

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

January 27, 2011

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

Hawaii

Consent to Assign General Lease No. S-3596, D. L. Downing, General Contractor, Inc., Assignor, to Lesley Hill, Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/2-2-49:11.

APPLICANT:

D. L. Downing, General Contractor, Inc., as Assignor, to Lesley Hill, single, Tenant in Severalty, as Assignee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Kanoiehua Industrial Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/2-2-49:11, as shown on the attached map labeled Exhibit A.

AREA:

16,634 square feet, 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:

For the first 5 years, for the same business use in which the Lessee was engaged at the time of the natural disaster; provided that the Lessee may use for other than paint shop with the prior written consent of the Board.

TERM OF LEASE:

55 years, commencing on 1/16/1961 and expiring on 1/15/2016. Last rental reopening occurred on 1/16/2011; there are no more rental reopenings.

ANNUAL RENTAL:

\$17,940.00.

CONSIDERATION:

\$ 10,000.00.

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

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:	YES <u>X</u>	NO <u>__</u>

ASSIGNEE:

Assignee is sole proprietorship and, as such, is not required to register with DCCA.

REMARKS:

Under the provisions of the special disaster legislation (Act 4, First Session Laws of Hawaii 1960), the Department of Land and Natural Resources was authorized to enter into direct negotiation, leases of public lands to victims of natural disasters. General Lease No. S-3596 was issued to Isao Morimoto dba Mori's Paint Shop of Hilo, Hawaii. This lease with the option to purchase was approved by the Board at its meeting of November 18, 1960 under agenda item C-6.

At its meeting of January 9, 1976 under agenda item D-1-y, the Board consented to the agreement of sale of GL S-3596 from Isao Morimoto, Seller to Body & Fender Repair, Inc., Purchaser. The purchase amount of \$100,000 was to be paid in monthly installments over a period of 96 months at a rate of 10% interest.

The Board, at its meeting of December 4, 1981 under agenda item F-1-c, consented to the assignment of agreement of sale from Body & Fender Repair, Inc., Assignor, to Laupahoehoe Transportation Company, Inc., Assignee. Further, at its meeting of November 11, 1985 under agenda item F-1-a, the Board consented to the assignment of lease from First Hawaiian Bank, Trustee under the Will of Isao Morimoto, Assignor, to Laupahoehoe Transportation Company, Inc., Assignee.

At its meeting of August 8, 1996 under agenda item D-1, the Board consented to the assignment of lease from Laupahoehoe Transportation Company, Inc., Assignor to D. L. Downing, General Contractor, Inc. Assignee.

Paragraph 21 of the lease authorizes the Board to allow a change in character of use other than for what it was originally leased and is described as follows:

21. Character of use. That the Lessee shall be required to use the leased land for the first five (5) years of the term of the lease for the same business use or undertaking in which the Lessee was engaged at the time of the natural disaster or a use designated by the Board; provided, however, that the Lessee may devote or place said demised premises to a use or uses other than paint shop in character, with the prior written consent of the Board, which consent shall not be unreasonably or arbitrarily withheld; provided, further, that should the Lessor consent to a change in the character of the use, it shall be upon such terms and conditions as set by the Lessor. The Board before acting upon a request by the Lessee for a change in use shall consult with the Lessee and any assignee, mortgagee and sublessee if any. The Board shall also consider market and economic conditions affecting said change.

As a change in the character of use had already occurred as a result of the second assignment of lease, staff recommends the Board consent to the change in the character of use from 'paint shop' to the current allowed use under the County of Hawaii zoning code, ML-20, limited industrial. Staff believes the change in use will benefit the State by allowing a wider range of use and thereby making the property more appealing for future leasing.

Staff is therefore recommending that the Board consent to the change in the character of use from paint shop business to the allowable use under the current County of Hawaii zoning code, ML-20, limited industrial use.

The Lessee, D. L. Downing, General Contractor, Inc. has relocated his business to the Shipman Industrial Park in Keaau and wishes to sell the leasehold property to Lesley Hill. The Lessee has provided a Phase 1 Environmental Site Assessment Report that revealed no evidence of recognized environmental conditions in connection with the property

The Lessee is current with the terms and conditions of the lease with regards to rent and insurance. The performance bond was waived by the Board at its meeting of April 28, 1972 under agenda item F-3. As a requirement of the assignment of lease, staff is recommending the Board re-impose the performance bond requirement.

The Assignee is the owner of Paradise Plants and occupies the property adjacent to GL S-3596. Paradise Plants is a garden supply and import business and has operated in the Hilo area for over thirty years. They plan to utilize the subject property for warehouse and storage purposes. This use is consistent with the current county zoning, industrial use.

The Assignee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. The Assignee is also aware and understands that the lease will expire on January 15, 2016 and that it cannot be extended beyond the 55-year term.

The last rental reopening occurred on January 16, 2011. This rent was accepted by the Assignor and is the last rental reopening for this lease.

RECOMMENDATION:

That the Board consent to the assignment of General Lease No. S-3596 from D. L. Downing, general Contractor, Inc., as Assignor, to Lesley Hill, as Assignee, subject to the following:

1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
2. Re-impose the Performance Bond requirement in an amount equal to two times the annual rent.
3. Consent to the change in the character of use from paint shop business to the current allowable county zoning code, ML-20, limited industrial use;
4. Review and approval by the Department of the Attorney General; and
5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



 Gordon C. Heit  
Land Agent

APPROVED FOR SUBMITTAL:

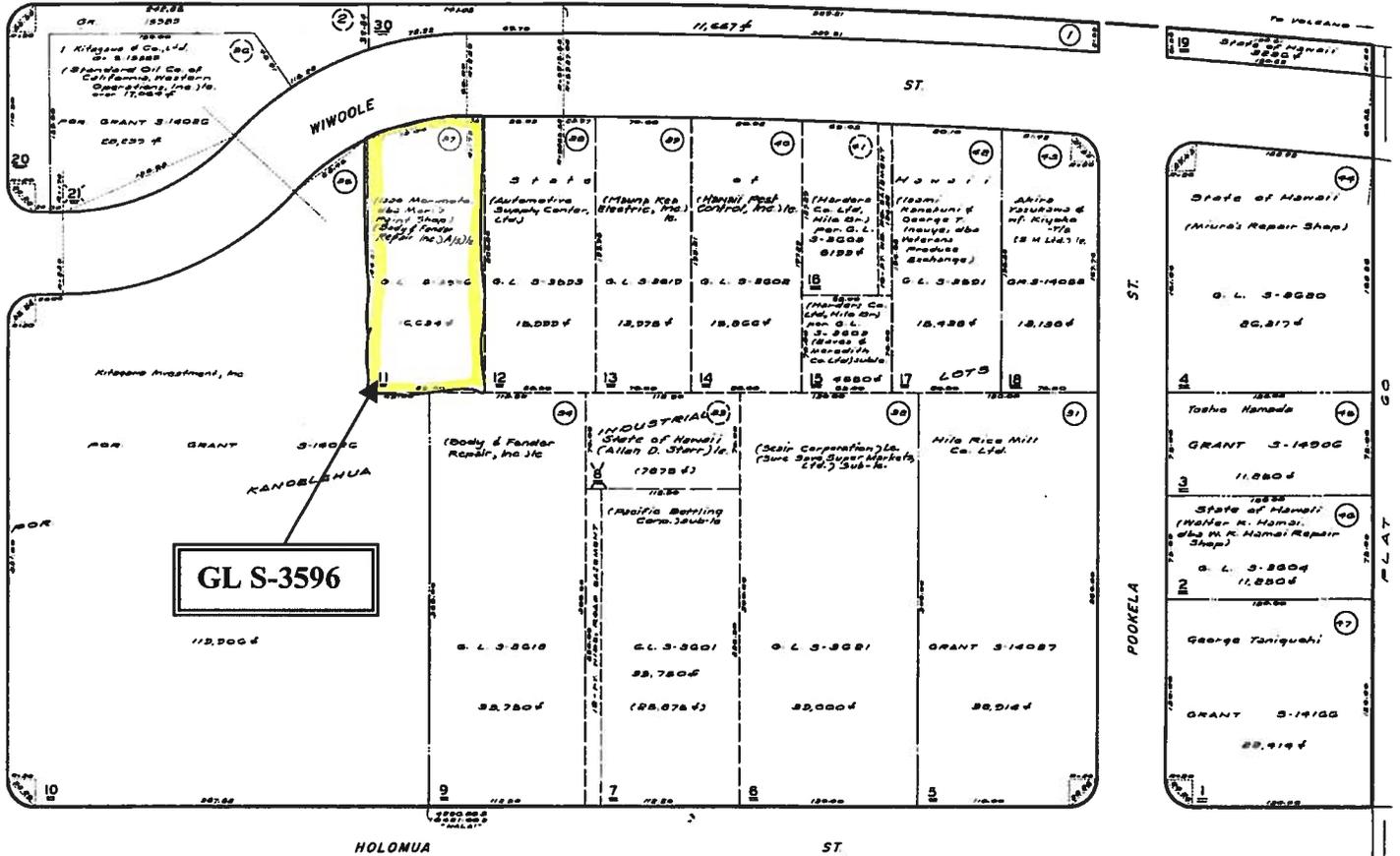
   
William J. Aila, Jr., Interim Chairperson

TMK: 3<sup>RD</sup>/2-2-49:11

KAOELEHUA

FAB 3-10(1)  
(Volcano Rd.)

AVENUE



**GL S-3596**

Drawn April 2, 51

FOR REAL PROPERTY TAXATION PURPOSES  
SUBJECT TO CHANGE

DEPARTMENT OF TAXATION PROPERTY ASSESSMENT DIVISION TAX MAPS BRANCH STATE OF HAWAII TAX MAP		
THIRD TAXATION DIVISION		
ZONE	SEC.	PLAT
2	2	49
SCALE: 1 IN. = 50 FT.		