

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

February 27, 2009

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

Kauai

Consent to Assign Grant of Non-Exclusive Easement Bearing Land Office Deed No. S-28180, Wailua Associates, Assignor, to Coco Palms Ventures LLC, Assignee, and Consent to Mortgage, Wailua, Kawaihau, Kauai, Tax Map Key:(4)4-1-03:11

APPLICANT:

Wailua Associates, a California limited partnership, as Assignor, to Coco Palms Ventures LLC, a Hawaii limited liability company, as Assignee, whose business and mailing address is 1919 West Street, Suite 100, Annapolis, MD 21401.

Coco Palms Ventures LLC, requesting consent to mortgage from National City Bank, Mortgagee, in an amount not to exceed \$25,139,183.

LEGAL REFERENCE:

Section 171-22, 36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Wailua situated at Wailua, Kawaihau, Kauai, identified by Tax Map Key:(4)4-1-03:11, as shown on the attached map labeled Exhibit A.

AREA:

0.48 acres, 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:

Right, privilege, and authority to use non-exclusive easement fifteen (15) feet wide for drainage ditch, pedestrian walkways,

lagoon and culvert purposes.

ANNUAL RENTAL:

Not applicable. One time payment of \$37,500 paid on December 13, 1996.

DCCA VERIFICATION:

ASSIGNOR:

Place of business registration confirmed:	YES	<u>x</u>	NO	<u> </u>
Registered business name confirmed:	YES	<u>x</u>	NO	<u> </u>
Good standing confirmed as of January 2006:	YES	<u>x</u>	NO	<u> </u>

ASSIGNEE:

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

REMARKS:

The Board at its August 12, 1988 meeting, under agenda Item F-20, authorized the direct sale of a perpetual, non-exclusive easement for drainage ditch, pedestrian walkway and lagoon purposes to Wailua Associates. The Board further assessed Wailua Associates a \$4,000 fine for twelve (12) encroachments. Grant of Non-Exclusive Easement bearing Land Office Deed No. S-28180 was executed on February 5, 1997. Wailua Associates paid a \$4,000 fine and \$37,500 for the easement consideration.

The Board at its January 14, 2005 meeting, under agenda Item D-29, consented to the assignment of General Lease Nos. S-4878 and S-4740, Grant of Easements Bearing GL Nos. S-4645 and S-4244, Grant of Easement bearing LOD Nos. S-12850 and S-27442, from Wailua Associates to Coco Palms Ventures LLC; authorized the cancellation of Revocable Permit Nos. S-6233 and S-6234; and authorized the re-issuance of Revocable Permits to Coco Palms Ventures LLC.

On January 23, 2008, the Chairperson consented to the mortgage between Coco Palms Venture LLC, Mortgagor and National City Bank, Mortgagee. The loan amount was \$25,139,183.

During the documentation process, the Attorney General's Office discovered that Grant of Non-Exclusive Easement bearing Land Office Deed No. S-28180 was not assigned from Wailua Associates to Coco Palms Ventures LLC. Furthermore, the loan of \$25,139,183 covers all of Coco Palms Ventures LLC land holdings on the island of Kauai including this subject easement.

RECOMMENDATION: That the Board:

1. Consent to the assignment of Grant of Non-Exclusive Easement

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bearing Land Office Deed No. S-28180, from Wailua Associates, Assignor, to Coco Palms Ventures LLC, Assignee subject to the following:

- A. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Consent to the mortgage between Coco Palms Ventures LLC, Mortgagor, and National City Bank, Mortgagee, subject to the following:
- A. The loan proceeds shall be used for the purposes as stated in "Use of Loan Proceeds" above. The Lessee shall maintain records of loan expenditures which may be inspected by the Department;
 - B. The standard terms and conditions of the most current consent to mortgage form, as may be amended from time to time;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Thomas Oi
Kauai District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thiesen, Chairperson

