

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

April 24, 2015

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

Hawaii

Amend Prior Board Action of January 23, 2015, Item D-5, Forfeiture of General Lease No. S-5189, Fishing Island, Inc., Lessee, Non-Exclusive Mooring Rights in Offshore Waters of Kailua-Kona, Island of Hawaii, Hawaii.

The purpose of the amendment is to correct the effective date of forfeiture from January 23, 2014 to January 23, 2015.

BACKGROUND:

At its meeting of January 23, 2015, under agenda item D-5, the Board approved the above subject matter regarding the forfeiture of General Lease No. S-5189. A copy of the approved submittal is attached as Exhibit 1.

Recommendation number 3 of the approved submittal set the effective date of lease termination as January 23, 2014. This was a typographical error and should have been January 23, 2015.

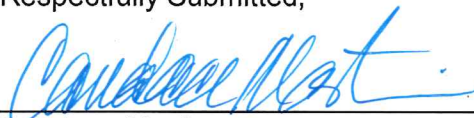
REMARKS:

Staff is asking that the Board correct this error by approving the change of the effective date from January 23, 2014 to January 23, 2015.

RECOMMENDATION: That the Board:

1. Authorize the change of effective date of termination of General Lease No. S-5189 from January 23, 2014 to January 23, 2015.

Respectfully Submitted,



 Candace Martin
 Land Agent

APPROVED FOR SUBMITTAL:



 Carty S. Chang, Interim Chairperson

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

January 23, 2015

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

Hawaii

Forfeiture of General Lease No. S-5189, Fishing Island, Inc., Lessee, Non-Exclusive Mooring Rights in Offshore Waters of Kailua-Kona, Island of Hawaii, Hawaii.

PURPOSE:

Forfeiture of General Lease No. S-5189, Fishing Island, Inc., Lessee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Offshore Waters of Kailua-Kona, Island of Hawaii, Hawaii, as shown on the attached map labeled Exhibit A.

AREA:

100 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:

Non-exclusive easement rights for mooring anchor for off-shore fishing platform purposes.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
January 23, 2015 UO.

EXHIBIT " 1 " D-5

TERM OF LEASE:

40 years, commencing on December 01, 1988 and expiring on November 30, 2028.

ANNUAL RENTAL:

\$200.00 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-5189, Fishing Island, Inc., Lessee, was served a Notice of Default by certified mail dated July 3, 2014 for:

Failure to keep lease rental payments current

Failure to post required performance bond

Failure to post required fire insurance policy

Failure to post required liability insurance policy

Other: _____

Said notice, accepted by the Lessee on July 5, 2014, offered the Lessee a thirty-day cure period to correct the default. This cure period expired on August 5, 2014. As of **December 24, 2014**, this breach has not been cured.

As of **December 24, 2014**, the current status of all lease compliance items is as follows:

RENT: The Lessee has a rental delinquency of \$200.00 for the time period from June 1, 2014 to May 31, 2015.

INSURANCE: The Lessee has not posted the required liability insurance policy.

PERFORMANCE BOND: The Lessee has posted the required performance bond. This bond is in the form of cash.

OTHER: **Abandonment:** Paragraph 37 of the lease states that "If the Grantee should fail or cease to use or abandon the subject premises for a continuous period of one (1) year, all rights and interest granted under this easement shall cease and terminate without any

further action by Grantor.” The Lessee has not used the easement since it was granted.

The Lessee has been in default for non-payment of rent on six previous occasions since 2007. Another rent payment was due on December 1, 2014 for the period December 1, 2014 through May 31, 2015.

Due to the Lessee’s failure to keep rent payments current and to use the easement for the purpose granted, staff is recommending that the Board authorize the cancellation of General Lease No. S-5189

RECOMMENDATION: That the Board:

1. Authorize the cancellation of General Lease No. S-5189 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-5189 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 January 23, 2014, 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-5189 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,


Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:

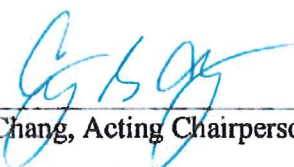

Carty S. Chang, Acting Chairperson



EXHIBIT A

