

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

June 22, 2011

Ref. No.: GLS-4302

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

HAWAII

Request for Approval of Special Installment Agreement for Payment of  
Retroactive Rent under General Lease No. S-4302 to Yamada Transfer, Inc.  
Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-2-037:089.

LESSEE:

Yamada Transfer, Inc., a Hawaii corporation.

LEGAL REFERENCE:

Board policy of January 28, 2000, Item D-19, as amended.

LOCATION AND AREA:

Portion of Government lands identified as Lot 4, Block 40, Waiakea Houselots, situated  
at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/2-2-037:089, consisting  
of approximately 4.823 acres, as shown on the attached map labeled Exhibit A.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

LEASE CHARACTER OF USE:

General industrial purposes.

TERM OF LEASE:

55 years, commencing on 5/12/1970 and expiring on 5/11/2025. Last rental reopening  
was May 12, 2010; next rental reopening is scheduled for May 12, 2020.

ANNUAL RENTAL:

From May 12, 2000 to May 11, 2010: \$ 73,080.00.  
From May 12, 2010 to May 11, 2020: \$153,000.00. (rent as determined via arbitration)

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO
Registered business name confirmed:	YES <u>X</u>	NO
Good standing confirmed:	YES <u>X</u>	NO

REMARKS:

By letter dated May 3, 2012, Mr. Brian J. Ikawa, President of Yamada Transfer, Inc., requested an installment payment plan to assist in the payoff of retroactive rent in the amount of \$159,840.00, incurred as a result of the most recent rental reopening under the lease. (Exhibit B)

The annual lease rent in the ten-year period ending May 11, 2010 was \$73,080.00. In 2010, DLNR hired an appraiser to determine the rent for the ensuing ten-year period, and the annual rent was established at \$162,000.00. DLNR notified Lessee of the new rent by letter dated November 18, 2009. Lessee disputed the new rent and Lessee and the State proceeded to arbitration to resolve the dispute. The arbitration process took over a year to resolve as an unexpected situation developed concerning the State's appraisal, so the State initiated procedures to retain another appraiser for preparation of a new independent appraisal report. By memorandum dated February 22, 2012, the arbitration panel set the new rent at \$153,000 per year.

The terms and conditions of the lease did not specifically require the Lessee to pay disputed rent during the arbitration process, however, retroactive rent in the amount of \$159,840.00 accrued in the interim. Records indicate that Lessee did maintain regular rental payments at the older rate throughout the arbitration period.

Under Lessee's proposal, Lessee would pay \$13,320.00 of the retroactive rent upon the Board's approval of the installment plan. Lessee would pay the balance of \$153,000.00 over a 12-month period, at no interest, with monthly payments of \$13,320.00, which would fully amortize the retroactive rent. Lessee feels that it should not be charged interest on the retroactive rents outstanding as the delays experienced in the arbitration process were not the fault of Lessee. Additionally, Lessee would continue to make the semi-annual rental payments of \$76,500.00 when it becomes due in the months of May and November.

Although Lessee is of the opinion that it should not be assessed any interest against the

retroactive rents outstanding, the staff recommendation is that interest be assessed on the declining balance of the amount owing. Staff prepared an amortization schedule on the \$159,840.00 owing, for a term of twelve (12) months, at a rate of 7.00% per annum. (Exhibit C)

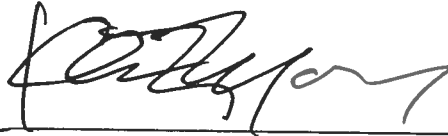
With the exception of retroactive rent, the Lessee is compliant with all lease terms and conditions including rent, insurance and performance bond. A notice of default for non-payment of regular and retroactive rent was issued on June 30, 2011. Lessee made timely petition to Land Division for acceptance of an installment plan for the retroactive rent. The last rental reopening occurred on May 11, 2011; next rental reopening is scheduled for May 11, 2020. There are no existing special installment agreements on the subject lease. There are substantial improvements on the property that will revert to State ownership upon termination of the lease.

RECOMMENDATION: That the Board:

- A. Approve Staff's recommendation for proposed Special Installment Payment Plan for Yamada Transfer, Inc., of the retroactive rent on the conditions cited above which are by this reference incorporated herein, and further subject to the following terms and conditions:
1. The total amount due is \$159,840.00.
  2. The interest rate applicable to the payments under the installment plan is 7% per annum.
  3. The term shall be for twelve (12) consecutive months, commencing on September 1, 2012.
  4. Lessee shall pay to DLNR commencing on September 1, 2012, and continuing on the 1<sup>st</sup> day of the twelve (12) consecutive monthly installment payments of \$13,830.44, which includes interest to DLNR on or before the first business day of each month.
  5. Prepayments may be made without penalty.
  6. Any delinquent installment payment will be charged a \$50.00 late fee plus 1% interest for any month or portion thereof a payment remains unpaid. In addition, a late installment payment shall constitute a default under the lease. If such default is not cured within 60 days after delivery to Lessee of a notice of default, the lease shall be subject to forfeiture in accordance with its terms and conditions.

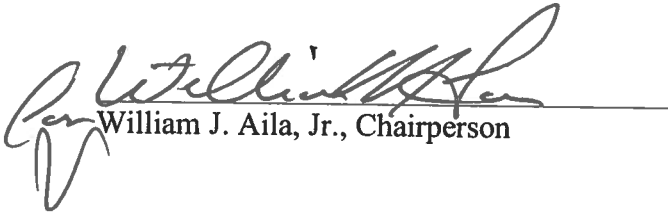
7. Land Division's Fiscal Office shall bill Lessee for the special installment monthly payments as well as the regular semi-annual rent.

Respectfully Submitted,



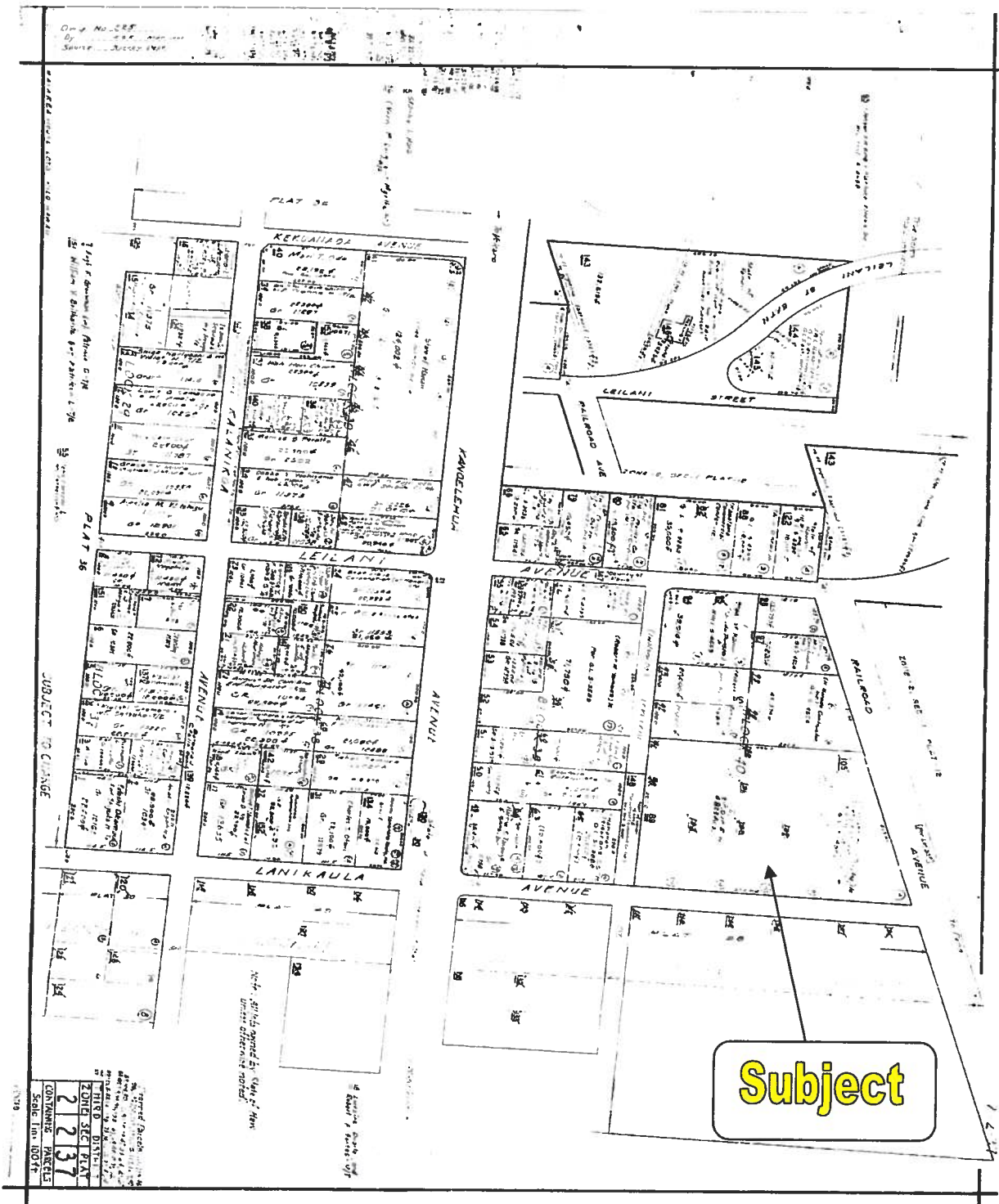
for \_\_\_\_\_  
Wesley T. Matsunaga  
Land Agent

APPROVED FOR SUBMITTAL:



\_\_\_\_\_

William J. Aila, Jr., Chairperson



**EXHIBIT A**

**YAMADA TRANSFER, INC.**  
733 Kanoelehua Ave. \* Hilo, Hawaii 96720  
Ph: (808) 933-8400 \* Fax: (808) 933-8415

May 3, 2012

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**DEPT OF LAND & NATURAL RESOURCES  
HAWAII DISTRICT LAND OFFICE  
75 AUPUNI ST RM 204  
HILO HI 96720**

RECEIVED  
LAND DIVISION  
HILO, HAWAII

Re: General Lease No. 4302

Dear Mr. Aila:

We recently concluded the rent reopening for the above lease with your department. The annual rent increased from \$73,080 to \$153,000. As a result of the time involved to complete the process, \$159,840 of retro-rent had accrued.

Like any business trying to survive today, paying off such a large obligation immediately would be very difficult; therefore, we asking for you assistance in this matter. We are requesting to pay off the retro-rent balance over a period of twelve months with no interest. The monthly payment amount would be \$13,320.

We have been a lessee with you for many years. We believe that our compliance with the lease terms and conditions, our paying history, our investment on the leased property, and our relationship with your staff over the years make us, we believe, a suitable lessee.

Once again, please consider our request to pay the retro-rent over a period of twelve months.

Thank you for your consideration in this matter.

Please feel free to call me at (808) 933-8410 if you have any questions or need additional information.

Sincerely,



Brian J. Ikawa  
President

**EXHIBIT B**

**Amortization schedule on \$159,840.00,  
 for a term of twelve (12) months,  
 at an interest rate of 7.00% per annum.**

<b>Payment Due Date</b>	<b>Payment Amount</b>	<b>Principal Paid</b>	<b>Interest Paid</b>	<b>Total Interest</b>	<b>Balance</b>
<b>Sept 2012</b>	\$ 13,830.44	\$ 12,898.04	\$ 932.40	\$ 932.40	\$ 146,941.96
<b>Oct 2012</b>	\$ 13,830.44	\$ 12,973.27	\$ 857.16	\$ 1,789.56	\$ 133,968.69
<b>Nov 2012</b>	\$ 13,830.44	\$ 13,048.95	\$ 781.48	\$ 2,571.05	\$ 120,919.74
<b>Dec 2012</b>	\$ 13,830.44	\$ 13,125.07	\$ 705.37	\$ 3,276.41	\$ 107,794.67
<b>Jan 2013</b>	\$ 13,830.44	\$ 13,201.63	\$ 628.80	\$ 3,905.21	\$ 94,593.04
<b>Feb 2013</b>	\$ 13,830.44	\$ 13,278.64	\$ 551.79	\$ 4,457.01	\$ 81,314.40
<b>Mar 2013</b>	\$ 13,830.44	\$ 13,356.10	\$ 474.33	\$ 4,931.34	\$ 67,958.29
<b>Apr 2013</b>	\$ 13,830.44	\$ 13,434.01	\$ 396.42	\$ 5,327.76	\$ 54,524.28
<b>May 2013</b>	\$ 13,830.44	\$ 13,512.38	\$ 318.06	\$ 5,645.82	\$ 41,011.91
<b>Jun 2013</b>	\$ 13,830.44	\$ 13,591.20	\$ 239.24	\$ 5,885.06	\$ 27,420.71
<b>Jul 2013</b>	\$ 13,830.44	\$ 13,670.48	\$ 159.95	\$ 6,045.01	\$ 13,750.23
<b>Aug 2013</b>	\$ 13,830.44	\$ 13,750.23	\$ 80.21	\$ 6,125.22	\$ 0.00

**EXHIBIT C**