

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

August 24, 2012

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-4323 to Kalaniana'ole Real Estate Investments, LLC and FMM LLC, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-1-10:33.

LESSEE:

Kalaniana'ole Real Estate Investments, LLC and FMM LLC, both Hawaii Limited Liability Companies.

LEGAL REFERENCE:

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

LOCATION AND AREA:

Portion of Government lands of Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/2-1-10:33, consisting of approximately 3.7 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:

65 years, commencing on 11/10/1970 and expiring on 11/09/2035. Last rental reopening occurred on 11/10/2010; next rental reopening is scheduled for 11/10/2020.

**ANNUAL RENTAL:**

From November 10, 2010 to November 9, 2020: \$126,000.00.  
From November 10, 2000 to November 9, 2010: \$ 60,600.00.

**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>
Good standing confirmed:	YES <u>X</u>	NO <u>__</u>

**REMARKS:**

By letter dated July 23, 2012, Kalaniana'ole Real Estate Investments, LLC and FMM LLC requested an installment payment plan to pay off retroactive rent in the amount of \$130,800.00 incurred as a result of the most recent rental reopening under the lease. A copy of the letter is attached as Exhibit B.

The annual lease rent in the ten-year period ending November 9, 2010 was \$60,600.00. In 2010, DLNR hired an appraiser to determine the rent for the ensuing ten-year period, and the annual rent was established at \$144,000.00. DLNR notified Lessee of the new rent by letter dated May 5, 2010. Lessee disputed the new rent and Lessee and the State proceeded to arbitration to resolve the dispute. By memorandum dated June 21, 2012, the arbitration panel set the new rent at \$126,000 per year.

The terms and conditions of the lease did not specifically require the Lessee to pay disputed rent during the arbitration process. Accordingly, retroactive rent in the amount of \$130,800.00 accrued in the interim. The Lessee is requesting a payment plan for the retroactive rent to be paid over a two-year period.

Staff is recommending the Board's approval of a special installment agreement (SIA) plan. Lessee would pay the retroactive rent of \$130,800.00 over 24 month's at 7% interest per annum with monthly payments of \$5,856.25 and a final payment of \$5,856.25, which would fully amortize the retroactive rent as indicated in the schedule attached as Exhibit C. Additionally, Lessee would continue to make semi annual rental payments of \$63,000.00.

With the exception of retroactive rent, the Lessee is compliant with all lease terms and conditions including rent, insurance and performance bond. Lessee has timely petitioned Land Division for acceptance of an installment plan for the retroactive rent. The last rental reopening occurred on November 10, 2010; next rental reopening is scheduled for November 10, 2020. There are no existing special installment agreements on the subject lease. There are substantial improvements on the property that will revert State ownership upon termination of the lease.

The interest rate and amortization schedule have been reviewed by Land Division's Fiscal Office for accuracy.

**RECOMMENDATION:**

Staff is recommending that the Board accept Lessee's proposal for paying the retroactive rent on an installment basis 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 \$130,800.00.
2. Lessee shall make twenty-four (24) consecutive monthly installment payments of \$5,856.25 and a final payment of \$5,856.25 including interest to DLNR on or before the first business day of each month.
3. The interest rate applicable to the payments under the installment plan is 7% per annum. Interest will begin accruing as of September 1, 2012.
4. Prepayments may be made without penalty.
5. 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.
6. Land Division's Fiscal Office shall bill Lessee monthly for installment payments as well as regular semi-annual rent.

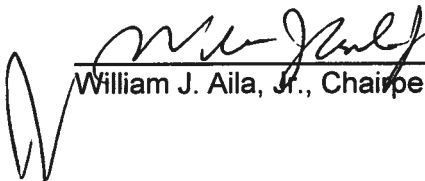
Respectfully Submitted,



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Gordon C. Heit  
District Land Agent

APPROVED FOR SUBMITTAL:

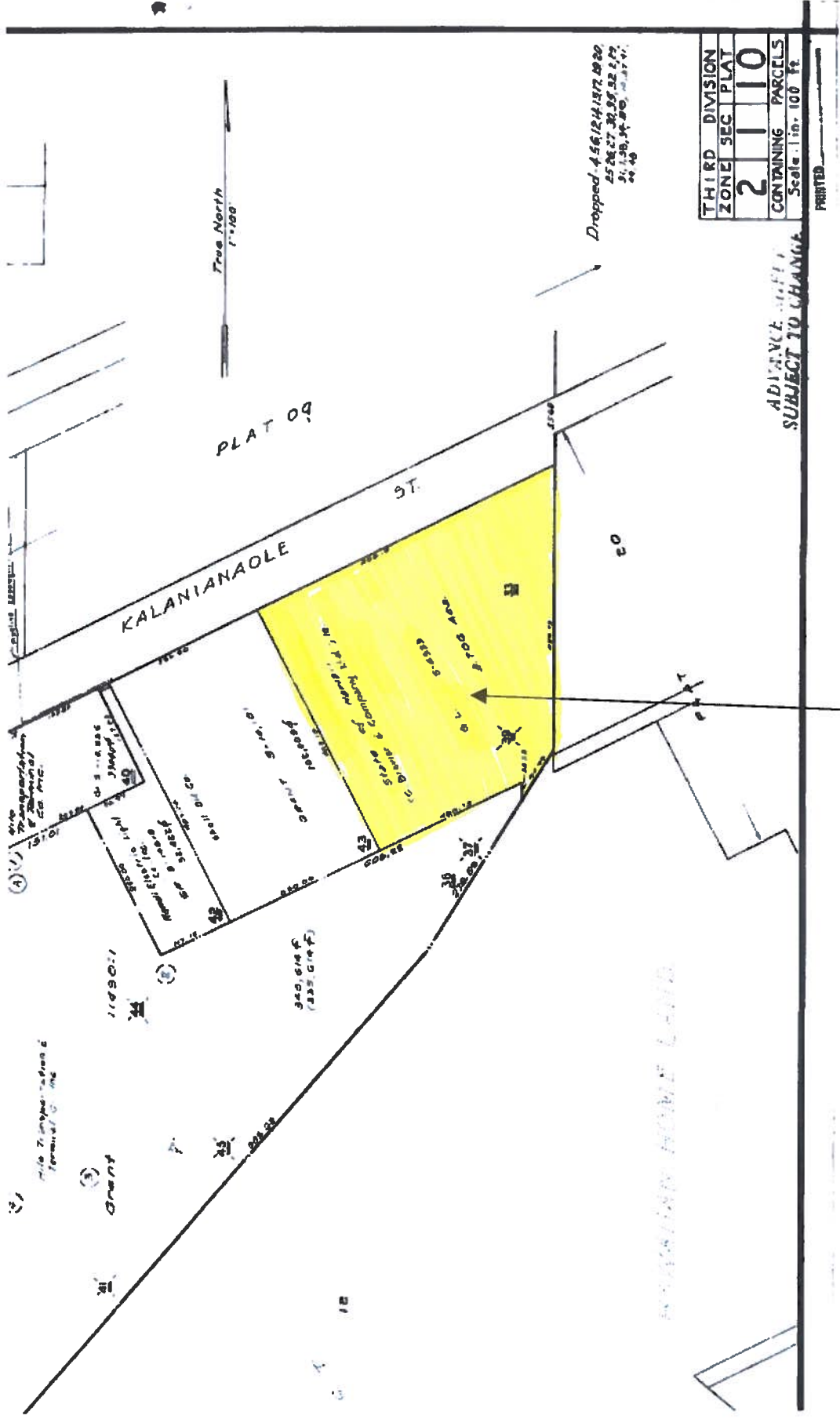


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William J. Aila, Jr., Chairperson

# EXHIBIT A

TMK: 3<sup>RD</sup>/2-1-10:33



SUBJECT PROPERTY





Hilo Harbor

Subject Parcel  
(3) 2-1-10:33

Kalaniana'ole Ave

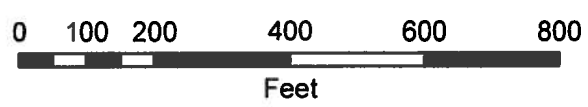
Nahale-a Ave

Kaula Ave

Desha Ave

Silva St

Airport Runway



July 23, 2012

2012 JUL 24 P 3: 33

Department of Land & Natural Resources  
Hawaii District Land Office  
75 Aupuni Street #204  
Hilo, Hawaii 96720

RECEIVED  
LAND DIVISION  
HILO, HAWAII

Attention: Gordon Heit, Land Agent

RE: General Lease #4323  
888 Kalaniana'ole Avenue

Aloha Gordon:

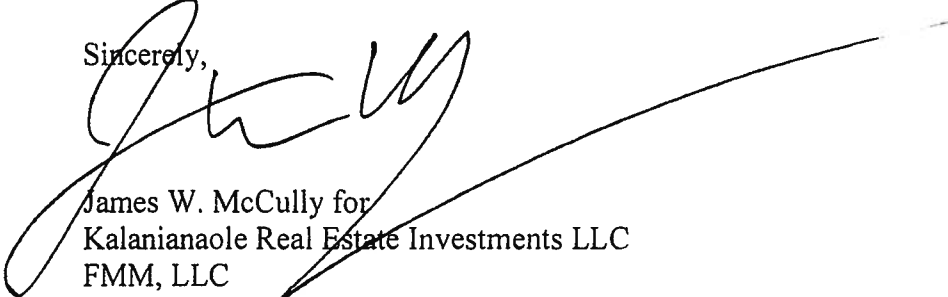
We have received a retro-rent billing (see attached) for the period of 11/10/2010 – 11/9/2012 in the amount of \$130,800.00 (the arrearage).

In regards to the increased ground rent, due to the continued recession and the very weak industrial market we are in a very tough economic situation. We expect to at best hold current gross rents or adjust downward to maintain occupancy. When these factors are combined with ongoing maintenance and sharply increasing costs (ground lease increase of 105%) we find ourselves in a very difficult market. With recent repairs made, and additional anticipated expenses in the near future, we are therefore compelled to ask for some relief.

We are requesting a payment plan for the arrearage sum of \$130,800.00. We would appreciate a payment period of 24 months. We will remain current with ground lease payments during this time.

We have always met with the requirements of our lease, and been in good standing with DLNR for more than 30 years. We regret having to make this request. If you have any questions please feel free to call me at 808-960-2953.

Sincerely,



James W. McCully for  
Kalaniana'ole Real Estate Investments LLC  
FMM, LLC  
40 Kamehameha Avenue  
Hilo, Hawaii 96720

## SA-4323 Kalaniana'ole Real Estate Investments LLC

Compound Period ..... : Monthly

Nominal Annual Rate ....: 7.000 %  
 Effective Annual Rate ...: 7.229 %  
 Periodic Rate .....: 0.5833 %  
 Daily Rate .....: 0.01918 %

## CASH FLOW DATA

Event	Start Date	Amount	Number	Period	End Date
1 Loan	08/01/2012	130,800.00	1		
2 Rate	08/01/2012	Compound: Monthly		Rate: 7.000 %	
3 Payment	09/01/2012	5,856.25 ✓	24	Monthly	08/01/2014

## AMORTIZATION SCHEDULE - Normal Amortization

Date	Payment	Interest	Principal	Balance
Loan 08/01/2012				130,800.00
Rate 08/01/2012	0.00	0.00	0.00	130,800.00
08/01/2012	Rate: 7.000 %	Compound: Monthly		
1 09/01/2012	5,856.25	763.00	5,093.25	125,706.75
2 10/01/2012	5,856.25	733.29	5,122.96	120,583.79
3 11/01/2012	5,856.25	703.41	5,152.84	115,430.95
4 12/01/2012	5,856.25	673.35	5,182.90	110,248.05
2012 Totals	23,425.00	2,873.05	20,551.95	
5 01/01/2013	5,856.25	643.11	5,213.14	105,034.91
6 02/01/2013	5,856.25	612.70	5,243.55	99,791.36
7 03/01/2013	5,856.25	582.12	5,274.13	94,517.23
8 04/01/2013	5,856.25	551.35	5,304.90	89,212.33
9 05/01/2013	5,856.25	520.41	5,335.84	83,876.49
10 06/01/2013	5,856.25	489.28	5,366.97	78,509.52
11 07/01/2013	5,856.25	457.97	5,398.28	73,111.24
12 08/01/2013	5,856.25	426.48	5,429.77	67,681.47
13 09/01/2013	5,856.25	394.81	5,461.44	62,220.03
14 10/01/2013	5,856.25	362.95	5,493.30	56,726.73
15 11/01/2013	5,856.25	330.91	5,525.34	51,201.39
16 12/01/2013	5,856.25	298.67	5,557.58	45,643.81
2013 Totals	70,275.00	5,670.76	64,604.24	
17 01/01/2014	5,856.25	266.26	5,589.99	40,053.82
18 02/01/2014	5,856.25	233.65	5,622.60	34,431.22
19 03/01/2014	5,856.25	200.85	5,655.40	28,775.82
20 04/01/2014	5,856.25	167.86	5,688.39	23,087.43
21 05/01/2014	5,856.25	134.68	5,721.57	17,365.86
22 06/01/2014	5,856.25	101.30	5,754.95	11,610.91
23 07/01/2014	5,856.25	67.73	5,788.52	5,822.39
24 08/01/2014	5,856.25	33.86	5,822.39	0.00

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**SA-4323 Kalaniana'ole Real Estate Investments LLC**

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<b>Date</b>	<b>Payment</b>	<b>Interest</b>	<b>Principal</b>	<b>Balance</b>
2014 Totals	46,850.00	1,206.19	45,643.81	
Grand Totals	140,550.00	9,750.00	130,800.00	