll take a look at what you sent, but the cure period for the Notices of Default for the performance and construction bonds come due March 11. Anything beyond that would require Land Board approval. Please do you best; again cash or an irrevocable letter of credit would be acceptable in lieu of the performance bond.

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Winston Churchill

<2014.02.27 Hilo Naniloa Schedule.pdf>



{In Archive} Re: Updated Schedule Hilo Naniloa 

Russell Y Tsuji to: Ed

02/27/2014 04:17 PM

Cc: "Bill.J.Wynhoff@hawaii.gov", "Gordon.C.Heit@hawaii.gov",
"Kevin.E.Moore@hawaii.gov"

Archive: This message is being viewed in an archive.

Sorry, neither Kevin nor I can simply drop our duties here and fly to Hilo next week. And none of us would have the authority to bind the State on this matter. That would require BLNR action, with the approval of the Department of the Attorney General. Note that our Hawaii District Land Agent Gordon Heit is situated in Hilo (as I've told you many times before) and he may be able to visit the site when he can break away from his other duties--but you'd need to check with him directly as I don't handle his schedule. But again, all he can do is observe what you show him and listen to what you say.

The various email messages that I've seen are not very helpful at all. If you want to send us a formal written proposal of what you have in mind, we'll take a look at it, work on it if appropriate and if tentatively agreed upon, we'll need to take that to the Land Board in any open meeting in accordance with the sunshine law, and subject to the review and approval from the Department of the Attorney General.

But if you're still talking about not providing a bond or other security that is otherwise required by the express terms of the Lease, that's a different issue. If your lawyer wants to take a shot at drafting around the concerns I mentioned earlier, we'll take a look at it. We wouldn't be capable for drafting your proposal. Otherwise, as of right now, the NODs for the bonds come due March 11.

From: Ed <ed@towerdevcon.com>
To: "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov>,
Cc: "Bill.J.Wynhoff@hawaii.gov" <Bill.J.Wynhoff@hawaii.gov>, "Gordon.C.Heit@hawaii.gov" <Gordon.C.Heit@hawaii.gov>,
"Kevin.E.Moore@hawaii.gov" <Kevin.E.Moore@hawaii.gov>
Date: 02/27/2014 03:39 PM
Subject: Re: Updated Schedule Hilo Naniloa

Russell, I have already put it in writing in prior emails. And if someone could take the time to come to the site next week, we could agree on a fair time frame for any violations of the prior owner on a case by case basis. Perhaps this would also allow the powers to be to understand the truth about the work necessary and also the hard work we have already completed to even get the hotel open again for the community.

Please set up a time for you to visit the site so we can walk every violation of the prior owner and we can agree with you of a reasonable time frame for each one. We would be happy to do this for DLNR.

Aloha and warm regards,

Ed Bushor
Tower Development

1050 Bishop Street #530
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ed@towerdevcon.com
www.towerdevcon.com

On Feb 27, 2014, at 3:09 PM, "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov> wrote:

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Cc: "Bill.J.Wynhoff@hawaii.gov" <Bill.J.Wynhoff@hawaii.gov>, "Gordon.C.Heit@hawaii.gov" <Gordon.C.Heit@hawaii.gov>, "Kevin.E.Moore@hawaii.gov" <Kevin.E.Moore@hawaii.gov>
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Date: 02/27/2014 01:49 PM
Subject: Re: Updated Schedule Hilo Naniloa

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<2014.02.27 Hilo Naniloa Schedule.pdf>

EXHIBIT F



{In Archive} Naniloa Lease

Russell Y Tsuji to: ed

Cc: Gordon C Heit, Kevin E Moore

03/13/2014 12:29 PM

Archive: This message is being viewed in an archive.

Hi Ed:

Please provide us a status on the bonds--performance and construction bonds. I believe the cure periods are up. Also, what happened to the meeting you were trying to get with the County officials, did you folks have it?

Thanks.

Russell

EXHIBIT F



{In Archive} Re: Naniloa Lease 

Russell Y Tsuji to: Ed

03/13/2014 04:50 PM

Cc: "Gordon.C.Heit@hawaii.gov", "Kevin.E.Moore@hawaii.gov"

Archive: This message is being viewed in an archive.

we have two bonds that are due and cure periods expired. is the surety contemplating tying up both bonds with this County agreement? see may email previously about the performance bond, and construction bond, and what it is intended to cover, past, present, and future defaults, claims, etc.

From: Ed <ed@towerdevcon.com>

To: "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov>,

Cc: "Gordon.C.Heit@hawaii.gov" <Gordon.C.Heit@hawaii.gov>, "Kevin.E.Moore@hawaii.gov" <Kevin.E.Moore@hawaii.gov>

Date: 03/13/2014 04:15 PM

Subject: Re: Naniloa Lease

We had a meeting with County on Wednesday and David Hamamoto as scheduled and are preparing a requested cure sheet listing the current status for David Hamamoto. We will copy you with the notes from meeting and status/approach to all items.

As I explained at the hearing SND in prior emails, the bonding company is requiring this list and cure time frames. We agreed to get this out by next Tuesday with the proposed bond.

Aloha and warm regards,

Ed Bushor
Tower Development
1050 Bishop Street #530
Honolulu, Hawaii 96813
808.268.1903
ed@towerdevcon.com
www.towerdevcon.com

On Mar 13, 2014, at 3:29 PM, "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov> wrote:

Hi Ed:

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have it?

Thanks.

Russell



Nanihoa
Russell Y Tsuji to: Ed
Cc: Gordon C Heit, Kevin E Moore

04/01/2014 03:24 PM

Ed we need to resolve the outstanding bonds asap. They've been outstanding since you're closing On the hotel late last year.

Sent from my iPhone



Naniolo
Russell Y Tsuji to: ed
Cc: Kevin E Moore, "Gordon Heit"

04/04/2014 05:36 PM

Ed:

When can we expect the rest of the plans for the remaining work? I want to take all of the plans to the BLNR at one time, not in piecemeal fashion. I don't mean to be a stickler but you're behind your own schedule at this point.

If you have the specifications, please send them; also send us the itemized costs breakdown for the work described in the plans--all of the plans. I think you will need that amount anyway when you go in for your building and other permits.

We will respond to you under separate cover on your draft revisions to the Performance Bond. Where are you on the Kilauea Tower construction bond (covering labor, materials and completion for the Kilauea Tower) that was due at closing, in addition to the aforesaid Performance Bond.

Russell



Naniloa---Performance Bond
Russell Y Tsuji to: ed
Cc: Gordon C Heit, Kevin E Moore

04/09/2014 11:38 AM

Ed:

Here is our revised version of the performance bond you sent to us in the afternoon on April 1. The bottom line is we're okay holding off calling on the bond for the county violations, orders, and fines as long as the County holds off prosecuting, enforcing or collecting on the same, but if they proceed to prosecute, enforce or collect then we definitely will need to call upon the Surety to cure the same. In all other respects we will need the ability to call up the performance bond for any other default under the lease.

Please have the revised bond duly executed by the Surety and yourself and delivered back to us. Thanks.



GL S-5488 - Naniloa bond.v5.redline.pdf GL S-5488 - Naniloa bond.v5.clean.pdf



Naniloa--Plans and Outstanding Construciton Bond

Russell Y Tsuji to: ed

Cc: Gordon C Heit, Kevin E Moore

04/09/2014 12:29 PM

Ed:

Will you be sending us in the near future the remaining plans for your proposed renovation/construction project? Please let me know because if not, then we'll prepare a staff submittal showing the Board what you gave us (partial plans for rooms at Mauna Loa, and partial lobby plans). We're already probably too late to try to make the second April meeting, but certainly make a May meeting.

What is your intention on the construction bond for the Kilauea Tower that was due at your Bankruptcy sale closing? I understand you believe Ken did that work so you shouldn't be responsible for it, but that's not our view or position. Our position is that you did agree to take an assignment of the lease and that a construction bond for Kilauea was a requirement. In any event, we'll need to advise the Board of the bond matter and provide our recommendation on appropriate action. Looking forward to hearing from you soon.

Thanks.

Russell

From: Ed <ed@towerdevcon.com>
To: "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov>, Ed <ed@towerdevcon.com>,
Cc: "Kevin.E.Moore@hawaii.gov" <Kevin.E.Moore@hawaii.gov>, Gordon Heit <gheit@hawaii.rr.com>
Date: 04/09/2014 01:20 PM
Subject: Re: Naniloa

Aloha Russell,

Here is our outlook. Although I agree it would be easier if all done, designers and architects can't do all things at one time. I am restricted a bit because I need them working in phases to be efficient. Also, the project has 4 distinct areas that will be constructed under separate permits in order to open New Years December 31, 2014. Thus, we respectfully request you allow us to follow our efficient proposed phasing:

1. April 21 Submittal Phases 1 & 2. We have committed to open January by doing the design plans, construction plans and construction with overlapping phasing. We will be complete with Phases 1 & 2 (Mauna Loa Tower and Lobby/public areas) for all construction drawings to submit for a permit by April 21st. In order to process plans and open January 1, 2014, we need our architects and designers to submit in phases rather than after the entire project is designed and drawn or we will never open timely.

This is a majority of the construction that will allow the hotel to open January 1, 2014.

2. Balance of Phases 3 & 4. We will plan to submit Phases 3 and 4 (Restaurant and Willie Ks) after leases are signed and restaurant operators are selected, which we anticipate for month of July.

We intend to be efficient in our timing and intend to do the construction as plans and design are completed as follows:

Phasing:

1. Mauna Loa Tower Rooms. April 21
2. Lobby and Public Spaces. April 21
3. Restaurant and Pool Area. July
4. Willie K's Crown Room. July

We are hopeful that DLNR appreciates our desire to open all 4 phases by New Years and this is the way I am comfortable assuring DLNR that I will meet my commitments on that date.

Aloha and warm regards,

Ed Bushor

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Winston Churchill

From: "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov>

Date: Friday, April 4, 2014 5:36 PM

To: Edward Bushor Tower Development <ed@towerdevcon.com>

Cc: "Kevin.E.Moore@hawaii.gov" <Kevin.E.Moore@hawaii.gov>, Gordon Heit <gheit@hawaii.rr.com>

Subject: Naniloa

Ed:

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We will respond to you under separate cover on your draft revisions to the Performance Bond. Where are you on the Kilauea Tower construction bond (covering labor, materials and completion for the Kilauea Tower) that was due at closing, in addition to the aforesaid Performance Bond.

Russell

EXHIBIT G



733 Bishop Street, Suite 3000
Honolulu, HI 96813
Tel: 808-523-8499
Fax: 808-533-0226

Memorandum

Subject: In-Progress Evaluation of Design Drawings for the Naniloa Resort Alterations

Date: April 28, 2014

To: Russell Y. Tsuji, Land Administrator
DLNR Land Division
1151 Punchbowl St., Room 220
Honolulu, HI 96813

From: Douglas B. Lee, P.E., Brown and Caldwell

Copy to: Kevin E. Moore, Assistant Administrator

This memo provides a List of Drawings submitted to date for the alterations to the Naniloa Resort at 93 Banyan Drive, Hilo, HI 96720, Tax Map Key (TMK) (3)-2-1-005:032 (027, 016). The attached spreadsheet list the title of the drawings submitted, date on the PDF drawing file name, drawing numbers submitted, and drawing numbers pending submittal based upon information shown on the title sheet of each drawing set. Based upon the number of drawings submitted in comparison to the total number of drawings indicated for each drawing set's Sheet Index, a Percentage of Drawings Submitted was determined for each drawing set if known. In some cases, the total number of drawings to be submitted for a particular set was Unknown, as no Sheet Index was provided for that set.

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.

Also attached to this memo are copies of the Title Sheet of the drawing sets that had a Sheet Index so that the title of each drawing submitted or pending (i.e., missing plumbing, mechanical, fire sprinkler, and electrical plans) can be viewed that correlates to the Drawing Nos. provided on the attached List of Drawings.

Please contact me at 808-203-2655 or Dean Nakano at 808-203-2673 if you have any question.

EXHIBIT G

Naniiloa Resort List of Drawings Submitted (as of 4/28/14)

Drawing Title	File Date	Drawing Nos. Submitted	Drawing Nos. Pending	Percentage of Dwgs Submitted
Owner Alterations Mauna Loa Tower	3/28/2014	A0.0, A0.1, A1.0, A2.0, A2.1, A2.2, A2.3, A2.4, A2.5, A2.6 (10) + Two sliding door details (8 1/2" x 11" format)	A0.2, A3.0, A4.0, P0.0, P1.0, P1.1, P1.2, P1.3, P1.4, P1.5, P1.6, M0.0, M0.1, M1.0, M1.1, M1.2, M1.3, M1.4, M1.5, M1.6, M2.0, M3.0, FS1.0, FS2.0, FS2.1, FS2.2, FS2.3, FS2.4, FS2.5, FS2.6, E0.0, E1.0, E2.0, E2.1, E2.2, E2.3, E2.4, E2.5, E2.6, E3.0, E4.0 (41)	20%
Owner Alterations Lobby	3/31/2014	A0.0, A2.0, A2.1, A2.2, A2.3, A2.4, A2.5, A2.6, A2.7 (9)	A0.1, A0.2, A1.0, A3.0, A4.0 (5)	64%
Owner Alterations Crown Room Lounge	4/1/2014	A0.0, A2.0, A2.1 (3)	A0.1, A0.2, A1.0, A2.2, A2.3, A2.4, A2.5, A4.0, D1 (9); Various Plumbing Plans (4); Various Mechanical Plans (7); Various Fire Sprinkler Plans (4); and Various Electrical Plans (7).	9%
Owner Alterations Kilauea Tower	4/1/2014	A0.0, A2.0, A2.1, A2.2 (4)	A0.1, A0.2, A1.0, A3.0, A3.1, A3.2, A3.3, A3.4, A3.5, A4.0, D1 (11); Various Plumbing Plans (8); Various Mechanical Plans (11); Various Fire Sprinkler Plans (8); and Various Electrical Plans (11).	8%
Owner Alterations Mauna Kea Tower	4/1/2014	A0.0, A2.0, A2.1, A2.2 (4)	A0.1, A0.2, A1.0, A2.3, A2.4, A2.5, A3.0, A3.1, A3.2, A3.3, A3.4, A3.5, A4.0, D1 (11); Various Plumbing Plans (8); Various Mechanical Plans (11); Various Fire Sprinkler Plans (8); and Various Electrical Plans (11).	8%
Partial Guest Room Demolition Mauna Loa Tower	4/9/2014	A0.0, A1.0, A2.0, A2.1 (4)	None Identified on the Sheet Index	100%
Ventilation Ductwork Demolition Kilauea Tower	4/9/2014	A0.0, A1.0, A2.0, A2.1, A2.2, A2.3 (6)	None Identified on the Sheet Index	100%
Bar Progress Set	4/11/2014	B1, B2, B3 (3)	Unknown - No Sheet Index Provided	Unknown
Hilo Naniiloa Lighting Plans	4/4/2014	LT-0.0, LT-1.1, LT-1.2 (3)	Unknown - No Sheet Index Provided	Unknown
Ranquet Plan	3/25/2014	Sheet 1 of 2 (1)	Unknown - No Sheet Index Provided	Unknown
Lobby Plan	3/25/2014	Sheet 1 of 1 (1)	Unknown - No Sheet Index Provided	Unknown
Mauna Loa Furniture Plan	4/8/2014	Floor Plate 2-12, Furniture Plans A, B, C, D (5)	Unknown - No Sheet Index Provided	Unknown

EXHIBIT H



Fw: Naniloa
Russell Y Tsuji to: Daniel A Morris, Cindy Y Young
Cc: Bill J Wynhoff, Kevin E Moore, Gordon C Heit

04/29/2014 04:07 PM

----- Forwarded by Russell Y Tsuji/DLNR/StateHiUS on 04/29/2014 04:06 PM -----

From: Russell Y Tsuji/DLNR/StateHiUS
To: ed@towerdevcon.com,
Date: 04/29/2014 04:06 PM
Subject: Re: Naniloa

Dear Mr. Bushor:

As you are aware, the Lease specifically prohibits the construction of any improvements on the premises without first obtaining the approval of the BLNR. In light of your scheduled timeline to initiate and complete the permitting and construction of the improvements for Phases I and II (Mauna Kea and Mauna Loa Towers) in time for your planned grand re-opening at the end of this calendar year, we and our consultants have diligently been attempting to review the partial plans submitted by you as expeditiously as possible in order to be able to make a final recommendation to the BLNR. However, as noted in our consultant's memorandum, they are unable to render an opinion on your proposed plans because they are *incomplete*; for example you are missing plans and specifications from the various trade disciplines such as for the electrical, plumbing, mechanical and fire sprinkler systems.

As I previously advised you, we will be taking this matter to the BLNR on May 23 to update them on the plans you've submitted thus far, and the outstanding lease issues related to the bonds (performance and the construction bond for Kilauea Tower).

At this point, I don't see any benefit for you to meet directly with the State's consultants. However, what was noted in our consultant's memorandum as being helpful would be for you to provide us with a firm date that you will be able to deliver the complete set of plans and specifications for your proposed improvements (at least for your proposed improvements for Phases I and II—the Mauna Kea Tower and the Mauna Loa Tower), in order for you to complete the permitting and construction of the improvements for Phases I and II by end of the calendar year—in time for your planned grand re-opening.

Thank you for your anticipated cooperation on this matter, and I look forward to your response.

Russell

Ed

Aloha Russell, Per your request during our initia...

04/28/2014 06:31:27 PM

From: Ed <ed@towerdevcon.com>
To: "Russell.Y.Tsuji@hawaii.gov" <Russell.Y.Tsuji@hawaii.gov>,
Date: 04/28/2014 06:31 PM
Subject: Re: Naniloa

EXHIBIT H

Aloha Russell,

Per your request during our initial meeting w/ staff, we submitted progress plans, meaning incomplete plans, but with the intent to evidence the progress as of the date when submitted. More importantly was to inform staff of plans as they are bring progressed. So very odd to have some consultant report to me that an incomplete progress set of plans that we submitted to give staff insights are "incomplete".

Perhaps we will just wait til the set is complete before we submit the next progress set. Thus, please advise us as to the following so we are efficient:

1. Just so I am clear, do you want progress sets?
2. We hope to have a constructive meeting with your consultant on our progress set if that is preferred or should we wait til the plans are complete?

Aloha and warm regards,

Ed Bushor
Tower Development
1050 Bishop Street #530
Honolulu, Hawaii 96813
808.268.1903
ed@towerdevcon.com
www.towerdevcon.com

> On Apr 28, 2014, at 9:06 PM, "Russell.Y.Tsuji@hawaii.gov"
<Russell.Y.Tsuji@hawaii.gov> wrote:

>

> Dear Mr. Bushor:

>

> I am enclosing for your review and comment a status report from our consultants indicating the plans you provided to us are incomplete. We request that you provide to us the remaining plans, including those noted as missing in the consultants memo such as the plumbing, mechanical, electrical and fire sprinkler plans, and the complete specifications. My understanding is that you will need the complete plans and specifications to obtain the needed county permits and to proceed with your proposed construction.

>

> If you need more time to submit a complete set of the plans and specifications, then as noted in the memorandum please advise us when that would be forthcoming,. Thank you for your anticipated cooperation on this matter.

>

> Russell

>

>

>

>

> <BC Memo on In-Progress Review of Drawings for the Alteration of Naniloa Resort 4-28-14.pdf>

EXHIBIT I

BOND NO.: _____
PREMIUM: _____

KNOW ALL MEN BY THESE PRESENTS THAT WE, WHR, LLC, a Hawaii limited liability company, as Principal, and SURETY COMPANY, a corporation duly organized and doing business under and by the virtue of the laws of the State of _____, and duly licensed for the purpose of making, guaranteeing or becoming sole surety upon bonds or undertakings required or authorized by the laws of the said State, as Surety, are held and firmly bound unto STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES (hereinafter called the "Obligee") in the sum of ONE MILLION and 00/100 Dollars (\$1,000,000.00) for the payment whereof well and truly to be made we and each of us bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT, WHEREAS, the above bounded Principal is the Lessee under that certain Lease Agreement, General Lease No. S-5844 dated January 20, 2006 (referred to herein as "Lease", a copy of which is or may be attached hereto, and is hereby referred to and made a part hereof), with the said Obligee conditioned on the following:

1. This bond shall be in effect from April 1, 2014 to March 31, 2015, but may be continued by certificate at the option of the Surety. Failure of the Surety to continue this bond shall not be considered a default hereof. Surety shall provide Obligee and Principal with a written notice of its intent not to continue this bond at least sixty (60) days prior to its anniversary date. In the event of such notice, Principal agrees to replace this bond on or before the anniversary date.
2. Surety shall be held firmly bound unto Obligee in the amount of ONE MILLION and 00/100 Dollars (\$1,000,000.00) for the full and faithful performance of all the terms, covenants and conditions contained in the Lease.
3. No claim shall be had or maintained against the Surety on this instrument unless such be brought or instituted and process served upon the Surety prior to expiration date of the bond; no suit shall be maintained against the Surety unless it is brought within thirty (30) days after the expiration date of the bond.
4. Obligations of Principal:
 - a. Full and faithful observance and performance by Principal of all the terms, conditions and covenants of the Lease;
 - b. In the event of a breach or default by Principal of any of the Lease terms, covenants, and conditions, the full amount of the bond shall be paid to the Obligee as liquidated and ascertained damages and not as a penalty. Notwithstanding the foregoing, Obligee agrees to refrain from calling this bond as to any Notices of Violation (NOVs), orders or fines that were issued by the County of Hawaii (County) prior to the date of this bond for building, electrical, plumbing or other violations at the lease premises, as long as the County does not further prosecute, enforce or attempt to collect on such NOVs, orders or fines; provided, however, that in the event the County further prosecutes, enforces or attempts to collect at any time on the prior NOVS, orders or fines, Obligee may call upon the bond and demand payment.
 - c. In the event of any breach or default by Principal of any of the Lease terms, covenants, conditions and agreements not covered by subparagraph 4.b above, Obligee shall deliver a notice of default and provide a right to cure of thirty (30) days for monetary defaults or sixty (60) days for non-monetary defaults, and in the event the cure is not complete by the time allowed, or by such other reasonable date to cure such default are the parties may agree in

writing, then the full amount of the bond shall be paid to the Obligee as liquidated and ascertained damages and not as a penalty.

NOW, THEREFORE, if the above bounded Principal shall comply with the provisions of said Lease, then this obligation to be null and void, otherwise to remain in full force and effect. No right of action shall accrue under this bond to or for the use of any person other than the said Obligee.

SIGNED AND SEALED THIS ____ day of _____ 20 ____.

WHR, LLC

By: _____

Name:

Title:

SURETY COMPANY

By: _____

_____, Attorney-in-fact

EXHIBIT J

Surety Bond
Bond Number: _____

Know all men by these presents:

That we Hawaii Outdoor Tours, Inc., as Principal, and Developers Surety and Indemnity Company a corporation organized under the laws of the State of Iowa, and authorized to transact the business of surety in the State of Hawaii as Surety, are firmly held and bound unto The State of Hawaii (hereinafter referred to as Obligee) in the penal sum of ONE MILLION ONE HUNDRED FIFTEEN THOUSAND THREE HUNDRED FIFTY SIX & NO/100 Dollars (\$1,115,356.00) for which sum, well and truly to be paid, we bind ourselves, our heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

This bond is given pursuant to sections 40 and 41 of the Special Conditions of the General Lease No. S-5844 dated January 20, 2006 to assure lien-free completion of all improvements described in Principal's "Planned Construction Statement – Kilauea Tower", a copy of which is attached hereto and incorporated herein by references, including the work to be performed thereunder, and the plans and specifications accompanying same, for the resort site known as Naniloa Volcanoes Resort situated in the County of Hawaii, State of Hawaii and is subject to provisions of the "Letter of Understanding" between Obligee and Surety dated June 29, 2007 which is incorporated herein and made part hereof.

The condition of this obligation is such that if Principal shall complete or cause to be completed all of the aforesaid improvements free and clear of all liens and claims on or before the latest completion date specified in said "Planned Construction Statement – Kilauea Tower", or an extension thereof given in writing by Obligee to Principal and assented to in writing by Surety, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

A suit or action of this bond must be filed within two (2) years after the latest completion date set forth in the Planned Construction Statement –Kilauea Tower or any extension thereof given in writing by Obligee to Principal and assented to in writing by Surety.

No right of action shall accrue hereunder to or for the use of any persons, firm, or corporation other than the Obligee.

In Witness Whereof, Principal and Surety have caused these presents to be duly signed and sealed this 3rd day of July, 2007.

HAWAII OUTDOOR TOURS, INC.

DEVELOPERS SURETY AND INDEMNITY
COMPANY

Signature of Principal

Signature of Surety

By: 
Kenneth Fujiyama, Its CEO

By: 
Michael Grossi, Its Attorney-In-Fact

385102

EXHIBIT J

LABOR AND MATERIAL PAYMENT BOND (SURETY)**KNOW TO ALL BY THESE PRESENTS:**

That HAWAII OUTDOOR TOURS, INC., a Hawaii corporation, whose mailing address is 421 Makalika Street, Hilo, HI 96720, as Principal (hereinafter referred to as "Principal"), and DEVELOPERS SURETY AND INDEMNITY COMPANY, an Iowa corporation, whose mailing address is P. O. Box 19725, Irvine, CA 92623, as Surety (hereinafter referred to as "Surety"), a corporation(s) authorized to transact business as a surety in the State of Hawaii, are held and firmly bound unto the State of Hawaii, Department of Land and Natural Resources, its successors and assigns, (hereinafter referred to as "Obligee"), in the amount of ONE MILLION ONE HUNDRED FIFTEEN THOUSAND THREE HUNDRED FIFTY SIX & NO/100 DOLLARS (\$1,115,356.00), to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has executed a Planned Construction Statement – Kilauea Tower with Obligee on June 29, 2007 for the following project:

Kilauea Tower at the resort site known as Naniloa Volcanoes Resort
situated in the County of Hawaii, State of Hawaii

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor and materials supplied to the Principal for use in the performance of the Planned Construction Statement –Kilauea Tower pursuant to sections 40 and 41 of the Special Conditions of the General Lease No. S-5844 and as further defined within the Letter of Understanding between the Obligee and Surety dated June 29, 2007, then this obligation shall be void; otherwise to remain in full force and effect.

1. Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Planned Construction Statement –Kilauea Tower, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Planned Construction Statement – Kilauea Tower.

2. A "Claimant" shall be defined herein as any person who has furnished labor or materials to the Principal for the work provided in the Planned Construction Statement –Kilauea Tower.

Every Claimant who has not been paid amounts due for labor and materials furnished for work provided in the Planned Construction Statement – Kilauea Tower may institute an action against the Principal and its Surety on this bond at the time and in the manner prescribed by law, and have the rights and claims adjudicated in the action, and judgment rendered thereon; subject to the Obligee's priority on this bond. If the full amount of the liability of the Surety on this bond is insufficient to pay the full amount of the claims, then after paying the full amount due the Obligee, the remainder shall be distributed pro rata among the claimants.

3. Every suit instituted under bond shall be brought in the circuit court of the circuit in which the project is located, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied for the work provided in the contract.

Signed this 3rd day of July, 2007

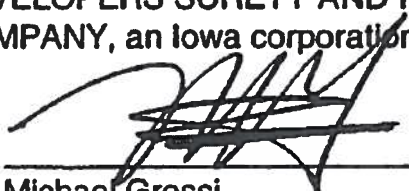
Principal:

HAWAII OUTDOOR TOURS, INC.,
a Hawaii corporation

By: 
Kenneth Fujiyama,
Its Chief Executive Officer

Surety :

DEVELOPERS SURETY AND INDEMNITY
COMPANY, an Iowa corporation

By: 
Michael Grossi
Its Attorney-In-Fact

ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

Kilauea Tower Planned Construction Statement

June 29, 2007

Description	Kilauea Tower		Kilauea Tower
	Completed	To Finish	
Room Construction Budget			
Demolition & Debris Removal	\$ 23,180		\$ 23,180
Plumbing Rough / Finish		\$ 2,722	\$ 2,722
Flush Valves - Watergates Design	\$ 5,151.14		\$ 5,151
Leialoha Plumbing		\$ 30,618	\$ 30,618
Electrical Rough / Finish			
Hirayama Bros. Electric		\$ 50,316	\$ 50,316
Fire Alarm - Hirayama Bros.		\$ 10,134	\$ 10,134
Fire Alarm - D&N Electric		\$ 9,514	\$ 9,514
Internet - Hawaiian Tel		\$ 18,047	\$ 18,047
Heating / Air Conditioning / Ventilation		\$ 8,165	\$ 8,165
Rainbow Isle Refrigeration		\$ 139,684	\$ 139,684
Roofing			
Drywall / Plaster		\$ 21,773	\$ 21,773
Cabinets / Doors		\$ 41,845	\$ 41,845
Maple - Honsador Lumber		\$ 83,895	\$ 83,895
Marble		\$ 122,812	\$ 122,812
Marble - Daltile		\$ 237,405	\$ 237,405
Plumbing Finish			
Pressure Valves - Watergates Design	\$ 9,420.64		\$ 9,421
P-Traps - Watergates Design	\$ 3,434		\$ 3,434
Painting Exterior / Interior		\$ 73,551	\$ 73,551
Showers / Mirror / Accessories		\$ 5,443	\$ 5,443
Sinks - Watergates Design	\$ 16,045.58		\$ 16,046
Bath Fixtures - Watergates Design	\$ 41,060.58		\$ 41,061
Toilet Seats - Watergates Design	\$ 1,119		\$ 1,119
Electric Fixtures			
Bay Lighting		\$ 20,197	\$ 20,197
Carpeting			
Clean-Up Finish		\$ 1,260	\$ 1,260
Asbestos			
Environmental Control Specialists	\$ 131,729		\$ 131,729
EnvironMETeo Air Monitoring	\$ 6,836		\$ 6,836
Overhead / Supervision			
Miscellaneous Invoices			
Contingency			
Total by Tower	\$ 237,976	\$ 877,380	\$ 1,115,356

**POWER OF ATTORNEY FOR
DEVELOPERS SURETY AND INDEMNITY COMPANY
INDEMNITY COMPANY OF CALIFORNIA
PO BOX 19725, IRVINE, CA 92623 (949) 263-3300**

KNOW ALL MEN BY THESE PRESENTS, that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, do each, hereby make, constitute and appoint:

Nadine K. Cui, Michael Grossi, Kathleen Kano, Michael K. Kinoshita, Myles A. Murakami, Arlene A. Tana jointly or severally

as their true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporations, as sureties, bonds, undertaking and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporations could do, but reserving to each of said corporations full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolutions adopted by the respective Board of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, effective as of November 1, 2000:

RESOLVED, that the Chairman of the Board, the President and any Vice President of the corporation be, and that each of them hereby is, authorized to execute Powers of Attorney, qualifying the attorney(s) named in the Powers of Attorney to execute, on behalf of the corporations, bonds, undertakings and contract of suretyship; and that the Secretary or any Assistant Secretary of the corporations be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporation when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA have severally caused these presents to be signed by their respective Executive Vice President and attested by their respective Secretary this 1st day of December, 2005.

By: [Signature]
David H. Rhodes, Executive Vice-President

By: [Signature]
Walter A. Crowell, Secretary



STATE OF CALIFORNIA]
COUNTY OF ORANGE]

On December 1, 2005 before me, Gina L. Garner, (here insert name and title of the officer), personally appeared David H. Rhodes and Walter A. Crowell, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature [Signature]

(SEAL)



CERTIFICATE

The undersigned, as Assistant Secretary, of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked, and furthermore, that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in the Power of Attorney, are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, the 3rd day of July, 2007

By: [Signature]
Albert Hillebrand, Assistant Secretary