

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

April 27, 2012

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

OAHU

Request for Mutual Termination of General Lease No. 5590; Island Demo, Inc. Lessee;  
Moanalua, Honolulu, Oahu; Tax Map Key: (1) 1-1-064:006.

APPLICANT:

Island Demo, Inc., a domestic corporation.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Moanalua, Honolulu, Oahu, identified by Tax  
Map Key: (1) 1-1-064:006, as shown on the attached map labeled Exhibit A.

AREA:

9,005 square feet, more or less.

ZONING:

State Land Use District: Urban  
City and County of Honolulu LUO: I-2

TRUST LAND STATUS:

Section 5(e) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Encumbered by General Lease No. 5590 issued to Island Demo, Inc. for industrial  
purposes.

TERM:

Thirty-five (35) years, commencing from August 1, 1999, and expires on July 31, 2034.

ANNUAL RENTAL:

\$63,700.00 effective from August 1, 2009. Rent due semi-annually.

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>
Good standing confirmed:	YES	<u>  x  </u>	NO	<u>  </u>

REMARKS:

At a public auction held in 1999, Island Demo, Inc. (“ID”) was the highest bidder for the GL 5590 (Parcel E) and GL 5564 (Parcel A). Both leases are for a term of 35 years for industrial purposes, and further subject to rental reopening every 10 years.

In early December 2003, flooding occurred in Mapunapuna area, and ID’s leased premises were affected by the flooding. In December 2004, a civil case was filed naming the State of Hawaii as co-defendant regarding the loss suffered by the plaintiffs, including ID in the flooding.

Pursuant to the rental reopening process, on December 23, 2008, the department notified ID the annual rent for GL 5590 during the period from August 1, 2009 to July 31, 2019 would be \$63,700. Similar rental reopening was conducted for GL 5564 and the rent for the period from March 1, 2009 to February 28, 2019 was appraised at \$54,600 per annum.

ID did not agree to the new rents for either lease, and initiated arbitration process for both leases. Pursuant to the lease conditions, ID was billed the new rent until the arbitration is concluded. At the time of writing this submittal, the arbitration process is still ongoing and ID owes \$54,500 for GL 5590 in terms of rent and late fees. GL 5564 is current regarding rent.

PROPOSAL FROM ISLAND DEMO, INC.

Recently, ID, through its attorney, requested for a mutual termination of GL 5590, subject to the following conditions:

1. Island Demo agrees to release and dismiss with prejudice all claims against the State of Hawaii in Civil No. 04-1-0421-03. All claims against all remaining defendants

- remain and are preserved;
2. Island Demo will withdraw its rejection to the Reopening Offer Letter for General Lease S5564, Lot A, with each party to bear their own fees and costs;
3. Based upon the financial hardship of Island demo and in settlement of disputed claims, the Board of Land and Natural Resources (“the Board”) agrees to early termination of General Lease S5590, Lot E, pursuant to paragraph 31 of the Lease with no further monetary penalty or obligation by Island Demo to the Board with respect to Lot E, except as provided in paragraph 6 below;
4. The Board agrees to release all Bonds procured by Island Demo on deposit with the Board pursuant to the terms of General Lease S5590, Lot E;
5. Island Demo will be prohibited from bidding on property put out by the Department of Land and Natural Resources for a period of five (5) years;
6. Pursuant to paragraph 33 of the Lease, Island Demo will perform at its own cost, a Phase I environmental assessment of Lot E. If the Phase I assessment shows that Lot E contains no hazardous materials, Island /Demo shall have no further obligation to the Board with respect to Lot E. If the Phase I assessment indicates that presence of hazardous materials on Lot E caused by Island Demo, Island Demo will then perform a Phase II environmental assessment and, if necessary a remediation of the site.

STAFF RESPONSE:

1. Subject to review and approval of the Department of the Attorney General, staff has no objection to this condition;
2. GL 5564 is current regarding rent. Accordingly, staff has no objection to this condition;
3. Subject to (a) Island Demo performing its obligation regarding Phase I environmental assessment as mentioned in paragraph 6 above, (b) paying 50% of any rent owed under GL 5590 up to the date of acceptance of the Phase I environmental assessment, (c) providing perimeter fencing around Lot E at no cost to the State<sup>1</sup>, and (d) all conditions mentioned above are met within three (3) months from the Board date, staff has no objection to the proposed mutual termination request;
4. ID has a surety bond for \$56,000 currently deposited with the department pursuant to the terms of GL 5590. In view of the proposal of requiring ID to settle 50% of the rent owed until the environmental assessment process is finalized, staff recommends the Board hold on to the bond until the monetary obligation is complied with;
5. No objection; and
6. No objection.

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<sup>1</sup> To prevent vandalism between the date of cancellation and the occupation of the next lessee, staff believes the perimeter fencing is necessary. Currently, there is no physical barrier of any form around the perimeter.

RECOMMENDATION: That the Board:

Authorize the mutual termination of General Lease No. 5590 requested by Island Demo, Inc., under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

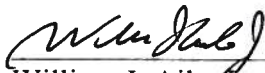
- A. The standard terms and conditions of the most current mutual cancellation form, as may be amended from time to time;
- B. Performance by Island Demo, Inc. of the lessee's obligation in the "Staff Response" section above, within three (3) months of the Board date to:
  - i. Perform Phase I environmental assessment;
  - ii. Pay 50% of the rent owes under GL 5590 until Phase I environmental assessment is accepted by the Chairperson; and
  - iii. Install perimeter fencing on Lot E.
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



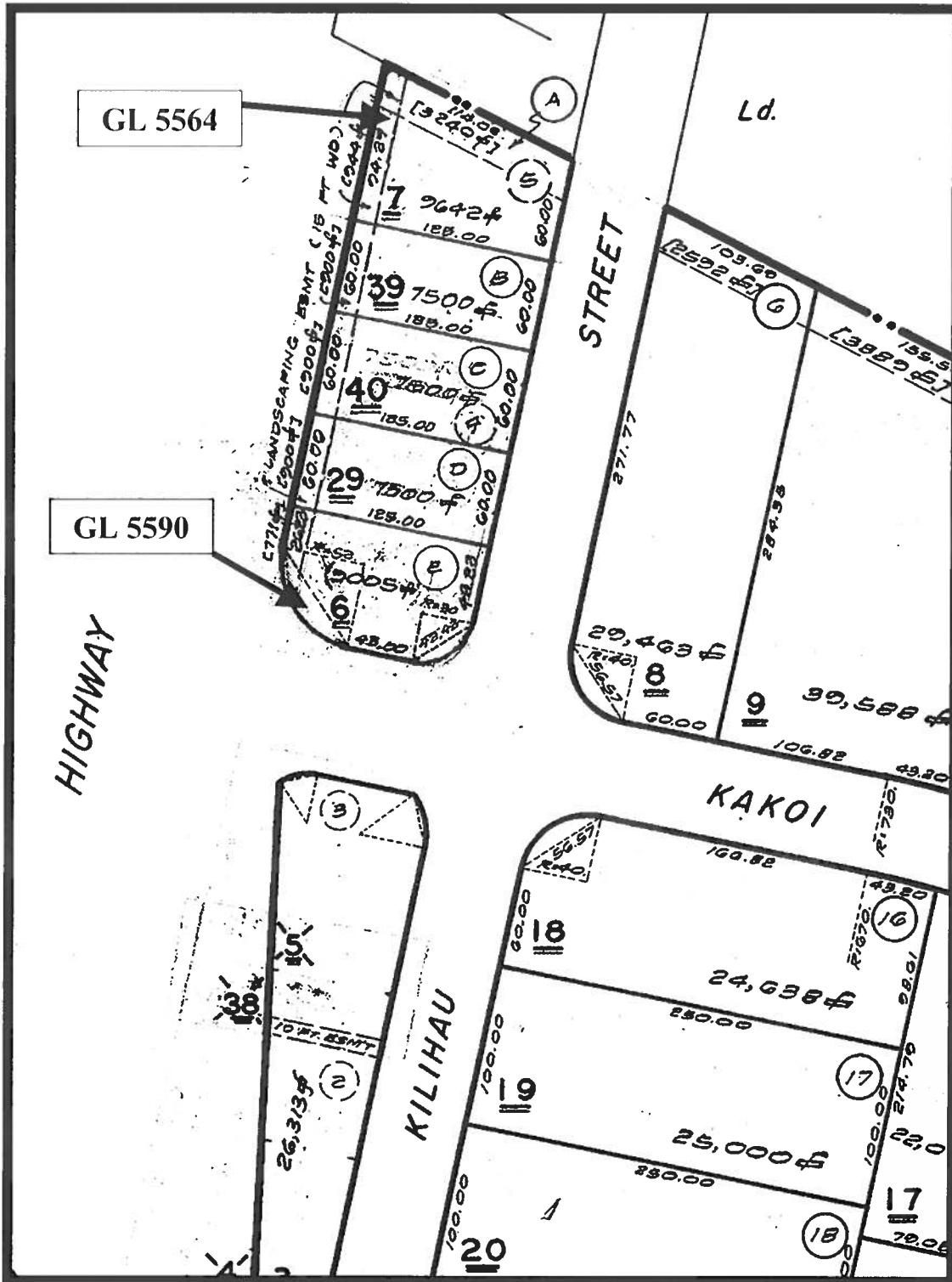
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson





TMK (1) 1-1-064:006

EXHIBIT A