

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

July 26, 2013

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

Kauai

Forfeiture of General Lease No. S-3977, P.I.K.A. INC. Lessee, Hanapepe, Waimea, Kauai, TMK (4) 1-9-005:007

PURPOSE:

Forfeiture of General Lease No. S-3977, P.I.K.A. INC., Lessee.

LEGAL REFERENCE:

Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Hanapepe situated at Hanapepe, Waimea, Kauai, TMK (4) 1-9-005:007, as shown on the attached map labeled Exhibit A.

AREA:

6873 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:

Business purposes.

TERM OF LEASE:

55 years, commencing on May 26, 1966 and expiring on May 25, 2021

ANNUAL RENTAL:

\$5,685.00 due in semi-annual payments.

REMARKS:

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- S3977, P.I.K.A. INC., Lessee, was served a Notice of Default by certified mail dated February 28, 2011 for failure to post required performance bond and on February 1, 2013 for failure to keep lease rental payments current:

Said notice for Bond, accepted by the Lessee on March 9, 2011, offered the Lessee a sixty-day cure period to correct the default. This cure period expired on May 9, 2011. As of June 25, 2013, this breach has not been cured.

Said notice for rental payments, accepted by the Lessee on February 6, 2013, offered the Lessee a sixty-day period to correct the default. This cure period expired on April 6, 2013. As of June 25, 2013 this breach has not been cured.

As of June 25, 2013, the current status of all lease compliance items is as follows:

RENT: The Lessee has a rental delinquency of \$10,275 for the time period from May 26, 2012 to May 26, 2013

INSURANCE: The Lessee has posted the required liability/fire insurance policy.

PERFORMANCE BOND: The Lessee has not posted the required performance bond. Expired November 10, 2011

The Lessee had Notice of Default letters for rent sent on: July, 1, 2009, December 30, 2009, January 31, 2011, June 30, 2011 and February 1, 2013. Since July 2009 the Lessee has cured all of their rental defaults over time by making partial payments towards past due rents. Since November 26, 2011 the tenant has not caught up on past due rents and continues to fall further behind on its obligations. Over the last one and a half years the Lessee has continued to make partial payments with the most recent payments on April 1 and 4, 2013 in the amounts of \$8,000.00 and \$2,000.00. The Lessee has not fully cured the February 1, 2013 default of \$14,590.00. The Lessee currently owes \$10,275.00 in past due rent.

The Lessee had Notice of Default letters for Performance Bond sent on: December 4, 2009, February 28, 2011 and May 30, 2013. The Default on the December 2009 was cured in a timely manner. The February 2011 and May 2013 Defaults have not been cured.

The Lessee had a Notice of Default letter for Insurance sent on September 10, 2010. This Default has been cured and the Lessee's Insurance is current.

The Lessee, P.I.K.A., Inc. took over the General Lease from R.K.U. Enterprises on March 19, 2009. As noted above the Lessee has shown a consistent pattern of delinquency since it was assigned the lease. In the past, Mr. Leonard Bagano, the Vice-President for P.I.K.A., Inc. has requested additional time to make payments and has shown efforts to get caught up with deficiencies.

In January of 2013 Staff contacted Mr. Bagano by phone to discuss his company's delinquencies. He is requesting a twenty four (24) month Special Installment Agreement (SIA). The proposed plan would allow payment of \$14,590 over 24 months at 7% interest for a monthly payment of approximately \$655.00 in addition to the regular lease obligations. The Lessee has stated that it has no other sources of funding to pay the delinquencies. The Lessee's delinquencies are not due to any action by DLNR. There have been no rental rate adjustments since the Lessee assumed the lease.

It is Staff's recommendation that the Lessee does not meet the "factors" required to be issued an SIA. Specifically, in accordance with the BLNR SIA Policy dated January 28, 2000, the Lessee does not meet the following factors for consideration of a SIA:

1. The Lessee having a good and sufficient performance bond on file with the Department for the lease.
2. The amount of the delinquent rent is not excessive and, preferably, does not exceed one year's rent amount.
3. The lessee has a reasonably good history of lease compliance over the past five years.

The Lessee's Bond is in default and the delinquent rent owed is for approximately a 12 month period of time. Since the Lessee assumed the lease it has continually been late or delinquent on their rent, insurance or bond requirements.

There are a few factors that the Board should consider prior to approving the cancelation. The Lessee operates an auto body shop and a mechanic's shop on the property. Due to the nature of the business there may be a need for environmental cleanup after the Lessee is evicted and the Lessee may not voluntarily pay for any required cleanup. The performance bond has expired due to non-payment. Upon cancelation of the lease the State will have no deposit to debit for back due rent or cleaning expenses. It is also possible that once the lease is canceled P.I.K.A., Inc. will go out of business leaving the State with no recourse for collections.

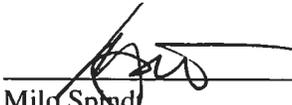
Taking the above factors under consideration, an alternative to cancelation would be to allow the Lessee to set up a SIA under the condition that it re-establishes its Performance Bond. This Bond would provide recourse for the delinquent rent and prevent the State from taking on additional liability of environmental site cleanup.

There is a building on the property that will revert to State ownership upon the termination of the lease. See attached photos labeled Exhibit "B"

RECOMMENDATION: That the Board:

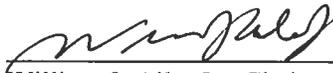
1. Authorize the cancellation of General Lease No. S-3977 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-3977 to be applied to any past due amounts;
3. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of August 2, 2013, 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. 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-3977 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,



Milo Spradl
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson





EXHIBIT "B"



