

HSBA Purchase of Premises

Introduction: On March 23, 2009, HSBA became the owner of the 10th floor of Alakea Corporate Tower, (1100 Alakea Street, across from the District Court), a building converted to condo ownership a few years ago. HSBA thus joined several nonprofits, including LASH, Domestic Violence Action Center, the Hawaii Medical Association, the Hawaii and Honolulu realtors' organizations, which have controlled escalating future costs and moved from the "living year to year" mindset. HSBA is confident that this acquisition is in the best interest of the HSBA and its members and was made prudently after carefully considering all relevant factors and responsible due diligence.

Background: Thanks to Coralie Matayoshi, former ED, and member Mel Kaneshige, HSBA's current 10-year lease has resulted in below-market base rent in the last few years. [Our current base rent is 30%--45% below the current asking prices for premises as large or larger as needed.] With this lease terminating in seven months and knowing that we needed larger premises, HSBA began in 2008 to review options for premises. As a coincidence, the premises adjacent to our current premises became available in the fall of 2008, so we entered into negotiations with the landlord to expand the space and extend the lease.

Coldwell Banker Richard Ellis (CBRE), who had assisted HSBA with a 2004 search for office space when we expressed interest in a then-available floor at Alakea Corporate Tower, was retained to assist; Frances Okazaki on the leasing possibilities and Dana Peiterson on the acquisition side. After extensive negotiations with the landlord, during which numerous terms were negotiated in HSBA's favor, the Board rejected this option, declining to enter a 5-year lease under the then terms proposed by the landlord. However, these negotiations provided a benchmark for analyzing future negotiations, with the recognition that the square-foot cost of premises would rise at the end of the lease.

A Premises Committee, consisting of Board members Jeff Sia, Rai Saint Chu, Louise Ing, Doug Moore, Craig Wagnild and members Leighton Yuen and Carl Schlack, who practice in the commercial leasing area, comprised the Committee, worked with CBRE to analyze all alternatives, comparing long-term costs of leasing versus acquiring property. The search centered on leasing options until opportunities at Alakea Corporate Tower unexpectedly arose. Ownership of a condo unit, under which maintenance and other matters were handled by the collective ownership group, combined with the longterm control on escalating costs through financing rather than leasing, were positives.

Lease vs. Acquisition Projections: As negotiations progressed, projections were presented to the Board comparing the 10-year estimated costs of leasing versus purchasing/financing. Using the rate per square foot previously negotiated with the current landlord and comparing space of the same size, using conservative assumptions regarding financing terms and buildout costs, these projections showed that the acquisition route would be slightly more expensive during the next 5-7 years, but that the “difference” would decline annually and acquisition/financing would become more favorable annually after year 7. Thus, on a 10-year cost basis, acquisition/financing would be less expensive than leasing and this positive difference would increase annually.

In anticipation of the need for a “premises fund” to finance a move and buildout, whether lease or acquisition, a “premises assessment” was included in the 2010 dues/fees collection (\$85/active members and \$45/inactive members). This provided approximately \$500,000, which in combination with \$250,000 reserves, established a “premises fund” of \$750,000, which was to be used for a down payment, build out and moving costs, and other expenditures necessitated by a move.

At the end of 2008, HSBA entered a DROA to acquire the 10th floor of Alakea Corporate Tower for \$2,000,000, subject to due diligence and acceptable financing. As we entered the due diligence and financing phase, conflicts prevented Leighton Yuen from continuing on the committee and Craig Wagnild from continuing serving during the negotiation and due diligence period; Carl Schlack agreed to provide legal services for the HSBA “pro bono”. The Premises Committee, along with the Executive Committee, continued the due diligence review of the subject property and the search for financing.

Financing: First Hawaiian Bank, Bank of Hawaii and American Savings Bank were approached and requested to provide financing proposals. After extensive discussions and review of HSBA’s financial history and structure, all three banks submitted very attractive proposals, each with varying terms. In each case, the proposals were more favorable than the assumptions utilized in the projections of costs of lease versus purchase. The Premises and Executive Committees recommended to the Board and the Board approved the proposal submitted by First Hawaiian Bank. Negotiations continued on terms and covenants with First Hawaiian Bank and mutually satisfactory terms, covenants and conditions were agreed upon. The loan is generally in 2 tranches, the first a loan for the acquisition and the second a draw-down loan for the build-out. The terms and covenants are unique to the HSBA organization and financial structure.

Due Diligence: Simultaneously, documentation about title, the building history, ADA compliance and other matters, were reviewed. The DROA was extended by one week to allow for further work, but it was determined that the due diligence review had not produced any issues of major financial risk which would preclude HSBA from continuing with the acquisition.

Board Action: At a duly called meeting of the Board of the HSBA, held on January 29, 2009, the Board was briefed on the loan proposals and reviewed the recommendation of the Premises Committee, determining unanimously to accept the recommended financing proposal from First Hawaiian Bank. The Board also unanimously adopted the proposed resolution authorizing the acquisition of the premises and to specify First Hawaiian Bank as the lender. At the February 26, 2009 meeting of the Board, it was reported that the Premises Committee and the Executive Committee had carefully reviewed title, ADA and due diligence issues and had authorized moving forward with the acquisition. The Board unanimously approved a motion to authorize the Executive Committee to proceed with such actions as necessary to proceed with the premises acquisition.

Build Out and Move: At the March 19, 2009 meeting of the HSBA Board, a new "Premises Committee," comprised of Rai Saint Chu, and Board members Ken Robbins and James Dandar, was appointed to work with staff on the design, build out, furnishing, and move. Thomas Fudge, of Next Design, was retained to design the premises. Thomas Schell of TSI Consulting LLC was retained as Project Manager to oversee all aspects of the project through the move and clean up of the current premises.

An aggressive timetable of deadlines has been established with the goal of moving to the new premises in November in order to settle in before the 2010 renewal process begins. Major deadlines include:

1. April 15: completion and agreement on floor design
2. June 1: release RFP and CDs to contractors for bid
3. July 1: Contractor selection based on bids
4. July 15: Furniture selection completed
5. August 1: Build out begins
6. October 15: Build out completed
7. October 31: Furniture installation completed
8. November: Move HSBA staff and records and files which have survived an ambitious purging and scanning effort

This is obviously a very challenging and time-consuming project for staff and leaders of HSBA, during a very busy year in which, rather than eliminating programs/services to free time for this project, several programs are being added, including a Leadership Institute, a Senior Counsel Division, a Litigation Section, affiliated status for new entities, numerous new member benefits and communication programs, and possible implementation of MCLE regulation, just to mention a few. In addition, HSBA continues to support the Access to Justice Commission and the legal service providers in a very difficult year.

A mini-blessing of the new premises is planned pre-construction, and a full blessing and open house will be planned at the end of the year.