

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

February 14, 2014

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

OAHU

Amend Prior Action of September 27, 2013, Item D-11 by Removing Posting of Performance Bond from the Recommendation Section; Request for Mutual Termination, Leki, Incorporated, Lessee, General Lease No. 3983, Waialea, Koolauloa, Oahu; Tax Map Key: (1) 5-8-001:051

REMARKS:

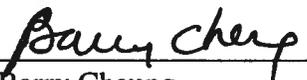
On September 27, 2013, under agenda item D-11, the Board approved, as amended, the staff recommendation pertaining to the request for mutual termination of the subject lease. The amendment included four (4) conditions as noted on the copy of the approved submittal attached as **Exhibit 1**. One of the conditions requires the performance bond be kept at \$84,000.

When the cancellation document, including the condition for the performance bond described above inserted therein, was sent to the former lessee for signature, the former lessee asked if the condition for the performance bond could be removed from the cancellation document. Staff has discussed the request with the Department of the Attorney General, and noted that a Board action is required for the latest request.

Staff reports that the former lessee has provided the Phase I report and cleaned up the property. Physical possession of the property was returned to the Department in a satisfactory condition. Staff notes that the document as prepared may imply the former lessee needs to post the \$84,000 bond notwithstanding the lease is terminated. According the minutes of the Board meeting of September 27, 2013, “[i]f the phase one and the cleanup are satisfied, then the bond will be released.” For clarification purpose, staff recommends the Board amend its prior action by removing the performance bond as part of the condition of the requested mutual termination.

RECOMMENDATION: That the Board amend its prior action of September 27, 2013, item D-11 by removing the performance bond condition from the Recommendation Section as described above.

Respectfully Submitted,

  
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
William J. Aila, Jr., Chairperson

**AMENDED**

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

September 27, 2013

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

OAHU

Request for Mutual Termination, Leki, Incorporated, Lessee, General Lease No. 3983, Waialeale, Koolauloa, Oahu, TMK (1) 5-8-001:051.

APPLICANT:

Leki, Incorporated, Lessee, a domestic profit corporation

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waialeale, Koolauloa, Oahu, identified by Tax Map Key: (1) 5-8-001:051, as shown on the attached map labeled **Exhibit A**.

AREA:

12.854 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:

Convalescent home purposes.

TERM OF LEASE:

55 years, commencing on June 27, 1966 and expiring on June 26, 2021.  
*as amended*

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
September 27, 2013 *GO.*

**ANNUAL RENTAL:**

\$42,000 due in quarterly payments.

**BACKGROUND:**

The subject lease (“GL 3983”) was issued to David A.P. Lew pursuant to a public auction held in 1966 and the permitted use was convalescent home. In 1973, the Lease was assigned to Leki, Inc. (“Lessee”) which was formed by Mr. Lew and currently managed by Mrs. Lew.

The current annual rental at \$42,000 was appraised during the rental reopening process covering the period from June 27, 2006 to June 26, 2016.

Around September 2011, the Lessee, through its attorney wrote to the Department and inquired the possibility of ‘... restructuring of the terms of the [Lease] in light of the reduction Medicaid payment, substantial reduction occupancy ... down turn in the economy.’ Staff explained that the terms of the Lease cannot be restructured as the lease was disposed by auction.

By its letter dated July 24, 2013 (**Exhibit B**), the Lessee, through its attorney, requested the Board approve the mutual termination of the Lease, due to financial circumstances.

**Site condition**

During an inspection in September 2011, staff noted the main building of the convalescent home was reasonably maintained, while the roofing of an employee quarters would need some repair. In addition, a building that burned down in 2002 remained on the premises with no restoration work done. Staff did not inspect the individual rooms of the facility due to privacy concerns. On the ground, staff did not notice any potential environmental concern other than the remains of the burned-out building.

At the time of writing this submittal, staff did not inspect the premises because the Lessee is coordinating with other parties regarding relocation of patients or removal of fittings and utilities. Nevertheless, staff will advise the Board of the latest condition covering the land and building and will supplement this submittal with an inspection report done prior to the Board meeting date.

**Lease compliance**

The Lessee paid the rent up to September 26, 2013 and currently has a surety bond for \$84,000 (expiring on March 5, 2014) posted with the Department. The fire and liability insurance expired early August 2013. There is no violation of lease terms or other government regulatory issues. Next quarterly rental is due on September 27, 2013.

**Improvements**

Pursuant to lease conditions, the Lessee was required to erect improvements at a cost of not

less than \$120,000 (1966 value) and agreed to surrender the improvements to the State upon expiration or sooner termination of the Lease. According to the City and County of Honolulu Real Property Tax Assessment Office website, the latest building assessed value on the subject premises is \$877,100.

Phase I Environmental Site Assessment (“ESA”)

In recent requests for mutual termination cases, for example, the former Meadow Gold leased area in Waimanalo and the former Del Monte leased lands in Kunia, the Board approved the staff recommendation of requiring the outgoing lessees to procure a Phase I ESA report to ascertain the State parcels were clean.

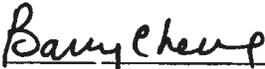
The subject facilities have been used for convalescent home since the 1960s. Though there were no reports in our files indicating any possible environmental contamination on the premises, staff recommends the Board require the Lessee to provide a Phase I Environmental Site Assessment at its own costs to ensure the returning land and buildings are clear of any possible environmental contaminants prior to mutual termination of the subject lease.

An attorney representing the Lessee indicates that due to shortage of funds, his client will not be able to comply with this requirement.

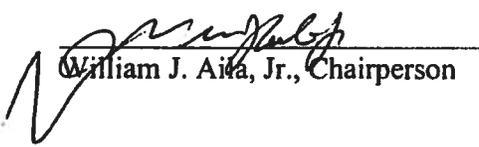
RECOMMENDATION: That the Board:

- A. Subject to the Lessee’s provision of the Phase I Environmental Site Assessment described above, authorize the mutual termination of General Lease No. S-3983 in the manner specified by law; and
- B. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective in the manner described above, 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.

Respectfully Submitted,

  
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
William J. Aifa, Jr., Chairperson

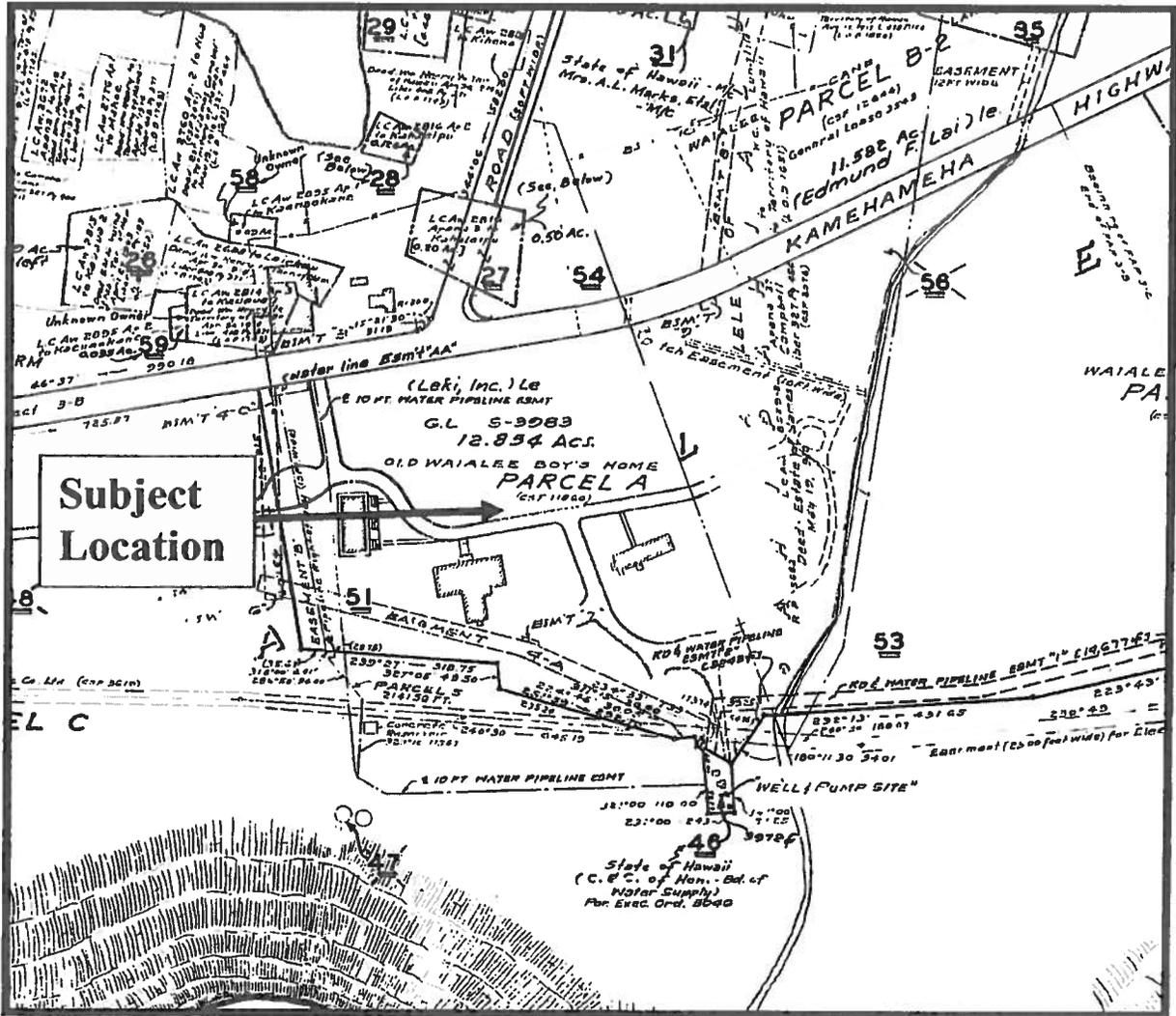
Land Board Meeting: September 27, 2013; D-11: Approved as amended.

See attached page.

Land Board Meeting: September 27, 2013; D-11: Approved as amended.

The Board approved staff's recommendation for mutual termination of the Lease pursuant to the following conditions:

- 1) The performance bond shall remain in the amount of \$84,000.00;
- 2) Lessee shall provide a Phase I Environmental Site Assessment, but is not obligated to provide anything beyond that, such as a Phase II environmental site assessment;
- 3) Lessee shall meet all lease requirement obligations, including clean up of the property and removal of equipment (metal recycler, etc.); and
- 4) Authorize a gratis sixty (60) day right-of-entry to the Lessee in order for them to continue their clean-up of the property.



TMK (1) 5-8-001:051

EXHIBIT A



KOBAYASHI SUGITA & GODA, LLP

July 24, 2013

Mr. William J. Aila, Jr.  
Chair  
Board of Land and Natural Resources  
P.O. Box 621

Re: General Lease S-3983, Land of Waialeale, Koolauloa, Oahu,  
Hawaii; TMK (1) 5-8-001:051 ("Property"), by and between  
the State of Hawaii and Leki, Incorporated.

Dear Chair Aila:

We represent Leki, Incorporated ("Leki") with regard to the above-referenced lease.

As you may know, the term for the above-referenced Lease commenced June 27, 1966 and terminates June 26, 2021. During that entire time, and even before this Lease commenced, the Crawford Convalescent Home has been operated on the Property.

As part of its obligations under the Lease, Leki executed a mortgage for approximately \$350,000 with First Hawaiian Bank<sup>1</sup>, and used those funds not just to renovate existing structures, but to build a new intermediate care facility to be able to carry on its operation starting in the late 1960's. State Records for this Lease indicate a total investment in connection with this improvement of \$1,001,724.00. The new facility was completed, the loan paid off, and the improvement will become property of the State at the end of the Lease. In addition, Leki completed installation with the approval of the State Department of Health ("DOH") of a new IWS with leach field, which is currently in operation.

Throughout the term of this Lease, the monthly rent due has been paid on time and in full. Leki has been a good tenant of the State as well as a good steward of the Property. Unfortunately, current financial circumstances caused by declining patient rolls have made it impossible for it to continue to operate, without going into bankruptcy. Over a number of years and especially the losses incurred last year by Leki made it clear it could not continue to

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<sup>1</sup> The Lease only required improvements to an existing structure in the amount of \$120,000. However, the existing structure was unusable from the start and instead of renovation, Leki's shareholders opted to construct a new facility.

**EXHIBIT "B"**

Mr. William A. Aila, Jr.  
Chair  
July 23, 2013  
Page 2

operate<sup>2</sup>. While Leki is current on its rent to the State and have been in compliance with the terms of its Lease with the State, it cannot continue much longer.

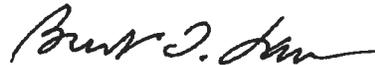
Therefore, it is with much regret, that we must request on behalf of Leki, that the State consider and agree to a mutual termination of the Lease, without condition. This is being submitted in connection with Leki's ongoing efforts, with the knowledge and coordination of the State Department of Health, to transfer its last remaining twelve (12) patients to other licensed facilities. Notice of termination, effective July 31, 2013, has been given to it's nursing and dietary staff. Leki is working to provide its staff with information and contacts regarding the employee benefits and benefit transfer arrangements, applications for State benefits, as needed and have made other attempts to ease the transition for its employees, several of whom have been with the company for thirty (30) years or more.

Before reaching this decision, Leki sought to interest other operators in assuming the existing Lease with the improvements made by Leki without success. Although Leki has been advised by one medical facility, of its interest in this property and this operation, no firm discussions have taken place.

Therefore, we would appreciate the Board's consideration of this request for mutual termination, without conditions, as soon as possible. In any event, we wish to work with the Department of Land and Natural Resources ("DLNR") staff to return physical control over the the Property back to the State, as soon as possible to protect the Property and the improvements, and preserve it for any future tenant.

We look forward to hearing from you as expeditiously as possible. If you or your staff have any questions, please feel free to contact the undersigned.

Very truly yours,



BURT T. LAU  
for  
KOBAYASHI, SUGITA & GODA

Enclosure: Confidential/Sealed Information

Cc: Mr. Russell Tsuji  
Chief, Land Management

Mr. Barry Cheung  
Oahu Land Agent

Leki, Inc.  
Attn: Ms. Alice Lew

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<sup>2</sup> We have enclosed with this letter, by way of a sealed envelope, copies of Leki's corporate financial statements for 2007 to 2012. This is for your consideration and the Members of the Board and staff, but this information contains confidential business information. We request it remain under seal in your files and marked as "Confidential/Sealed".