

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

September 23, 2011

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

GL No. S-3660  
Hawaii

Amendment of General Lease No. S-3660 and Reduction of Performance Bond Amount, Hilo Bay Printing Company, Ltd., Lessee, Lot 9, Kanoelehua Industrial Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-2-50:77

APPLICANT:

Hilo Bay Printing Company, Ltd.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government Lands of Waiakea, being Lot 9 of the Kanoelehua Industrial Lots, Waiakea, South Hilo, Island of Hawaii, identified by Tax Map Key: 3rd/ 2-2-50:77, as shown on the attached map labeled Exhibit A.

AREA:

12,000 sq. ft., more or less.

ZONING:

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

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Encumbered by General Lease No. S-3660 to Hilo Bay Printing Company, Ltd.

CHARACTER OF USE:

Wholesale and retail of paints and painting supplies.

DCCA VERIFICATION:

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

REMARKS:

General Lease No. S-3660 was originally issued to Katsumi Sakai dba K. Sakai Painting Contractor on March 20, 1961 pursuant to Act 4, Session Laws of Hawaii (First Special Session 1960), which provided for the direct issuance of leases to victims of natural disaster who were affected by the 1960 tsunami that struck Hilo and other areas of the State. One of the conditions of the lease was that the lessee

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 wholesale & retail of paints and painting supplies in character, with the prior written consent of the Board, which consent shall not be unreasonably or arbitrarily withheld....

By mesne assignments with consent of the Board of Land and Natural Resources, the lease was assigned to Hilo Bay Printing Company, Ltd. (Lessee) by assignment dated May 1, 2002. The Board's consent thereto dated January 17, 2003 was executed pursuant to the Board's approval of the assignment at its meeting of August 10, 2001, Item D-4. However, the character of use provision in the lease was never amended to reflect the printing use to which Lessee put the premises.

A rental reopening scheduled under the lease increased the rent from \$7,300 per year to \$13,560 per year for the period from March 20, 2011 to March 19, 2016. The lease requires Lessee to post a performance bond with the State equal to two times the annual rent. As a result of the rent increase, the performance bond obligation increased from

\$14,600 to \$27,120 for the same period.

By letter dated May 6, 2011, Lessee requested a reduction of the performance bond from two times the annual rent to one times the annual rent. Lessee cites its satisfactory performance history under the lease, the depressed economy, financial hardship and its investment in the premises and operating equipment all as the basis for its request. See Exhibit B attached.

The current commercial/industrial State lease form contains a standard provision reading as follows:

Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond or improvement bond requirements or both or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond(s) or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

As an older lease, General Lease No. S-3660 lacks this bond modification provision. But because the lease was issued by direct negotiation instead of public auction, the Board has authority to amend the lease to include the provision and make other amendments.

Staff reviewed the file and can report that lease rent, liability insurance and fire insurance are all current. A performance bond is in place in the amount \$14,600 through December 29, 2011. Staff inspected the premises on June 17, 2011 and determined that the property is in fair to good condition for its age and there are no compliance issues with the exception of the character of use and the inadequacy of the bond. Lessee operates a commercial print shop on the premises, while the lease character of use was for wholesale and retail sales of paints and painting supplies.

In the past three years, Lessee was issued three notices of default for late rent payments on June 3, 2009, July 1, 2009, and April 29, 2011. The defaults were timely cured.

The Lessee was also issued a notice of default for failure to post the required performance bond on February 17, 2011. As noted above, the Lessee has a bond in the amount of \$14,600 posted, which is \$12,520 short of the required \$27,120.

A change in the character of use from "wholesale & retail of paints and painting supplies" to the proposed uses allowed under the County of Hawaii zoning code, ML-20, limited

industrial, would benefit the State by allowing a wider range of uses and thereby making the property more appealing for future leasing.

Accordingly staff is recommending that the Board authorize the amendment of the lease (i) to change the character of use provision to the allowable uses under the current County of Hawaii zoning code, ML-20, limited industrial, (ii) to include the bond modification provision quoted above, as well as (iii) to update the lease provisions titled "Bond" (section 25 of the lease), "Liability insurance" (section 31), and "Fire insurance" (section 32) with the current language for such provisions used by the Department of the Attorney General. Staff is further recommending that the performance bond amount be reduced from two times the annual rent to one times the annual rent; provided, however, that in the event the Lessee violates any term or condition of the Lease in the future resulting in the issuance of a notice of default, then the Chairperson be given the authority, with thirty (30) days written notice, to require that the full performance bond (two times the annual rent) be posted. The failure to timely post the required bond shall be deemed a material default and the State may terminate the Lease and pursue all other rights and remedies it may have.

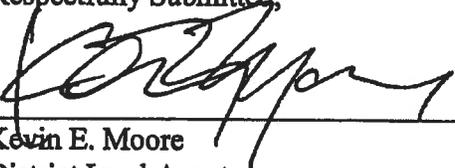
Lessee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

- A. Authorize the amendment of General Lease No. S-3660 (i) to change the character of use from "wholesale & retail of paints and painting supplies" to uses allowed under the current County of Hawaii Zoning Code, ML-20, limited industrial; (ii) to include the section titled "Waiver, modification, reimposition of bond and liability insurance provisions" set forth above, and (iii) to update the lease provisions titled "Bond" (section 25 of the lease), "Liability insurance" (section 31), and "Fire insurance" (section 32) with the current language for such provisions used by the Department of the Attorney General. The amendment of the lease shall further be subject to the following:
  1. The standard terms and conditions of the most current consent to change in character of use and amendment of lease document forms, as may be amended from time to time;
  2. Review and approval by the Department of the Attorney General; and
  3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Authorize the reduction of the performance bond required under the lease from

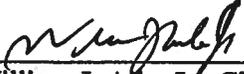
two times the annual rent to one times the annual rent. In the event the Lessee violates any term or condition of General Lease No. S-3660 in the future resulting in the issuance of a notice of default, then the Chairperson may, with thirty (30) days written notice, require that the full performance bond (two times the annual rent) be posted. The failure to timely post the required bond shall be deemed a material default and the State may terminate the Lease and pursue all other rights and remedies it may have.

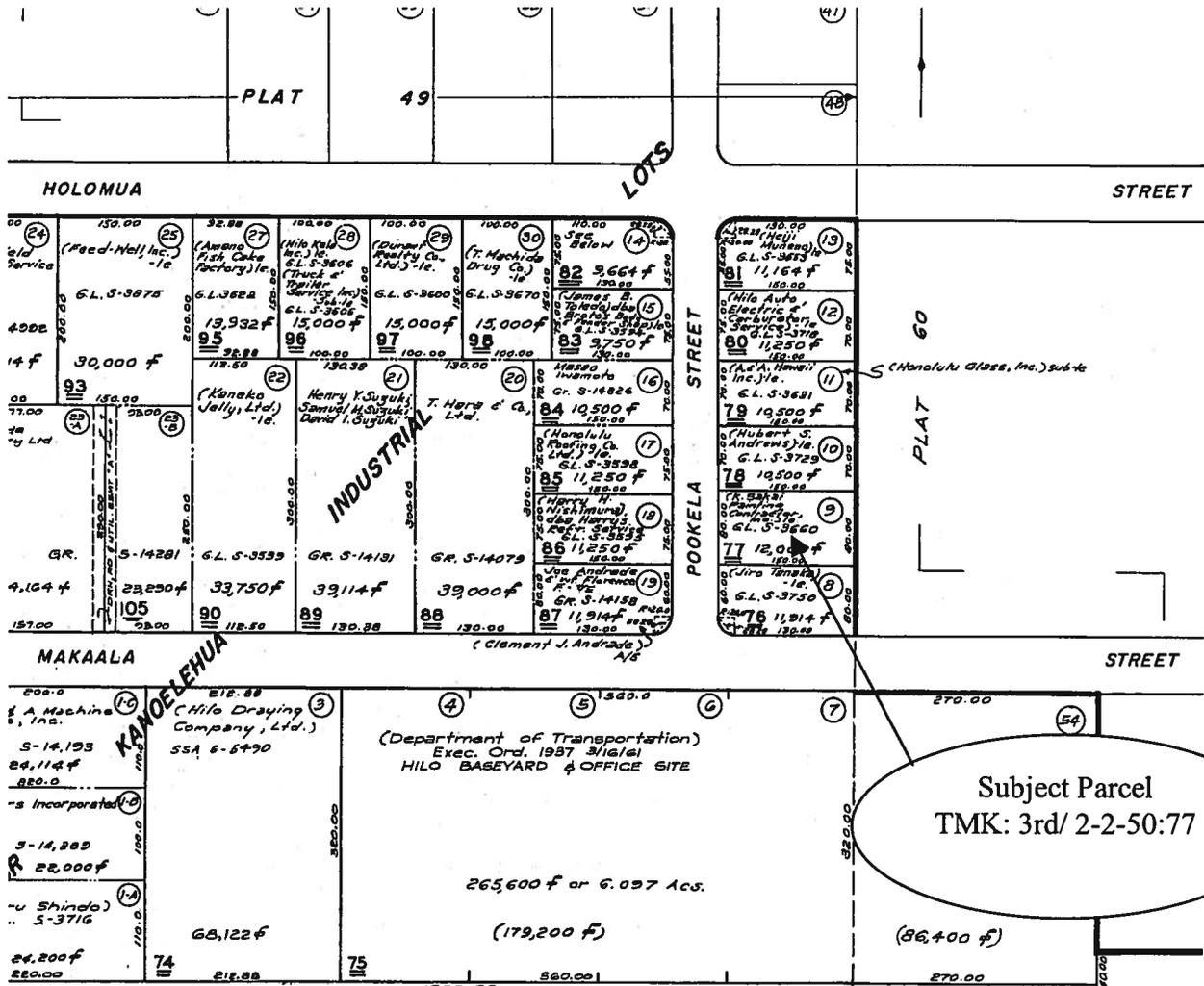
Respectfully Submitted,

  
\_\_\_\_\_  
Kevin E. Moore  
District Land Agent

W

APPROVED FOR SUBMITTAL:

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



State of Hawaii  
 (Dept. of Education)

20.783 Ac.

Exec. Ord. No. 1249  
 (14.720 Ac.)

(261,490 sq ft or  
 6.003 Ac.)

HAWAII TECHNICAL SCHOOL

EXHIBIT A

GL 3660

# Hilo Bay Printing Co., Ltd.

since 1989

12 Po'okela St. Hilo, Hawaii 96720  
808-969-1077 hilo.bayprinting@hawaiiantel.net

RECEIVED  
MAY 11 2011

2011-05-11 A 11:42

RECEIVED  
LAND DIVISION  
HILO, HAWAII

2011 MAY 11 P 1:42

May 6, 2011

Mr. Russell Y. Tsuji Administrator, Land Division  
Department of Land and Natural Resources  
Kalanimoku Building  
1151 Punchbowl Street, Room 220  
Honolulu, Hawaii 96813

RE: Hilo Bay Printing Co., Ltd. General Lease No. S-3660

Dear Mr. Tsuji:

Hilo Bay Printing Co., Ltd. ("Lessee") operates a commercial print shop located at 12 Po'okela St., Hilo, Hawaii under General Lease No. S-3660 dated August 11, 1961 (the "Lease") with the State of Hawaii (the "State"). I am writing this letter to request a reduction in the performance bond amount required under the Lease from an amount equal to two times the annual rent (currently equal to \$27,120), to an amount equal to the one time annual lease rent or \$13,560.

### A. BACKGROUND

The Lease is a ground lease for a term of 55 years, with an expiration date of March 19, 2016, for property situated at Waiakea, South Hilo, Island of Hawaii, containing an area of approximately 12,000 square feet. Lessee has been the lessee since May 2002. Lessee's leasehold interest is held free and clear by lessee. Since becoming Lessee under the Lease, Lessee has paid all rentals to the State. Lessee has also maintained property in good condition and repair, has addressed all necessary improvements on a timely basis and otherwise has complied with all applicable terms and conditions of the Lease.

Lessee Hilo Bay Printing, established in 1989, is a family business owned by Donald and Cathy O'Reilly. Lessee has been and continues to be a responsible owner who provides needed specialty services, contributes to the Big Island economy and fulfills all of its contractual obligations.

### B. BOND REQUIREMENT UNDER THE LEASE

Paragraph 25 the Lease requires Lessee to post a bond in an amount equal to two times the annual rent then payable to ensure the full and faithful observance and performance by the Lessee of all the terms, conditions, covenants, and agreements of the Lease. The current amount of bond being posted by Lessee is \$14,600, guaranteed through A1 Bonding of Honolulu, with an application currently submitted for a bond in the amount of 27,120.00

### C. BASIS OF REQUEST FOR A REDUCTION IN THE BOND AMOUNT

Lessee hereby requests a reduction in the bond amount required under the Lease for the following

## EXHIBIT B

5.09.11 04: HDLO

reasons.

1. With the reopening offer of the lease in August 2010, lessor has determined through appraisal that the annual rent will be increased by almost 90%, despite the enduring economic recession. At a time when revenue and net income have dramatically declined for several years, this increase has created a personal hardship for the Lessee.

2. As the ability to secure credit has become increasingly difficult due to the tightening of the credit markets and financial institutions' reluctance to advance credit for day to day operation and management of Lessee's enterprise.

#### D. BASIS FOR GRANTING FOR A REDUCTION IN THE BOND AMOUNT

Lessee submits that a bond equal to one years rent is more than adequate to protect the State. The probability of a default is unlikely due to the reasons listed below.

1. Lessee has been successfully operating a commercial printing business in Hilo since 1989, always meeting obligations, at times before paying themselves.

2. Lessee is a U.S. Government Printing Office certified quality level 3 vendor with a progressive share of the windward market, and a provider of services unavailable anywhere else on the Big Island.

3. Lessee has made substantial investments in the renovation of this property, as well as investments in machinery and technical equipment.

In conclusion, the Lessee requests that the State allow a reduction in the performance bond requirement in the Lease from an amount equal to two times the annual rent to an amount equal to one annual payment. Lessee submits that this reduction will enable lessee to more adequately endure the prolonged economic recession, and continue to be a valuable tenant.

Mahalo for your consideration.

Sincerely,



Donald O'Reilly  
President