

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

March 14, 2014

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

Hawai'i

Request for Consent to Extension of Lease Term Pursuant to Act 207, Session Laws of Hawaii 2011, General Lease No. S-3599 Central Supply, Inc., Lessee; Amendment of Terms and Conditions Regarding Allowed Use, Assignment and Sublease Provisions for General Lease No. S-3599; Lot 22 Kanoelehua Industrial Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-50:90.

APPLICANT AND REQUEST:

Central Supply, Inc. a Hawaii Corporation.

Improvements to leasehold property financed by Lessee, Central Supply, Inc. pursuant to Act 207, Session Laws of Hawaii and Sections 171 36(b) in the amount of approximately \$40,100.00.

In order for Lessee to amortize this expenditure, the Lessee is requesting an extension of General Lease No. S-3599 of 10 years, commencing on January 16, 2016 and expiring on January 15, 2026 for an aggregate term (initial 55 year term plus extension) of 65 years.

LEGAL REFERENCE:

Sections 171-36(b)(3), Hawaii Revised Statutes, as amended.
Act 207, Session Laws of Hawaii 2011

LOCATION:

Portion of Government lands of Lot 22, Kanoelehua Industrial Lots, situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-50:90, as shown on the attached map labeled Exhibit A.

AREA:

33,750 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 (jelly processing); provided that the Lessee may use for other than jelly processing with the prior written consent of the Board.

TERM OF LEASE:

55 years, commencing on January 16, 1961 and expiring on January 15, 2016. Last rental reopening occurred on January 16, 2011

Request for extension of 10 years commencing on January 16, 2016 and expiring on January 15, 2026.

ANNUAL RENTAL:

Current rent is \$26,000.00¹, due in semi-annual installments of \$13,000.

RENTAL REOPENINGS:

Rental reopenings in the original term were at the end of the 20th, 30th, 40th and 50th years of the term. The last rental reopening occurred on January 16, 2011. However, the request before the Board expands the allowed uses under the lease from jelly processing to any uses allowed by current zoning. Therefore, staff is recommending the rent for the extended term be determined by an immediate appraisal that will cover the period from the date of this Board action through January 15, 2026. The appraiser shall be selected by the State and paid for by Lessee. As a condition of the Board's discretionary approval of the lease extension, the appraised rent for the extension period will be determinative and not subject to arbitration.

¹ The last rental reopening is currently in arbitration. The amount of rent shown is the result of the 1st arbitration award agreed upon by all the arbitrators. There has since been a challenge to the procedure and it is currently being adjudicated in the courts.

PROPOSED IMPROVEMENTS:

The Lessee will make substantial improvements to the property. These improvements include major repairs to the roof of the warehouse and office additions to the interior of the warehouse. The cost of these improvements is estimated to be \$40,100.00.

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>

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for an appraisal for the immediate rental reopening.

The Lessee shall complete improvements to the structure including renovations to the restroom area and replacement of the roof in the amount of at least \$40,100.00 and submit to Land Division staff receipts verifying payment for the improvements by August 31, 2014.

REMARKS:

General Lease No. S-3599 was issued to Kaneko Jelly, Ltd. for a term of fifty-five (55) years pursuant to Act 4, First Special Session of 1960, which authorized the direct issuance of leases to victims of a natural disaster (tsunami).

The lease, which began on January 16, 1961 and expires on January 15, 2016, restricted the use of the 33,750 square foot property to jelly processing purposes. A warehouse building comprising an area of some 6,000 square feet was constructed in compliance with the building requirements of the lease in 1961. An additional warehouse building encompassing an area of 4,800 square feet was constructed in 1977.

At its meeting of August 12, 1977 the Board under agenda item F-1-b, consented to the assignment of lease from H. H. Jelly, Inc., formerly known as Kaneko Jelly, Ltd., as Assignor to Norman Koshiyama, as Assignee. Further, at the same meeting, the Board under agenda item F-1-c, consented to the assignment of lease from Norman Koshiyama as Assignor to Big Island Builders, Inc., as Assignee.

Big Island Builders, Inc. began to have financial problems and First Hawaiian Bank assumed the lease through foreclosure and, in accordance with the Finding of Fact, Summary Judgment and Interlocutory Decree of Foreclosure in Civil Case No. 87-023, General Lease No. S-3599 was assigned from Wayne Metcalf III, the appointed and acting commissioner to Tadao Roy Van Dyke Kimura, Trustee of the Tadao Roy Van Dyke Kimura Trust dated January 22, 1982, as Assignee and consented by the Board at its meeting of July 8, 1988 under agenda item F-1-f.

At its meeting of January 26, 1996, the Board, under Agenda Item F-1-f, approved the Assignment of Lease from Tadao Roy Van Dyke Kimura, Trustee of the Tadao Roy Van Dyke Kimura Trust dated January 22, 1982, as Assignor to Vince M. Kimura, as Assignee.

Further, at its meeting of April 9, 1999, the Board under agenda item D-25, consented to the assignment of lease from Vince M. Kimura to Central Supply, Inc., the business entity owned by the Lessee.

The Lessee is in compliance with the terms and conditions of the lease. The Lessee is current with rent, insurance and performance bond.

No agency comments were solicited on the request as it involves a lease extension, and not a new disposition.

LEASE EXTENSION:

The Lessee's current 55 year lease is set to expire on January 15, 2016 and they are requesting a 10 year extension pursuant to Act 207, Session Laws of Hawaii 2011² in order to amortize the cost of planned improvements to the property. These improvements include the replacement of the roof along with interior office renovations to the first warehouse at a cost in excess of \$40,100.00. An appraisal evaluation performed by a certified appraiser has determined that the economic life of the proposed improvements will exceed the twelve-plus year period necessary to amortize the refurbishments.

Staff additionally notes that Central Supply, Inc. has made substantial repairs and improvements to the premises in the course of the lease. The warehouse structures are well maintained and in good condition. Such maintenance demonstrates the Lessee's continuing efforts to keep the buildings in good order and repair.

The subject parcel is located in an area served by aging and/or substandard infrastructure. The area also includes numerous other DLNR parcels currently encumbered by long term leases that are also scheduled to expire between 2016 and 2021. Most of the DLNR leases in this area were established pursuant to Act 4, First Special Session of 1960 resulting from the destruction of the Hilo bay front caused by the 1960 tsunami. Businesses that were severely impacted by the tsunami were given the opportunity to relocate to the newly created industrial area of Kanoelehua. The act provided lessees with an option to purchase the land within two years. Several businesses exercised this option creating an industrial area of mixed DLNR leases and fee simple properties³.

² Act 207, Session Laws of Hawaii 2011 amends Section 171-36(b) of the Hawaii Revised Statutes by allowing the Lessee to: Extend or modify the fixed rental period of the lease: provided that the aggregate of the initial term and any extension granted shall not exceed sixty-five years.

³ There are currently twenty six (26) leases and fifteen (15) fee simple properties within the area set aside as a result of Act 4 First Special Session 1960. The area borders are Kawili St., Makaala St., Pookela St.

Since the implementation of Act 207, SLH 2011, there have been three leases within the Kanoiehua Industrial area that have been granted ten year extensions. Two of these leases are in the immediate vicinity of GL S-3599 and are direct leases awarded as a result of Act 4. The Other lease, although in the Kanoiehua Industrial area is located along Railroad Ave. and was initially awarded through the public auction process.

The East Hawaii economic region is unique in that a majority of the available land suitable for commercial and/or industrial use is under the management of a government agency⁴ (Exhibit B). As one of the largest stake holders of commercial/industrial land in the Hilo area, the Department of Land and Natural Resources understands the need for a comprehensive analysis of the area in order to develop an economic strategy that will encourage new enterprises in addition to supporting the established businesses.

With this concept in mind, the Land Division has retained the services of the consulting firm Munekiyo & Hiraga, Inc. for the purpose of providing a feasibility study and analysis of the Kanoiehua Industrial Area in order to determine the future direction of this very important economic area of East Hawaii.

Key elements of the study/analysis will be:

- Determine the market demand for the KIA properties, particularly the demand for industrial-commercial use or some other use for long-term leasing (30 years or more)
- Determine whether some properties should be consolidated and reconfigured to maximize the utility of the land in view of the results from the above findings.
- Assess the feasibility and desirability of placing management of the leasehold properties (or clusters of properties) under a master lease (or multiple master leases for each cluster) from the State for industrial, commercial or other uses permitted by the applicable zoning.

The results of this study will be used to assist the department in determining the future of the Kanoiehua Industrial Area and create an economic region that will benefit not only the people of East Hawaii, but the State as well.

Staff is recommending that the rent payable for the remaining term of the lease, with extension, be determined by immediate appraisal. The appraiser will be selected by the State but the appraisal fee will be paid by Applicant, and the appraised rent will not be subject to arbitration.

(both sides) and Wiwoole St.

⁴ The Department of Land and Natural Resources (DLNR) and the Department of Hawaiian Home Lands (DHHL) are the two major land holders in the industrial area of East Hawaii.

AMEND LEASE TERMS:

As the lease was issued by direct negotiation instead of public auction, the Board has authority to amend the lease to change the character of use provision and make other amendments.

One of the provisions of the lease is 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 jelly processing in character, with the prior written consent of the Board, which consent shall not be unreasonably or arbitrarily withheld...”

A change in the character of use from “jelly processing” to “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/valuable for future leasing.⁵

Also, the lease contains language which allows the Lessee to sublease portions of the property without Board approval, consent or knowledge. Staff believes the better practice is to require prior Board consent for all subleases. Therefore, Staff is recommending the assignment/sublease provision in the lease be amended to reflect the current language for assignments and subleases.

RECOMMENDATION:

EXTENSION:

1. Authorize the extension of General Lease No. S-3599 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current lease extension form, as may be amended from time to time;
 - B. Central Supply, Inc. shall complete its repairs to the warehouse roof and renovations to the restrooms and submit to Land Division staff receipts verifying payment for the improvements by July 31, 2014.

⁵ Although the use restriction by its terms applied only to the first five years of the lease, it is not clear what uses were intended to be allowed after the first five years. Accordingly staff is recommending the amendment of this provision for the sake of clarity.

- C. Review and approval by the Department of the Attorney General; and
- D. Such other conditions as may be prescribed by the Chairperson, which are in the best interests of the State.

AMENDMENT:

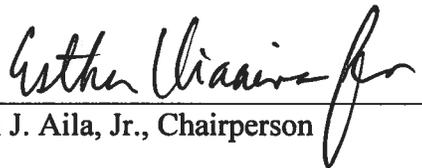
- 2. Authorize the amendment of General Lease No. S-3599 to change the character of use from “jelly processing” to “uses allowed under the current County of Hawaii Zoning Code, ML-20, limited industrial”, and to update the lease provision titled “Assignments, etc.” (Section 22 of the lease) with the current language used by the Department of the Attorney General for assignment and subleasing provisions. The amendment of the lease shall further be subject to the following:
 - A. 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;
 - B. Review and approval by the Department of the attorney general; and
 - C. 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
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



